

**STATE OF MICHIGAN**  
**DEPARTMENT OF MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

December 22, 2008

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B9200013**

between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR  <b>ESRI</b> <b>380 New York Street</b> <b>Redlands, CA 92373</b>  Email: <a href="mailto:gincampo@esri.com">gincampo@esri.com</a>		TELEPHONE(909) 793-2853 -1090 <b>George Incampo</b>
		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 373-3993 <b>Dale Reif</b>
Contract Compliance Inspector: Patty Bogard <b>GIS Software Products – Department of Information Technology</b>		
CONTRACT PERIOD:		From: <b>October 1, 2008</b> To: <b>September 30, 2009</b>
TERMS	SHIPMENT	
N/A	N/A	
F.O.B.	SHIPPED FROM	
N/A	N/A	
MINIMUM DELIVERY REQUIREMENTS		
N/A		
MISCELLANEOUS INFORMATION:		

**NATURE OF CHANGE(S):**

**Effective immediately, the attached letter dated May 29, 2008, containing Exhibit I, Appendix D and Appendix E are incorporated into this contract. In the event of any conflict between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.**

**AUTHORITY/REASON(S)☺**

**Per vendor and DMB agreement.**

**Estimated Contract Value Remains: \$500,000.00**



May 29, 2008

Patty Bogard, Contract Consultant  
DIT Office of Strategic Policy  
Contract Services  
Constitutional Hall, Atrium South Tower  
525 W. Allegan Street  
Lansing, MI 48933

Via Courier Delivery

**RE: State Of Michigan Contract No. 071b3001293  
Extension, Updated Pricing And Terms Of Use  
ESRI Agreement No. 2002MPA3133 ("MPA")**

Dear Ms. Bogard:

The enclosed documents update the scope of use for items and the services procured through the MPA.

- 1) Exhibit I, Scope of Use, E300 5/08C. A copy of the new Exhibit I is attached to this letter.
- 2) Appendix D - Time and Materials Rate Schedule, J8410 10/22/07 is deleted. An updated rate schedule is now found as Attachment B to Appendix E.
- 3) Appendix E - Implementation Services (G-363) is deleted in its entirety. In its place a new Appendix E - Custom Software, Technical Data, and Assistance License Addendum (E-600) is inserted. A copy of the new Appendix E is attached to this letter.

These updates are provided in accordance with Article 3 of the MPA Terms and Conditions and does not require further approval by the State of Michigan to be implemented. Extension of the MPA is confirmed through September 30, 2009, per email from W. John Gachugu ([gachuguj@michigan.gov](mailto:gachuguj@michigan.gov)) dated April 18, 2008. If you have any questions or concerns, please contact me at (909) 793-2853, x2710 or through email at [jcollins@esri.com](mailto:jcollins@esri.com)

Regards,

A handwritten signature in black ink that reads "Joe Collins". The signature is written in a cursive style with a long, sweeping underline.

Joe Collins  
Contract Specialist  
Enclosures: As referenced above

cc: Micki Westrum, ESRI Minneapolis Regional Office



EXHIBIT 1  
SCOPE OF USE  
(E300 5/08C)

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

The scope of use for each ESRI Software identified below is described in the applicable footnotes listed in parentheses.

**Desktop GIS**

- ArcReader (20 and 25)
- ArcView (1 or 2 and 25 and 44)
- ArcEditor (1 or 2 and 25, 26 and 44)
- ArcInfo (2, 25, 26 and 44)
- ArcGIS Desktop Extensions (7)
- ArcView 3.x and Extensions (1, 7, and 17)

**Server GIS**

- ArcGIS Server and Extensions
  - Workgroup (either 3, or 5, and 8, 9, 25, 28, 29, 30, 32, 38, 39, 40 and 45)
  - Enterprise (either 3, 4, or 5, and 8, 9, 25, 27, 31, 38, 39, 40 and 45)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5, and 8, 10, and 31)
  - ArcIMS ArcMap Server (either 3, 4, or 5, and 31)
- Tracking Server (5 and 31)
- ArcGIS Image Server (either 3, 4, or 5, and 8, 31, and 42)
  - ArcGIS Image Server Service Editor (1)
- RouteMAP IMS (either 3, 4, or 5, and 8, 25 and 31)
- ArcGIS Business Analyst Server (5, 8, 9, 21, 25, 28, 39, 40, and 45)

**Mobile GIS**

- ArcPad (1, 12, 13 and 25)
- ArcPad Application Builder (1 and 25)
- ArcGIS Mobile Deployments (1, 15, 16 and 25)

**Developer GIS**

- ESRI Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, 35, and 36)
- ArcGIS Engine Developer Kit and Extensions (1 and 14, 15, 22, 25, 26 and 43)
- ArcGIS Engine Runtime and Extensions (1, 15, 22, 25 and 26)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)

- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- NetEngine (1, 5, and 15)
- NetEngine Internet (5)

**GIS Viewers and Connectors**

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS Explorer (20 and 25)
- ArcGIS For AutoCAD (1, 20 and 25)

**Business GIS**

- ArcGIS Business Analyst (1 or 2 and 25 and 45)
- BusinessMAP (1 and 25)
- ArcLogistics (either 1 or 2 and 25)
- ArcLogistics Server (5, 8, 9, 21, 25, 28, 39, 40, and 45)
- ArcLogistics Navigator Deployments (1, 15, and 16)

**Cartographic Production**

- Maplex (1)
- Production Line Tool Set (PLTS) for ArcGIS, GIS Data ReViewer, Map Production System-Atlas, Job Tracking for ArcGIS (JTX) (either 1 or 2), Job Tracking for ArcGIS Server (either 4 or 5, and 7)

**Web Services**

- ArcGIS Online (6, 25, 33, 34, and 35)

**Data**

- ESRI Data and Maps (either 1 or 5, and 23 and 37)
- Demographic Data (either 1, 2 or 5)
  - CommunityInfo
  - Retail Marketplace
  - Consumer Expenditure
- Community Tapestry Data (either 1, 2 or 5, and 21)
- Community Coder (either 1, 2, or 5, and 21)
- *Sourcebook America* (1)
- ArcGIS Data Appliance—Server Bundle or Data Only (6, 23, and 25)
- StreetMap Premium (either 1, 2 or 5, and 23 and 25)

1. "Single Use License." Licensee may permit a single authorized end user to install and use the Software, Data, and Documentation on a single computer for use by that end user on the computer on which the Software is installed. Remote access is not permitted. Licensee may permit the single authorized end user to make a second copy for end user's exclusive use on a portable computer so long as only one (1) copy of the Software, Data, and Documentation is in use at any one time.
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8. The administration tools for the Software may be copied and redistributed throughout Licensee's organization.
9. User-developed ArcGIS Server administration tools may be copied throughout Licensee's organization, but the ArcCatalog application (found in ArcGIS Desktop) may not be copied.
10. The ArcIMS license includes the right to deploy MapObjects—Windows Edition applications on the Internet or intranet. Licensee shall not develop client/server solutions with the ArcIMS Java Archive (JAR) files without a license for the MapObjects—Java Edition Developer Kit.
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  - b. Sublicensee may not use any ESRI Software, Data, Web Services, or Documentation, in whole or in part, separate from Licensee's executable application; and
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17. Licensee may use Business Objects Crystal Reports software only with the ArcView 3.x Software with which it was acquired and subject to the Crystal Reports License Agreement available on the media. Licensee may not use a software program or system to cache or queue report requests.
18. The Deployment license is per application per computer.
19. The MapObjects—Java Edition contains Java Archive files, which indicate they are authentic ESRI-certificated files when used over the Internet. Licensee shall not use ESRI certification or reference ESRI as a source of trusted content in any modified MapObjects Java Archive files. Licensee may deploy the unmodified Java class ESRI certified libraries as an integral part of the Licensee's application(s).
20. Licensee may reproduce and deploy the Software provided all of the following occur: (a) The Software is reproduced and deployed in its entirety; (b) a license agreement accompanies each copy of the Software that protects the Software to the same extent as the ESRI License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement; (c) all copyright and trademark attributions/notices are reproduced; and (d) there is no charge or fee attributable to the use of the Software.
21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Community Tapestry market segmentation system.
22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and Server development and deployment. (b) An end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer. (c) The ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.

23. Licensee may redistribute the Data as described in the Redistribution Rights Matrix available at <http://www.esri.com/legal/>, in the Help system, or in supporting metadata files, subject to the specific attribution descriptions and requirements for the dataset accessed.
24. EDN Software, Web Services, and Data may only be used by one (1) named developer per subscription solely for the purposes of research, development, testing, and demonstration of a prototype application. EDN Software and Data may be installed on multiple computers for use by any named EDN developer.
25. Use of included third-party owned data shall be subject to the Use of Data Restrictions found at <http://www.esri.com/legal/> for the specific Data accessed. The Use of Data Restrictions may be modified by ESRI from time to time. If a modification is unacceptable to Licensee, Licensee may cancel a subscription upon written notice to ESRI, or discontinue use of the Data or Web Services, as applicable. If Licensee continues to use the Data or Web Services, Licensee will be deemed to have accepted the modification.
26. ArcSDE Personal is restricted to four (4) gigabytes of Licensee data.
27. ArcGIS Server Web ADF Runtime Software may not be deployed independent of Licensee's ArcGIS Server Enterprise configuration.
28. Limited to ten (10) concurrent end users of non ArcGIS Server applications. This restriction includes use of ArcGIS Desktop Products, ArcGIS Engine Products, and third party applications that connect directly to any ArcGIS Server geodatabase. There are no limitations on the number of connections from Web applications.
29. Can only be used with SQL Server 2005/2008 Express.
30. Restricted to a maximum total of four (4) gigabytes of Licensee data.
31. Redundant Software installation(s) for failover operations may be implemented during the period the primary site is nonoperational. The redundant Software installation(s) shall remain dormant except for system maintenance and updating of databases while the primary site or any other redundant site is operational.
32. No redundant Software installation is permitted.
33. ArcGIS Online may only be utilized in conjunction with ArcGIS Desktop, ArcGIS Server (including the Web ADF), ArcGIS Mobile, ArcGIS Explorer Software, and the ArcGIS APIs (including JavaScript™ and Adobe® Flex®).
34. Licensee's organization is limited to the number of specified credits, transactions, geography, or number of users as described in the online product description.
35. Licensed end users shall not share client-side data cache derived from ArcGIS Online with other licensed end users or third parties.
36. Licensee may not download or store resulting data or information except for results derived from using ArcWeb Services Address Manager.
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or calculating an alternate route if a turn is missed.
38. ArcGIS Server 3 D extension included with ArcGIS Server (Workgroup or Enterprise) Standard and Advanced may only be used for generating globe data cache(s), or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D Extension Software is permitted with ArcGIS Server Standard. ArcGIS Server 3D Extension can be used with ArcGIS Server Advanced if the additional license fees for the 3D extension have been paid.
39. Any editing functionality included with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) are permitted for use only with ArcGIS Server Advanced.
41. Reserved
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Image Server Service Editor for every four (4) cores of ArcGIS Image Server licensed. Additional Service Editor desktop deployments can be licensed for an additional fee.
43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the Engine Runtime Software.
44. For any operating system environment in which Licensee runs instances of the Concurrent Use license management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use license management software in a separate operating system environment for temporary failover support.
45. Data licensed with ArcGIS Business Analyst and ArcGIS Business Analyst Server are restricted to use with the respective Business Analyst extension and are not for general use with ArcGIS Desktop or ArcGIS Server Software.



**APPENDIX E  
CUSTOM SOFTWARE, TECHNICAL DATA, AND  
ASSISTANCE LICENSE ADDENDUM  
(E600M 10/05)**

ESRI, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2653 • FAX 909-793-5953

**ARTICLE 1—DEFINITIONS**

All words, phrases, or terms defined in other parts of this Agreement shall have the same meaning in this Addendum. The following additional words, phrases, or terms shall have the following meaning:

- i. "Task Order" means a task order issued under this Addendum. (A sample task order form is attached as Attachment A.)
- ii. "Custom Software" means all or any portion of the computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under any Task Order, exclusive of Software.
- iii. "Technical Data" means, without limitation, all technical materials including formula, 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 any Task Order.
- iv. "Map Data" means any digital data set(s) including geographic, vector data coordinates, raster, or associated tabular attributes supplied or used in performance of any Task Order.
- v. "Deliverables" means Custom Software, Technical Data, or Map Data specified for delivery or use by Licensee under a Task Order.
- vi. "Supported Software" means the Software identified pursuant to Article 2.

**ARTICLE 2—TASK ORDERS AND PROJECT SCHEDULE**

ESRI shall provide Deliverables as specified in Task Orders for support of the Software identified therein ("Supported Software").

Unless otherwise provided by ESRI in writing, ESRI's Senior Contract Administrator, John Perry is authorized to agree to Task Orders. Licensee shall provide advanced written notification of the name and title of the representative authorized to sign Task Orders and bind Licensee. Each party may enter into Task Orders at its sole discretion and shall not have any obligation under a Task Order until it is signed by both parties.

Each party shall identify in writing the project manager who is responsible for the Deliverables specified in Task Orders. By written notice, either party may replace the project manager at any time with a similarly qualified person.

ESRI shall complete each Task Order in accordance with the schedule specified in that Task Order.

**ARTICLE 3—LICENSE GRANT**

Subject to the terms and conditions set forth in this Agreement and effective upon their delivery, ESRI hereby grants to Licensee a nonexclusive, worldwide license in the Deliverables to use, modify, and reproduce the Deliverables in connection with Licensee's authorized use of Supported Software. The grant in the immediately preceding sentence does not apply to Map Data, which Licensee must separately and directly license from the vendor.

**ARTICLE 4—PATENTS AND INVENTIONS**

During performance of Task Orders, the parties anticipate that inventions, innovations, and improvements ("Inventions") relating to the subject matter of such Task Orders may be conceived solely or jointly by principals, employees, consultants, or independent contractors (hereinafter called "Inventors") of the parties hereto.

The parties agree that, as of the effective date of this Agreement, ESRI or its licensors own all intellectual property rights in the Software. During the term of this Agreement, Licensee shall promptly notify ESRI if Licensee becomes aware of any known or suspected infringement or violation of these rights.

Each party shall retain title to any Inventions made or conceived solely by its Inventors during the term of this Addendum, including, but not limited to, such Inventions as ESRI's Inventors solely make or conceive while providing technical assistance pursuant to this Addendum. The parties shall jointly own any Invention made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software and as additional compensation for the Technical Data access and license provided under this Addendum, Licensee hereby grants and agrees to grant to ESRI an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.

Licensee agrees to disclose promptly to ESRI (i) each Invention relating to the Software and made or conceived by Licensee's Inventors during the term of this Addendum and (ii) of any decision to file a patent application with respect to such Invention and the country or countries in which such application will be filed.

Where only one party has title to an Invention, that party, at its sole discretion, shall have the right, but not the obligation, at its expense to: (i) decide on whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on such Invention; (ii) decide the extent and scope of such protection; and (iii) protect and enforce in any country any patents issued on such Invention.

Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.

The acquisition or maintenance of protection shall not be abandoned by a joint owner (the "Assigning Owner") without giving the other joint owner (the "Beneficial Owner") an opportunity to intervene and acquire or maintain protection at the Beneficial Owner's expense. The Assigning Owner electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the Beneficial Owner as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.

All Inventions made by Inventors during performance of tasks and activities defined by Task Orders during the term of this Addendum will be presumed, absent clear and convincing evidence to the contrary, to have resulted from the Inventors' activities under the Task Orders.

Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to ESRI for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party. However, either party may transfer such Inventions to its Affiliates for their internal use only. "Affiliate" shall mean the parent or subsidiary companies of a party or subsidiary companies to a party's parent provided there is more than fifty percent (50%) ownership of the subsidiary by the parent or party.

#### **ARTICLE 5—OWNERSHIP, CONFIDENTIALITY, AND EXPORT CONTROLS**

Except as specifically granted in this Addendum, ESRI or its licensors own and retain all right, title, and interest in the Deliverables. This Agreement does not transfer ownership rights of any description in the Deliverables to Licensee or any third party.

Unless otherwise agreed in writing, the Deliverables are ESRI confidential and Licensee shall preserve and protect their confidentiality. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Deliverables delivered only in object code, executable code, or formats subject to similar or greater means of access control (collectively, "Secure Formats"). For Deliverables delivered in source code or other human-readable formats, Licensee shall have met its obligations under this Article if its disclosure of Deliverables is limited to Deliverables in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Deliverables is withheld from such

disclosure, and the person or entity in receipt of such Deliverables similarly agrees not to perform such acts or allow others to do so.

Except as provided in the preceding paragraph, Licensee shall not disclose the Deliverables to employees or third parties without the advanced written consent of ESRI. However, Licensee may, without such consent, make such disclosures to employees as are reasonably required for the Licensee's authorized use of the Supported Software, provided that such disclosure is strictly limited to the portions of the Deliverables needed for that purpose.

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

Licensee shall not have any obligation to protect any part of a Deliverable that it can prove: (i) was in Licensee's possession before receipt from ESRI; (ii) is or becomes a matter of public knowledge through no fault of Licensee; (iii) is rightfully disclosed by a third party without a duty of confidentiality; (iv) is disclosed by ESRI to a third party without a duty of confidentiality; (v) is independently developed by Licensee; or (vi) is required to be disclosed by operation of law.

## ARTICLE 6—ACCEPTANCE

### A. For Time and Materials Task Orders

Deliverables are provided strictly on a time and materials basis. Therefore, Licensee shall accept Deliverables as promptly as practicable after delivery, and Deliverables shall be deemed accepted thirty (30) days after delivery.

### B. For Firm Fixed Price Task Orders

Deliverables for fixed price Task Orders shall be categorized as follows:

- i. "DELIVERABLE ACCEPTED" means a Deliverable conforming to applicable Task Order(s) with no more than minor nonconformities. Licensee shall complete its acceptance review within ten (10) working days of receiving each Deliverable.
- ii. "DELIVERABLE ACCEPTED WITH REWORK" means a deliverable substantially conforming to applicable Task Order(s), but having a significant number of identified nonconformities and accepted subject to rework by ESRI. ESRI shall rework the Deliverable for the identified nonconformities and resubmit it within thirty (30) days. Licensee 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.
- iii. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). ESRI shall rework the Deliverable and resubmit it to Licensee within thirty (30) days, at which time Licensee shall have ten (10) working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Licensee agrees it shall not use any Deliverable in its business operations before acceptance as described in Subsections B(i) or B(ii). If ESRI does not receive within ten (10) working days after delivery written notice that the Deliverable is "ACCEPTED WITH REWORK" or "REJECTED" in accordance with B(ii) or B(iii), or if Licensee uses the Deliverable in its business operations, the Deliverable shall be deemed, as of the first to occur of either of these events, to have been accepted.

## ARTICLE 7—CHANGES TO SCOPE OF WORK

Licensee may, at any time, request changes within the general scope of an open Task Order. If the parties agree to such changes and such changes cause an increase or decrease in the cost or time required to provide a Deliverable under any Task Order (regardless of whether the Deliverable itself is changed), an equitable adjustment in the price or schedule, or both, shall be made, and this Agreement shall be modified accordingly in writing and signed by both parties.

## ARTICLE 8—COMPENSATION; INVOICES

### A. For Time and Materials Task Orders

ESRI shall prepare and submit to Licensee written monthly invoices showing the compensation due for work performed under Task Orders. The amount invoiced will be equal to the number of hours expended during the previous month multiplied by the rates for labor categories set forth in Attachment B, plus other burdened direct costs. ESRI may, at its sole discretion, stop work in order to avoid exceeding the total value of applicable Task Orders. Any election to exceed such total value shall not affect the rights or obligations of the parties under this Agreement, including any right to compensation for such excess work and to stop work at anytime after such total value is exceeded.

### B. For Firm Fixed Price Task Orders

ESRI shall prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the full amount of that Task Order is due.

### C. Payment

Licensee shall pay each invoice no later than forty-five (45) days after receipt thereof.

## ARTICLE 9—REQUIRED CORRECTIONS AND LIMITED WARRANTY

### A. Correction of Deliverables and Warranty

1. For Time and Materials Task Orders: Not later than thirty (30) days after acceptance of a Deliverable, Licensee may require ESRI to correct or replace, at ESRI's option, Deliverables that at the time of delivery do not conform with the applicable written specifications included in, or delivered by ESRI pursuant to, the corresponding Task Order. The cost of replacement or correction shall be determined under the Time and Materials section of the Compensation; Invoices article of this Addendum.

ESRI shall have no obligation or liability under this Agreement to correct Deliverables that were nonconforming at the time of delivery, except as provided in this Subsection A.1.

2. For Firm Fixed Price Task Orders: ESRI warrants that for a period of thirty (30) days after acceptance of a Deliverable that the Deliverable will conform, in a manner consistent with professional and technical standards in the software industry, with the applicable written specifications that are included in, or delivered by ESRI pursuant to, the corresponding Task Order.

### B. Disclaimer

1. THE REQUIRED CORRECTIONS AND WARRANTY SET FORTH IN SECTION "A" OF THIS ARTICLE ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER OBLIGATIONS TO CORRECT OR REPLACE DELIVERABLES AND OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT DELIVERABLES ARE ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR ARE 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.
2. IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY THE MAP DATA, WHETHER SUPPLIED BY LICENSEE OR ESRI, OR THE VENDORS OF EITHER OF THEM. IF SUPPLIED BY ESRI OR ITS VENDORS, ESRI BELIEVES SUCH MAP DATA IS RELIABLE, BUT IT MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET LICENSEE'S NEEDS OR EXPECTATIONS. ESRI IS NOT INVITING RELIANCE ON MAP DATA, AND LICENSEE SHOULD ALWAYS VERIFY ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

## ARTICLE 10—LIMITATION OF LIABILITY

### A. Disclaimer of Certain Types of Liability

IN NO EVENT SHALL ESRI OR ITS LICENSOR(S) BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR

FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

**B. General Limitation of Liability**

IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, EXCEED THE AMOUNTS PAID TO ESRI BY LICENSEE FOR THE DELIVERABLES FROM WHICH THE LIABILITY DIRECTLY AROSE.

**C. Applicability of Disclaimers and Limitations**

Licensee agrees that the limitations of liability and disclaimers set forth in this Agreement will apply regardless of whether Licensee has accepted the Deliverables or any other product or service delivered by ESRI. The parties agree that ESRI has set its prices and entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose or cause consequential loss), and that the same form an essential basis of the bargain between the parties.

**ARTICLE 11—HIGH RISK ACTIVITIES**

- A. Deliverables are not fault-tolerant and are not designed, manufactured, or intended for use or resale for use for insurance underwriting or with critical health and safety or online control equipment in hazardous environments that require fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, emergency response, terrorism prevention or response, life support, or weapons systems ("High Risk Activities"). ESRI SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.
- B. Licensee agrees to indemnify, defend, and hold ESRI, its officers, directors, employees, agents, subcontractors, licensors, successors, and assigns harmless from and against any and all liability, losses, claims, expenses (including attorneys' fees), demands, or damages of any kind, including direct, indirect, special, punitive, incidental, or consequential damages, arising out of or in any way connected with Licensee's use or permitting the use by others of Deliverables for High Risk Activities. Delivery of Deliverables does not constitute a waiver of the rights and obligations set forth in this Article.

**ARTICLE 12—TERM AND TERMINATION**

**A. Term**

Unless terminated earlier pursuant to Section B or C of this Article, the term of this Addendum shall expire upon the later to occur of (i) the delivery of the last scheduled Deliverable as specified in the Task Orders executed under this Addendum or (ii) the expiration of this Agreement.

**B. Termination for Convenience**

Licensee may terminate this Addendum or any Task Order at any time on thirty (30) days' written notice to ESRI and upon payment to ESRI of all amounts due to date pursuant to this Addendum, including reasonable termination expenses and the pro rata contract price for the Task Orders affected.

**C. Termination for Cause**

Either party, as applicable, shall have the right, in addition and without prejudice to any other rights or remedies, to terminate this Addendum or any Task Order as follows:

- i. By ESRI, at its sole discretion and without opportunity to cure, if (a) Licensee fails to pay after ten (10) days' written notice the amounts due to ESRI pursuant to the "Compensation; Invoices" article of this Addendum, (b) ESRI has terminated all or any part of this Agreement under any other of its provisions, or (c) Licensee engages in unauthorized use, reproduction, or disclosure of Deliverables.
- ii. By either party for any material breach of this Addendum that is not cured within fifteen (15) days of receipt by the party in default of a notice specifying the breach and requiring its cure.

**D. Obligations upon Termination**

Upon termination of this Addendum, the parties shall have no further obligations pursuant to its terms, except that Articles 4, 5, 8, 9B, and 10-14 shall survive termination. Unless Licensee has materially breached its obligations under this Agreement, Articles 3 and 9A shall also survive termination.

**ARTICLE 13—RESTRICTIONS ON HIRING**

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

**ARTICLE 14—TAXES**

Values specified in Task Orders are exclusive of state, local, and other taxes or charges (including, without limitation, custom duties, tariffs, and value-added taxes, but excluding income taxes payable by ESRI). In the event such taxes or charges become applicable to Deliverables, Licensee shall pay any such taxes upon receipt of written notice that they are due.

**ARTICLE 15—INDEPENDENT CONTRACTOR**

ESRI is, and at all times will be, an independent contractor. Nothing in this Agreement shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party has the authority to enter into any contracts on behalf of the other party or otherwise act on behalf of the other party.

**ARTICLE 16—FORCE MAJEURE**

The obligations in this Addendum are subject to the "Force Majeure" article set forth in this Agreement.

**ARTICLE 17—COMMERCIAL TERMS AND CONDITIONS**

This Addendum contains ESRI's commercial terms and conditions. Licensee's rights in the Deliverables are strictly limited to the uses granted by this Addendum. In the event any court, arbitrator, or board holds that the U.S. Government has greater rights to any portion of the Deliverables, such rights shall extend only to the portion(s) affected, and use, duplication, or disclosure by the U.S. Government is subject to restrictions as provided in DFARS §227.7202-1(a) and §227.7202-3(a) (1995), DFARS §252.227-7013(c)(1)(ii) (OCT 1988), FAR §12.212(a) (1995), FAR §52.227-19 (June 1987), or FAR §52.227-14 (ALT III) (June 1987), as applicable.

**ARTICLE 18—NOTICE**

All notice required by this Agreement shall be in writing to the parties at the following respective addresses, or to such other address as a party may subsequently specify in a notice provided in the manner described in this Article, and shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of three (3) days following post by first class registered or certified mail, return receipt requested, with postage prepaid; (iii) upon the passage of two (2) days following post by overnight receipted courier service; or (iv) upon transmittal by confirmed telex or facsimile, provided that if sent by facsimile a copy of such notice shall be concurrently sent by U.S. certified mail, return receipt requested and postage prepaid, with an indication that the original was sent by facsimile and the date of its transmittal:

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
Tel.: \_\_\_\_\_  
Fax: \_\_\_\_\_

ESRI: ESRI  
380 New York Street  
Redlands, CA 92373-8100  
USA  
Project/Technical Notice—Attn.: John Perry,  
Senior Contract Administrator  
Tel.: 909-793-2853, extension 1133  
Fax: 909-307-3034  
Legal Notice—Attn.: Contract Manager  
Tel.: 909-793-2853, extension 1593  
Fax: 909-307-3020  
With a copy to John Perry, Senior Contract Administrator

Notice for non-U.S. Licensees shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of seven (7) days following post by international courier service with shipment tracking provisions; or (iii) upon transmittal by confirmed telex or facsimile, provided that if sent by facsimile a copy of such notice shall be concurrently sent by receipted international courier service, with an indication that the original was sent by facsimile and the date of its transmittal.

#### **ARTICLE 19—ASSIGNMENT AND DELEGATION**

ESRI may, in whole or in part, assign any of its rights or delegate any performance under this Agreement, provided that ESRI shall remain responsible for the performance it delegates. This Agreement binds and benefits successors or assigns permitted under this Article 19.

**ATTACHMENT A**  
**SAMPLE TASK ORDER**  
ESRI Agreement No. 2008MPA3133  
Task Order No. \_\_\_\_\_

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. (ESRI), and \_\_\_\_\_ (Licensee), this Task Order authorizes delivery 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, and Technical Data (including Technical Assistance), Supported Software, and the resources to be provided by Licensee (including Licensee-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, Licensee agrees that its employees, representatives, and subcontractors will cooperate and communicate with ESRI during performance of this Task Order. Without cost to ESRI, Licensee shall provide, allow access to, or assist ESRI in obtaining all data ESRI requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Licensee and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type (FFP or T&M):
3. Total Task Order Value or Not-to-Exceed Value (if time and materials basis):
4. Delivery Schedule or Start/End Date(s) for Each Deliverable:
5. Special Considerations:
6. ESRI Project Manager:  
ESRI Senior Contract Administrator:

ACCEPTED AND AGREED:

\_\_\_\_\_  
(Licensee)

Signature: \_\_\_\_\_

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

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

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

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(ESRI)

Signature: \_\_\_\_\_

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

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

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

ATTACHMENT B  
TIME AND MATERIALS RATE SCHEDULE

*Effective January 1, 2008*

Hourly time and materials labor rates have been provided for each labor category for calendar year 2008. The hourly labor rates for services that are performed after 2008 may be escalated in an amount not to exceed seven and one-half percent (7.5%) each year. Other direct costs, such as travel, reproduction, subcontractor, telecommunication/freight, or materials, will be charged a material handling fee and invoiced.

ESRI reserves the right to provide fixed price quotations for professional services requests that require deliverables other than hours and/or are more than twenty-five thousand dollars (\$25,000). Work performed under fixed price orders will require additional terms and conditions and will be invoiced monthly based on percent complete.

Principal    Hourly Rate: \$332/Hour

These staff members work as program directors or project advisors providing project vision, strategic consulting, and program management for all types of geographic information system (GIS) projects. They apply market/application domain expertise and have extensive experience in GIS and related technologies. Consulting activities may include strategic planning, review and oversight of requirements definition, application and database design, and system integration consulting. Management activities may include defining program requirements, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. These staff members work with senior client staff and have the support of senior ESRI corporate staff to ensure successful project completion.

Senior Consultant Hourly Rate: \$251/Hour

These staff members work as project managers or project advisors providing strategic consulting and program management for all types of GIS projects. They apply market/application domain expertise and have extensive experience in GIS and related technologies. Consulting activities may include strategic planning, GIS workshops and seminars, requirements definition, application and database design and development, and system integration consulting. Management activities may include defining program requirements, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. They design comprehensive work plans that employ structured systems methodologies, which define project deliverables, milestones, and realistic schedules.

Consultant    Hourly Rate: \$200/Hour

These staff members provide day-to-day consulting and management of contracted projects within ESRI. They work under the guidance of senior ESRI consulting staff and support the design and implementation of defined work plans. They provide traditional consulting services and design and management support to application development projects and database conversion projects. They conduct detailed requirements interviews, document application requirements, develop logical and physical database designs using computer-aided software engineering (CASE) tools and entity-relationship (E-R) diagramming methodologies, design and develop software and database quality assurance/quality control (QA/QC) programs, and provide management oversight of daily technical activities. They work with senior consulting and technical staff to design comprehensive work plans that employ structured systems methodologies, which define project deliverables, milestones, and realistic schedules. These staff members also work with ESRI administrative staff to ensure that progress and financial reporting is provided according to contract requirements.

Senior Technical Designer Hourly Rate: \$259/Hour

These staff members are the senior technical staff at ESRI. They provide the overall technical vision and system architecture for large complex systems. They apply sound software engineering principles and life cycle methodologies to projects. They are actively involved in systems architecture design, application software design, database process design, and all phases of coding including conducting design and code reviews. They may serve as the principal investigator in focused studies or research and development (R&D) projects. While staff members in this category have broad technical knowledge of GIS applications and related technologies, they also provide specific expertise in areas such as Internet applications, data warehousing, spatial analysis, and modeling. They are proficient in ESRI software languages as well as third-generation programming languages, Internet markup languages, and other technologies.

Technical Designer    Hourly Rate: \$210/Hour

GIS system/software developers design technical project plans for the implementation of application software projects and database development projects. They oversee the day-to-day technical activities of the project team and ensure that appropriate systems methodologies are employed. They design and develop QA/QC programs and oversee design and code reviews, database reviews, and other QA/QC activities throughout the project life cycle. They perform detailed software design and detailed database conversion design and are directly involved in the coding and implementation of the more complex and strategic portions of application software and database conversion projects. They are proficient in ESRI software languages as well as third-generation programming languages, Internet markup languages, and other technologies.

Technical Analyst    Hourly Rate: \$163/Hour

Staff members in this category work independently to perform software coding and write software documentation to design specifications developed by senior staff. They also design and implement data conversion procedures. These staff members also perform software and database quality control and are proficient in the coding of software and processing of digital databases. They are also proficient in ESRI software languages as well as third-generation programming languages, Internet markup languages, and other technologies.

Database Analyst    Hourly Rate: \$138/Hour

These staff members provide database development support in creating cartographic and digital data products. Areas of expertise include performing data conversion, migration, and translation activities utilizing advanced processing techniques in ArcGIS software. In addition, these staff members design and implement efficient production tools and coordinate workflow with project personnel.

**STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B9200013**

**between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR  <b>ESRI          380 New York Street          Redlands, CA 92373</b>  Email: <a href="mailto:gincampo@esri.com">gincampo@esri.com</a>	TELEPHONE(909) 793-2853 -1090 <b>George Incampo</b> CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 373-3993 <b>Dale Reif</b>
Contract Compliance Inspector: Patty Bogard <b>GIS Software Products – Department of Information Technology</b>	
CONTRACT PERIOD: From: <b>October 1, 2008</b> To: <b>September 30, 2009</b>	
TERMS  <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT  <p style="text-align: center;"><b>N/A</b></p>
F.O.B.  <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM  <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #07118200263, this Contract Agreement and the vendor's quote dated May 29, 2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b>  <b>Estimated Contract Value: \$500,000.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07118200263. Orders for delivery will be issued directly by the Department of Information Technology through the issuance of a Purchase Order Form. All terms and conditions of contract 071B3001293 are made a part hereof. This contract replaces 071B3001293.

<b>FOR THE CONTRACTOR:</b> ESRI	<b>FOR THE STATE:</b>
Firm Name	Signature Dale Reif, Buyer
Authorized Agent Signature	Name/Title IT Division
Authorized Agent (Print or Type)	Division
Date	Date



**PURCHASING OPERATIONS  
STATE OF MICHIGAN**

**TABLE OF CONTENTS**

**SECTION I – CONTRACTUAL SERVICES TERMS AND CONDITIONS**

I-A PURPOSE..... 1  
 I-B TERM OF CONTRACT ..... 1  
 I-C ISSUING OFFICE..... 1  
 I-D CONTRACT ADMINISTRATOR ..... 1  
 I-E PURCHASE ORDERS ..... 1  
 I-F COST LIABILITY ..... 1  
 I-G CONTRACTOR RESPONSIBILITIES..... 2  
 I-H NEWS RELEASES ..... 2  
 I-I DISCLOSURE ..... 2  
 I-J ACCOUNTING RECORDS ..... 2  
 I-L NON INFRINGEMENT/COMPLIANCE WITH LAWS ..... 2  
 I-M WARRANTIES AND REPRESENTATIONS ..... 3  
 I-O CONFIDENTIALITY OF DATA AND INFORMATION ..... 3  
 I-P REMEDIES FOR BREACH OF CONFIDENTIALITY..... 4  
 I-Q CONTRACTOR'S LIABILITY INSURANCE ..... 8  
 I-R NOTICE AND RIGHT TO CURE..... 5  
 I-S CANCELLATION ..... 6  
 I-T RIGHTS AND OBLIGATIONS UPON CANCELLATION..... 7  
 I-U EXCUSABLE FAILURE..... 8  
 I-V ASSIGNMENT..... 8  
 I-W DELEGATION ..... 9  
 I-X NON-DISCRIMINATION CLAUSE..... 9  
 I-Y WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT ..... 9  
 I-Z MODIFICATION OF SERVICE ..... 9  
 I-AA NOTICES..... 10  
 I-BB ENTIRE AGREEMENT ..... 11  
 I-CC NO WAIVER OF DEFAULT ..... 11  
 I-DD SEVERABILITY ..... 11  
 I-EE HEADINGS..... 11  
 I-FF RELATIONSHIP OF THE PARTIES ..... 11  
 I-GG UNFAIR LABOR PRACTICES ..... 11  
 I-HH SURVIVOR..... 11  
 I-II GOVERNING LAW ..... 11

**APPENDICES**

- |                                   |                              |
|-----------------------------------|------------------------------|
| A. ESRI License Agreement         | E.Implementation Services    |
| B. ESRI MPA Terms & Conditions    | F.Client Site Training Terms |
| C. ESRI MPA Price List            | G. .... Scope of Use         |
| D. Time & Materials Rate Schedule |                              |



## DEFINITION OF TERMS

TERMS	DEFINITIONS
<b>Contract</b>	A binding agreement entered into by the State of Michigan, including all appendices and terms stated in Section 1.
<b>Contractor</b>	ESRI
<b>DMB</b>	Michigan Department of Management and Budget
<b>State</b>	The State of Michigan  For Purposes of Indemnification as set forth in section I-J, State means the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents.
<b>Blanket Purchase Order</b>	Alternate term for "Contract" used in the State's Computer system (Michigan Automated Information Network [MAIN])
<b>Expiration</b>	Except where specifically provided for in the Contract, the ending and termination of the contractual duties and obligations of the parties to the Contract pursuant to a mutually agreed upon date.
<b>Cancellation</b>	Ending all rights and obligations of the State and Contractor, except for any rights and obligations that are due and owing.
<b>DIT</b>	Department of Information Technology



**SECTION I**  
**CONTRACTUAL SERVICES TERMS AND CONDITIONS**

**I-A PURPOSE**

The purpose of this Contract is to enable the State to procure Environmental Systems Research Institute (ESRI) geographic information system Software, services Documentation, Data, or hardware.

**I-B TERM OF CONTRACT**

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of this Contract by all parties. The activities in the Contract cover the period **October 1, 2008 through September 30, 2009**. The State fiscal year is October 1 through September 30. The Contractor should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations.

**I-C ISSUING OFFICE**

The State of Michigan, Department of Management and Budget (DMB), Purchasing Operations, hereafter known as Purchasing Operations, for the State of Michigan, Department of Information Technology (DIT), issue this Contract. Where actions are a combination of those of Purchasing Operations and DIT, the authority will be known as the State.

Purchasing Operations is the only office authorized to change, modify, amend, alter, clarify, etc., the prices, specifications, terms, and conditions of Contract. All communications concerning this Contract must be addressed to:

**Dale N. Reif**  
DMB, Purchasing Operations  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, MI 48909  
[reifd@michigan.gov](mailto:reifd@michigan.gov)  
517-373-3993

**I-D CONTRACT ADMINISTRATOR**

Upon receipt at Purchasing Operations of the properly executed Contract Agreement, the Director of Purchasing Operations will direct that the person named below or any other person so designated be authorized to administer the Contract on a day-to-day basis during the term of the Contract. However, administration of this Contract implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications of such Contract. That authority is retained by Purchasing Operations. The Contract Administrator for this project is:

**Patty Bogard**  
DIT/CMVR  
Phone: 517-335-4051  
E-mail: [bogardp@michigan.gov](mailto:bogardp@michigan.gov)

**I-E PURCHASE ORDERS**

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

**I-F COST LIABILITY**

The State of Michigan assumes no responsibility or liability for costs incurred by the Contractor prior to the signing of this Contract. Total liability of the State is limited to the terms and conditions of this Contract.



**I-G CONTRACTOR RESPONSIBILITIES**

The Contractor will be required to assume responsibility for all contractual activities offered in this Contract whether or not that Contractor performs them. Further, the State will consider the Prime Contractor to be the sole point of contact with regard to contractual matters, including but not limited to payment of any and all costs resulting from the Contract. If any part of the work is to be subcontracted, the contractor must notify the state and identify the subcontractor(s), including firm name and address, contact person, complete description of work to be subcontracted, and descriptive information concerning subcontractor's organizational abilities. The State reserves the right to approve subcontractors for this project and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract.

**I-H NEWS RELEASES**

News releases pertaining to this document or the services, study, data, or project to which it relates will not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the program are to be released without prior approval of the State and then only to persons designated.

**I-I DISCLOSURE**

All information in the Contractor's proposal and this Contract, including Appendices, is subject to the provisions of the Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, *et seq.*

**I-J ACCOUNTING RECORDS**

The Contractor will be required to maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three (3) years from the expiration date and final payment on the Contract or extension thereof.

**I-K INDEMNIFICATION**

For purposes of Indemnification as set forth in this Contract, State means the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents.

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, expenses, liabilities, penalties, fines, damages, and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any claim, demand, action, citation or legal proceeding against the State arising out of or resulting from the performance of services provided by the Contractor, to the extent such loss, expense, liability, penalty, fine, damage, or claim 1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (excluding databases not subject to reasonable backup program) including the loss of use resulting therefrom and 2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Contractor's duty to indemnify continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or cancellation.

**I-L NON INFRINGEMENT/COMPLIANCE WITH LAWS**

The Contractor warrants that in performing the services called for by this Contract it will not violate any applicable law, rule, or regulation, any contracts with third parties, or any intellectual rights of any third party, including but not limited to, any United States patent, trademark, copyright, or trade secret.



**I-M WARRANTIES AND REPRESENTATIONS**

This Contract contains customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor has not provided any gifts, payments or other inducements to any officer, employee or agent of the State;
9. The Contractor will maintain all equipment and software for which it has maintenance responsibilities in good operating condition and will undertake all repairs and preventive maintenance in accordance with applicable manufacturer's recommendations;
10. The Contractor will use its best efforts to ensure that no viruses or similar items are coded or introduced into the systems used to provide the services;
11. The Contractor will not insert or activate any disabling code into the systems used to provide the services without the State's prior written approval. However, certain software does contain a nondestructive license management software program that administers and controls the distribution of the licensed copies of the Software to End User(s) through the use of a software keycode or hardware key.

**I-N LIMITATION OF LIABILITY**

Except as set forth herein neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages, and either party's maximum aggregate liability shall be limited to the maximum amount of the executed Contract. Such limitation as to indirect or consequential damages, and as to a party's maximum liability shall not be applicable for claims arising out of gross negligence, willful misconduct, or the Contractor's indemnification responsibilities to the State as set forth in Section I-K with respect to third party claims, actions and proceeding brought against the State.

**I-O CONFIDENTIALITY OF DATA AND INFORMATION**

1. All financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural



requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section.

2. The Contractor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Contractor without restriction, (3) information independently developed or acquired by the Contractor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Contractor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

**I-P REMEDIES FOR BREACH OF CONFIDENTIALITY**

The Contractor acknowledges that a breach of its confidentiality obligations as set forth in section I-O of this Contract shall be considered a material breach of the Contract. Furthermore the Contractor acknowledges that in the event of such a breach the State shall be irreparably harmed. Accordingly, if a court should find that the Contractor has breached or attempted to breach any such obligations, the Contractor will not oppose the entry of an appropriate order restraining it from any further breaches or attempted or threatened breaches. This remedy shall be in addition to and not in limitation of any other remedy or damages provided by law.

**I-Q CONTRACTOR'S LIABILITY INSURANCE**

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract. The Contractor also agrees to provide evidence that all applicable insurance policies contain a waiver of subrogation by the insurance company.

All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The Insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the State.

The State reserves the right to reject insurance written by an insurer the State deems unacceptable.

BEFORE THE CONTRACT IS SIGNED BY BOTH PARTIES OR BEFORE THE PURCHASE ORDER IS ISSUED BY THE STATE, THE CONTRACTOR MUST FURNISH TO THE DIRECTOR OF Purchasing Operations, CERTIFICATE(S) OF INSURANCE VERIFYING INSURANCE COVERAGE. THE CERTIFICATE MUST BE ON THE STANDARD "ACCORD" FORM. THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All such Certificate(s) are to be prepared and submitted by the Insurance Provider and not by the Contractor. All such Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. Such NOTICE must include



the CONTRACT NUMBER affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909.

The Contractor is required to provide the type and amount of insurance checked (☑) below:

- ☑ 1. Commercial General Liability with the following minimum coverage:  
\$2,000,000 General Aggregate Limit other than Products/Completed Operations  
\$2,000,000 Products/Completed Operations Aggregate Limit  
\$1,000,000 Personal & Advertising Injury Limit  
\$1,000,000 Each Occurrence Limit  
\$500,000 Fire Damage Limit (any one fire)

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability policy.

- ☑ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability policy.

- ☑ 3. Worker's disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. NOTE: (1) If coverage is provided by a State fund or if Contractor has qualified as a self-insurer, separate certification must be furnished that coverage is in the state fund or that Contractor has approval to be a self-insurer; (2) Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable; and (3) Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☐ 4. For contracts providing temporary staff personnel to the State, the Contractor shall provide an Alternate Employer Endorsement with minimum coverage of \$1,000,000.

- ☑ 5. Employers liability insurance with the following minimum limits:  
\$100,000 each accident  
\$100,000 each employee by disease  
\$500,000 aggregate disease

**I-R NOTICE AND RIGHT TO CURE**

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.



**I-S CANCELLATION**

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation.

If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled. 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 State payment of return shipping costs. State has the right to cancel hardware purchases thirty (30) days prior to scheduled delivery without cost. After hardware delivery or within thirty (30) 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.

2. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.



3. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
  
4. Approvals Rescinded. In the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Article 11, Section 5 of the Michigan Constitution of 1963, and Chapter 7 of the Civil Service Rules. Notwithstanding any other provision of this Contract to the contrary, the State Personnel Director is authorized to disapprove contractual disbursements for personal services if the Director determines that the Contract of the disbursements under the Contract violate Article 11, Section 5 of the Constitution or violate applicable Civil Service rules or regulations. Cancellation may be in whole or in part and may be immediate as of the date of the written notice to the Contractor or may be effective as of the date stated in such written notice.

The Contractor may terminate this Contract without prejudice to any other right or remedy available to Contractor, provided the State is given thirty (30) days prior notice to cure deficiency for the following reasons:

- 1) If the State fails to pay any license fees to Contractor in accordance with the requirements of this Contract;
- 2) If the State distributes Contractor Software, Data, and Documentation to any person or entity other than a Licensee; or
- 3) If the State discloses any trade secret technology and other information proprietary to Contractor in breach of this Agreement.

**I-T RIGHTS AND OBLIGATIONS UPON CANCELLATION**

1. If the Contract is canceled by the State for any reason, the Contractor shall, (a) stop all work as specified in the notice of cancellation, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Work Product or other property derived or resulting from the Contract that may be in the Contractor's possession, (c) return all materials and property provided directly or indirectly to the Contractor by any entity, agent or employee of the State, (d) transfer title and deliver to the State, unless otherwise directed by the Contract Administrator or his or her designee, all Work Product resulting from the Contract, and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or cancellation settlement costs, to the maximum practical extent, including, but not limited to, canceling or limiting as otherwise applicable, those subcontracts, and outstanding orders for material and supplies resulting from the canceled Contract.
  
2. In the event the State cancels this Contract prior to its expiration for its own convenience, the State shall pay the Contractor for all charges due for services provided prior to the date of cancellation and if applicable as a separate item of payment pursuant to the Contract, for partially completed Work Product, on a percentage of completion basis. In the event of a cancellation for cause, or any other reason under the Contract, the State will pay, if applicable, as a separate item of payment pursuant to the Contract, for all partially completed Work Products, to the extent that the State requires the Contractor to submit to the State any such deliverables, and for all charges due under the Contract for any cancelled services provided by the Contractor prior to the cancellation date. All completed or partially completed Work Product prepared by the Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and the Contractor shall be entitled to receive just and fair compensation for such Work Product. Regardless of the basis for the cancellation, the State shall not be obligated to pay, or otherwise compensate, the Contractor for



any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

3. If any such cancellation by the State is for cause, the State shall have the right to set-off against any amounts due the Contractor, the amount of any damages for which the Contractor is liable to the State under this Contract or pursuant to law and equity.
4. Upon a good faith cancellation, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Work Product under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

**I-U EXCUSABLE FAILURE**

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable thereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

**I-V ASSIGNMENT**

The Contractor shall not have the right to assign this Contract or to assign or delegate any of its duties or obligations under this Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.



**I-W DELEGATION**

The Contractor shall not delegate any duties or obligations under this Contract to a subcontractor other than a subcontractor named in the bid unless the Director of Purchasing Operations has given written consent to the delegation.

**I-X NON-DISCRIMINATION CLAUSE**

In the performance of any Contract or purchase order resulting herefrom, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. The Contractor further agrees that every

subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2101, *et seq*, and the Persons with Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, *et seq*, and any breach thereof may be regarded as a material breach of the Contract or purchase order.

**I-Y WORKPLACE SAFETY AND DISCRIMINATORY HARASSMENT**

In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at [www.state.mi.us/mdcs/Regindx](http://www.state.mi.us/mdcs/Regindx).

**I-Z MODIFICATION OF SERVICE**

The Director of Purchasing Operations reserves the right to modify this service during the course of this Contract. Such modification may include adding or deleting tasks that this service shall encompass and/or any other modifications deemed necessary.

This Contract may not be revised, modified, amended, extended, or augmented, except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. The Contractor shall provide a change order process and all requisite forms. The State reserves the right to negotiate the process during contract negotiation. At a minimum, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

1. Within five (5) business days of receipt of a request by the State for any such change, or such other period of time as to which the parties may agree mutually in writing, the Contractor shall submit to the State a proposal describing any changes in products, services, timing of delivery, assignment of personnel, and the like, and any associated price adjustment. The price adjustment shall be based on a good faith determination and calculation by the Contractor of the additional cost to the Contractor in implementing the change request less any savings realized by the Contractor as a result of implementing the change request. The Contractor's proposal shall describe in reasonable detail the basis for the Contractor's proposed price adjustment, including the estimated number of hours by task by labor category required to implement the change request.



- 2. If the State accepts the Contractor's proposal, it will issue a change notice and the Contractor will implement the change request described therein. The Contractor will not implement any change request until a change notice has been issued validly. The Contractor shall not be entitled to any compensation for implementing any change request or change notice except as provided explicitly in an approved change notice.
- 3. If the State does not accept the Contractor's proposal, the State may:
  - a. withdraw its change request; or
  - b. modify its change request, in which case the procedures set forth above will apply to the modified change request.

If the State requests or directs the Contractor to perform any activities that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to so notify the State prior to commencing performance of the requested activities, any such activities performed before the Contractor gives notice shall be conclusively considered to be In-scope Services, not New Work.

If the State requests or directs the Contractor to perform any services or functions that are consistent with and similar to the services being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the scope of the Contractor's responsibilities and charges as set forth in the Contract, then prior to performing such services or function, the Contractor shall promptly notify the State in writing that it considers the services or function to be an "Additional Service" for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing such services or functions. If the Contractor does so notify the State, then such a service or function shall be governed by the change request procedure set forth in the preceding paragraph.

**IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATIONS.**

**I-AA NOTICES**

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

For the Contractor: **ESRI  
Contract Manager  
380 New York Street  
Redlands, CA 92373-8100**

For the State: **Dale N. Reif  
DMB, Purchasing Operations  
2nd Floor, Mason Building  
530 W. Allegan  
Lansing, MI 48909**

Either party may change its address where notices are to be sent giving written notice in accordance with this section.



**I-BB ENTIRE AGREEMENT**

This Contract shall represent the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

**I-CC NO WAIVER OF DEFAULT**

The failure of a party to insist upon strict adherence to any term of a Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

**I-DD SEVERABILITY**

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

**I-EE HEADINGS**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

**I-FF RELATIONSHIP OF THE PARTIES**

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

**I-GG UNFAIR LABOR PRACTICES**

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. The United States National Labor Relations Board compiles this information.

A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.

**I-HH SURVIVOR**

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of this Contract for any reason.

**I-II GOVERNING LAW**

This Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.



## ARTICLE 1—DEFINITIONS

**Definitions**—As used herein, the following words, phrases, or terms in this Agreement shall have the following meanings:

- (a) "Software" means the actual copy of all or any portion of ESRI's proprietary geographic information system (GIS) software technology, computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media, including, but not limited to, alpha, beta, prerelease, restricted version(s), or final commercial release provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under this Agreement.
- (b) "Data" means any ESRI or third party data vendor(s) digital data set(s) including, but not limited to, geographic, vector data coordinates, raster, or associated tabular attributes in ESRI® GIS software compatible format(s) supplied under this Agreement.
- (c) "Documentation" means all of the printed and digital materials including, but not limited to, user documentation, training documentation, or technical information and briefings supplied under this Agreement.
- (d) "License Manager" means the nondestructive license management software program, comprised of a confidential software keycode or hardware key, which controls the distribution of the licensed number of Software copies to requesting end user(s) of Licensee.

## ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

The Software, Data, and Documentation are owned by ESRI and its licensor(s) and are protected by United States laws and applicable international laws, treaties, and conventions regarding intellectual property or proprietary rights. ESRI and its licensor(s) retain all rights, title, and ownership not granted herein to all copies of the Software, Data, and Documentation licensed under this Agreement. From the date of receipt, Licensee agrees to use reasonable effort to protect the Software, Data, and Documentation from unauthorized use, reproduction, distribution, or publication. All rights not specifically granted in this Agreement are reserved to ESRI and its licensor(s).

## ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License**—In consideration of the mutual promises and covenants provided herein and for other good and valuable consideration, and conditioned upon compliance with all of the terms and conditions set forth in the Contract including, but not limited to, Article 4, ESRI grants to Licensee a personal, nonexclusive, nontransferable license to

- (a) Use the Software, Data, and Documentation as a single package for Licensee's own internal use only; and
- (b) Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use only, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.

**3.2 Beta License**—In the event ESRI accepts Licensee into a current Beta Testing program, Licensee may be provided copies of alpha, beta, and/or prerelease (hereinafter collectively referred to as "Beta") Software for the limited purpose of testing the Beta Software in accordance with the Beta testing policies then in effect. Beta Software and Documentation delivered are confidential and proprietary to ESRI and contain trade secrets, inclusive of unpublished specifications. In consideration of the rights granted herein, Licensee agrees to retain all Beta Software and Documentation provided to Licensee in confidence. Licensee shall maintain all results of testing in confidence and agrees not to disclose to any third party details pertaining to the Beta Software, Documentation, test results, or errors encountered. ESRI reserves the right to determine which Beta Software and Documentation, subsequent interim beta release(s), or patch(es) will be made available to Licensee to test during the term of the Agreement. Beta Software is subject to change prior to its commercial



release and may never be commercially released. Licensee is advised that such Software is not suitable or licensed for full use and accepts all responsibility for use of the same and any results generated.

**3.3 Evaluation License**—ESRI may from time to time extend a limited term evaluation license(s) under the terms of this Agreement, for the duration authorized in any supporting documentation supplied by ESRI. Any evaluation license subsequently converted to a full use license is also subject to the terms of this Agreement.

**3.4 Consultant Access**—Licensee may provide access to the Software, Data, or Documentation to any consultant or contractor of Licensee, provided that the consultant or contractor is using the Software, Data, or Documentation exclusively for the benefit of Licensee, and so long as the consultant or contractor agrees to be bound by the terms and conditions of this Contract.

**ARTICLE 4—SCOPE OF USE**

**4.1 Permitted Uses**

- Licensee may (i) install and store copies onto electronic storage device(s) and (ii) only use the Software, Data, and Documentation as described in Exhibit 1 set forth herein and in accordance with the licensed configuration on file with ESRI Customer Service or ESRI authorized distributors.
- Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes during the term of this Agreement. Additionally, Licensee may make routine computer backups of the Software, Data, and Documentation. Licensee may establish a redundant server for failover operations in the event the primary site fails.
- Licensee may customize the Software using any (i) macro or scripting language, (ii) open application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- Licensee may use the Data only as described in the Distribution Rights section of the help or metadata files delivered with the Software, Data, and Documentation.
- Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. The portion(s) of the Documentation supplied in digital format merged with other software and printed or digital documentation shall continue to be subject to the terms and conditions of this Contract and shall provide the following copyright attribution notice acknowledging the proprietary rights of ESRI and its licensor(s) in the Documentation supplied in digital format: "Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. Copyright © [*Insert the actual copyright date(s) from the source materials*] ESRI and its licensor(s). All rights reserved."

**4.2 Uses Not Permitted**

- Licensee shall not sell; rent; lease; sublicense; lend; assign; time-share; or act as a service bureau or Application Service Provider (ASP) that allows third party access to the Software, Data, and Documentation except as provided herein; or transfer, in whole or in part, access to prior or present versions of the Software, Data, or Documentation, any updates, or Licensee's rights under this Agreement.
- Licensee shall not redistribute the Software, in whole or in part, including, but not limited to, extensions, components, or DLLs without the prior written approval of ESRI as set forth in an appropriate redistribution license agreement.
- Licensee shall not reverse engineer, decompile, or disassemble the Software, Data, or Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction in order to protect ESRI and its licensor(s) trade secrets and proprietary information contained in the Software, Data, or Documentation.
- Licensee shall not make any attempt to circumvent the technological measure(s) (e.g., License Manager, etc.) that controls access to or use of the Software, Data, and Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- Licensee shall not use the Software to transfer or exchange any material where such transfer or exchange is prohibited by copyright or any other law.
- Licensee shall not remove or obscure any ESRI or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Software, Data, or Documentation.



**ARTICLE 5—MAINTENANCE**

Maintenance consists of Software, Data, or Documentation updates and access to technical support and other benefits specified in the most current applicable ESRI Support Services Policy.

**ARTICLE 6—TERM AND TERMINATION OF SOFTWARE LICENSE**

The license granted to Licensee by this Agreement shall commence upon the acceptance of this Agreement and shall continue until such time that (i) Licensee elects in writing to discontinue use of the Software, Data, or Documentation and terminates this Agreement or (ii) ESRI terminates this Agreement upon written notice to Licensee for Licensee's material breach. Upon termination of this Agreement, Licensee shall uninstall, remove, and destroy all Software, Data, and Documentation, and any whole or partial copies, modifications, or merged portions in any form and execute and deliver evidence of such destruction to ESRI, which evidence shall be in a form acceptable to ESRI in its sole discretion.

**ARTICLE 7—LIMITED WARRANTIES AND DISCLAIMERS**

**7.1 Limited Warranties**—For a period of ninety (90) days from the later of the date of keycode issuance or date of delivery of the Software, Data, or Documentation to Licensee, ESRI represents and warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) the media upon which the Software, Data, and Documentation is provided will be free from defects in materials and workmanship under normal use and service.

**7.2 Data Disclaimer**—If included under this Agreement, the Data has been obtained from sources believed to be reliable, but its accuracy and completeness are not guaranteed. The Data may contain some nonconformities, defects, errors, or omissions. **ESRI AND ITS LICENSOR(S) MAKE NO WARRANTY WITH RESPECT TO THE DATA.** Without limiting the generality of the preceding sentence, ESRI and its licensor(s) do not warrant that the Data will meet Licensee's needs or expectations, the use of the Data will be uninterrupted, or that all nonconformities can or will be corrected. ESRI and its licensor(s) are not inviting reliance on this Data, and Licensee should always verify actual Data including, but not limited to, map, spatial, raster, and tabular information.

**7.3 General Disclaimer**—EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. ESRI DOES NOT WARRANT THAT THE SOFTWARE, DATA, OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.

LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT BETA AND EVALUATION SOFTWARE IS DELIVERED "AS-IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE BETA AND EVALUATION SOFTWARE.

**7.4 Exclusive Remedy**—Licensee's exclusive remedy and ESRI's entire liability for breach of the limited warranties set forth in this Article 7 shall be limited, at ESRI's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a work-around for the Software subject to the ESRI Support Services Policy; or (iii) return of the license fees paid by Licensee for the Software, Data, or Documentation that does not meet ESRI's Limited Warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Software, Data, or Documentation and executes and delivers to ESRI a Certification of Destruction in a form acceptable to ESRI.



**ARTICLE 8—LIMITATION OF LIABILITY**

**8.1 Disclaimer of Certain Types of Liability**—IN NO EVENT SHALL ESRI OR ITS LICENSOR(S) BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE SOFTWARE, DATA, OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**8.2 General Limitation of Liability**—IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, EXCEED THE MAXIMUM AMOUNT OF THE CONTRACT TO ESRI BY LICENSEE FOR SOFTWARE, DATA, OR DOCUMENTATION PURSUANT TO THIS AGREEMENT.

**8.3 Applicability of Disclaimers and Limitations**—Licensee agrees that the limitations of liability and disclaimers set forth in this Agreement will apply regardless of whether Licensee has accepted the Software, Data, or Documentation or any other product or service delivered by ESRI. The parties agree that ESRI has set its prices and entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

**ARTICLE 9—INFRINGEMENT INDEMNITY**

**9.1** ESRI shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Software, Data, or Documentation infringes a U.S. patent, copyright, or trademark provided

- (a) Licensee promptly notifies ESRI in writing of the claim thereof;
- (b) ESRI has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
- (c) Licensee cooperates fully in the defense of the claim.

**9.2** If ESRI believes that the Software, Data, or Documentation is or will become the subject of an infringement claim, or in the event that use of the Software, Data, or Documentation is enjoined, ESRI, at its own expense, may either (i) obtain the right for Licensee to continue using the Software, Data, or Documentation or (ii) modify the Software, Data, or Documentation to make it noninfringing while maintaining substantially similar software functionality or data/informational content. If neither of such alternatives is commercially practical, the infringing items shall be returned to ESRI and ESRI's sole liability shall be to refund license fees paid by Licensee prorated over a three (3) year period.

**9.3** ESRI shall have no obligation hereunder to defend Licensee or to pay any resulting costs, damages, or reasonable attorneys' fees for or with respect to any claims, actions, or demands alleging (i) infringement that arises by reason of combination of noninfringing items, however acquired, with any items not supplied by ESRI; (ii) infringement to the extent arising from material alteration of the Software, Data, or Documentation by anyone other than ESRI, its agents, or its contractors; (iii) the direct or contributory infringement of any process patent by Licensee through the use of the Software, Data, or Documentation other than a process patent that is necessarily infringed by the internal processes executed within the Software or Data itself when the Software or Data is executed for its intended purpose; (iv) continued allegedly infringing activity by Licensee after it has been notified of the possible infringement; or (v) continued allegedly infringing activity by Licensee to the extent it arises from failure of Licensee to use the updated or modified Software, Data, or Documentation provided by ESRI for avoiding infringement.



THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**ARTICLE 10—GENERAL PROVISIONS**

**10.2 Export Control Regulations**—Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, or provide the Software, Data, or Documentation, in whole or in part, to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation. Licensee shall not export the Software, Data, and/or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Licensee represents and warrants that it is not a national, resident, located in or under the control of, or acting on behalf of any person, entity, or country subject to such U.S. export controls.

**10.4 Taxes and Fees, Shipping Charges**—License fees quoted to Licensee are exclusive of any and all taxes or fees including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.



**APPENDIX B, ESRI MPA TERMS & CONDITIONS**

**ARTICLE 1—DEFINITIONS**

As used herein, the following words, phrases, or terms in this Contract shall have the following meanings:

"**Licensee**" means the governmental body that has signed this Contract or Authorized Entity that has accepted the terms of this Agreement.

"**Authorized Entity**" means an authorized political subdivision of the governmental body, such as counties or cities, that places orders in accordance with the requirements defined within this Contract.

**ARTICLE 2—TERM OF AGREEMENT**

Upon thirty (30) days notice to the State, Environmental Systems Research Institute, Inc. (ESRI), may elect to not renew the Contract should total orders for licenses, training, consulting, or custom application development not exceed fifty thousand dollars (\$50,000) per year or one hundred fifty thousand dollars (\$150,000) per any three (3)-year period.

**ARTICLE 3—PRODUCT OFFERINGS**

ESRI may, at its sole discretion, discontinue offering any Software, Data, other product, or service included in this Contract at any time upon thirty (30) days written notice.

ESRI may, at its sole discretion, offer new Software, services, Data, Documentation, hardware, or reduced and/or larger quantity discount pricing by providing thirty (30) days written notice. ESRI may require additional license terms prior to use of new Software or Data. Such notice shall become part of this Contract 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 this Contract 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 6—LIMITATION**

**6.1 No Minimum Purchase**

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

**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 Contract. 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 Contract shall govern all orders issued by Licensee.

**7.2 Purchase Order Requirements**

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

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: "Licensee agrees to be bound by the terms and conditions of Contract No. **TBD (ESRI 2002MPA3133)**"



**7.3 Additional Quotes**

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

**7.4 Authorized Entity**

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

**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 at the MPA price. 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 purchase order forwarded by the Licensee must list the information requested in Article 7.2, the ESRI reseller name, and the Software MPA pricing.

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**

The specified prices stated herein are exclusive of shipping, installation, and tax.

**9.1 Software**

ESRI will provide the Software specified at the prices provided within this Contract.

**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 Support Services**

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](http://www.esri.com).

**9.4 Implementation Services**

Implementation services are contracted by way of a quote and purchase order process on a time and materials basis. Implementation Services may only be contracted under this Agreement if this Agreement expressly incorporates the Implementation Services Terms and Conditions Addendum (G-363-C/CJ) and the Time and Materials Rate Schedule (J-8410/BD), both of which provide the applicable terms, staffing, and hourly labor rates for any such work to be performed. Information and arrangements are available from the Implementation Services program manager at 909-793-2853, extension 1232.



**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.

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:  
Melissa Castro  
Buyer, DMB, Purchasing Operations  
2nd Floor, Mason Building  
530 W. Allegan  
Lansing, MI 48909

ESRI Contact:  
Contracts Manager  
ESRI  
380 New York Street  
Redlands, CA 92373-8100  
Contracts Manager

**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.



**APPENDIX C, ESRI MPA PRICE LIST  
General Information and Disclaimers**

1. The following software items and related products are offered to Licensee and its qualified agencies for use only within the United States of America, its possessions, and territories.
2. The listed prices are exclusive of shipping, handling and any applicable taxes. Delivery terms are FOB Redlands, California. Shipping and handling will be prepaid and charged back, i.e. included in the invoice as a separate item. If desired, shipping and handling charges can be quoted to the customer prior to the placement of the order. Your ESRI Sales Representative can provide a specific quote including applicable shipping and handling charges.
3. Eligible customers may at any time request a specific quote based on this contract from an ESRI sales representative. When selecting items from this contract without assistance from an ESRI sales representative, be aware of the following general rules:
  - (a) Volume pricing applies on a per-order and per-item basis unless otherwise indicated. The listed prices must be multiplied by the order quantity to determine the total price for any given order.
  - (b) Some products may have prerequisites and interdependencies so that one may not be purchased, or may not be functional, without prior or simultaneous purchase of another product. For example, software upgrades can only be licensed by customers who have already acquired the corresponding earlier version of the software, and extension software is only functional in combination with the corresponding core software. If you have questions regarding your configuration and how it relates to your requirement, please contact your ESRI representative for additional information.
  - (c) System requirements and platform support vary from item to item. If in doubt whether your system will support a desired item, please contact your ESRI sales representative for additional information.
  - (d) Some items are not offered to all potential customers. For example, certain software upgrades are only offered to customers who have acquired the most recent versions of the software and local government licenses are only offered to local government customers.
  - (e) For installations exceeding one (1) day on-site, ESRI will add \$1,000 per day.
  - (f) Client Site Training of two (2) days or less is subject to an additional \$500 fee for instructor travel and expenses. Customer must provide adequate facilities for client site training. Certain other restrictions apply. See the Learning Center On-site training information at ESRI's Web site ([www.esri.com/training/site\\_training.html](http://www.esri.com/training/site_training.html)) for details.
  - (g) ESRI Site Training (i.e. Training at one of ESRI's Training Centers) requires a completed registration application form from each student. Registrations are processed on a first-come, first-served basis. We recommend that you submit this registration information at least one month prior to the start date of your class. See the Learning Center registration information at ESRI's Web site ([www.esri.com/training/register.html](http://www.esri.com/training/register.html)) for details.
4. Support services are defined at ESRI's Web site ([www.esri.com](http://www.esri.com)) within the user support section. Particular attention should be paid to the fact that some ESRI software comes with complimentary maintenance for the first year and other software features different support plans.
5. New software releases for ArcInfo, ArcSDE, ArcGIS Concurrent Use Licenses, and other software are provided exclusively through maintenance programs. In these cases, software upgrades are not sold separately.
6. Sales of ArcStorm software are limited to existing ArcStorm customers.



7. Complimentary User Conference Registration for Standard Maintenance.

<b>Standard Maintenance Program</b>	<b>No. of Complimentary Registrations</b>
Primary Maintenance for ArcInfo Floating License	1
Primary Maintenance for ArcInfo Node-Locked License	2
Maintenance for ArcSDE (or SDE 3) Server and Two Processor License	1
Maintenance for First Enterprise SDE Server License	1
Maintenance for First Workgroup SDE Package License	1
Maintenance for First SDE Enterprise or Extension Bundle	1
Maintenance for ArcSDE 3	1
Maintenance for ArcIMS Server/CPU License (limited to 1 per qualifying customer number)	1
Maintenance for First Floating ArcInfo University LAB KIT License	1
Maintenance for First Node-Locked ArcInfo University LAB KIT License	1
Maplex Maintenance	1
ArcView GIS or Standard Maintenance--per 25 License	1
Maintenance for ArcView 8.1 Single Use--per 25 License	1
Maintenance for ArcView 8.1 Concurrent Use--per 15 License	1
Maintenance for ArcEditor--per 10 License	1



**MPA Price List**  
E405 1/8/2003

<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>1.1</b>	<b>ArcGIS Concurrent Use Licenses</b>	
	ArcInfo 8.1 or 8.2 Concurrent Use License	\$7,100
	ArcInfo 8.1 or 8.2 Concurrent Use License Annual Maintenance (Primary 1st, 11th, 21st, 31st...)	\$3,000
	ArcInfo 8.1 or 8.2 Concurrent Use License Annual Maintenance (Secondary 2-10, 12-20...)	\$1,200
	ArcEditor Concurrent Use License	\$6,300
	ArcView 8.x Concurrent Use License	\$2,800
	ArcGIS Spatial Analyst Concurrent Use License	\$2,000
	ArcGIS 3D Analyst Concurrent Use License	\$2,000
	ArcGIS Geostatistical Analyst Concurrent Use License	\$2,000
	ArcPress for ArcGIS Concurrent Use License	\$1,120
	ArcGIS StreetMap USA Concurrent Use License (U.S. data)	\$400
	MrSID Encoder for ArcGIS Concurrent Use License	\$1,200
	ArcGIS Publisher Concurrent Use License	\$2,000
	ArcGIS Survey Analyst Concurrent Use License (expected availability February 2003)	\$2,000
	ArcGIS Tracking Analyst Concurrent Use License (expected availability February 2003)	\$2,000
	ArcGIS ArcScan Concurrent Use License (expected availability February 2003)	\$2,000
	Maplex for ArcGIS Concurrent Use License (expected availability Q2 2003)	\$2,000
	ArcGIS Schematics Concurrent Use License	\$2,800
	Primary Maintenance for ArcView 8.x Concurrent Use License	\$700
	Secondary Maintenance for ArcView 8.x Concurrent Use License	\$500
	Primary Maintenance for ArcGIS Spatial Analyst Concurrent Use License	\$500
	Secondary Maintenance for ArcGIS Spatial Analyst Concurrent Use License	\$200
	Primary Maintenance for ArcGIS 3D Analyst Concurrent Use License	\$500
	Secondary Maintenance for ArcGIS 3D Analyst Concurrent Use License	\$200
	Primary Maintenance for ArcGIS Geostatistical Analyst Concurrent Use License	\$500
	Secondary Maintenance for ArcGIS Geostatistical Analyst Concurrent Use License	\$200
	Maintenance for ArcPress for ArcGIS Concurrent Use License	\$200
	Primary Maintenance for ArcGIS Publisher Concurrent Use License	\$500
	Secondary Maintenance for ArcGIS Publisher Concurrent Use License	\$200
	Primary Maintenance for ArcGIS Survey Analyst Concurrent Use License	\$500
	Secondary Maintenance for ArcGIS Survey Analyst Concurrent Use License	\$200
	Primary Maintenance for ArcGIS Tracking Analyst Concurrent Use License	\$500
	Secondary Maintenance for ArcGIS Tracking Analyst Concurrent Use License	\$200
	Primary Maintenance for ArcGIS ArcScan Concurrent Use License	\$500
	Secondary Maintenance for ArcGIS ArcScan Concurrent Use License	\$200
	Primary Maintenance for Maplex for ArcGIS Concurrent Use License	\$500
	Secondary Maintenance for Maplex for ArcGIS Concurrent Use License	\$200
	Primary Maintenance for ArcGIS Schematics Concurrent Use License	\$700
	Secondary Maintenance for ArcGIS Schematics Concurrent Use License	\$350
	Primary Maintenance for ArcEditor Concurrent Use License	\$1,500
	Secondary Maintenance for ArcEditor Concurrent Use License	\$1,200
<b>1.2</b>	<b>ArcGIS Single Use Licenses</b>	



	ArcEditor Single Use License	\$6,300
	ArcView 8.x Single Use License	\$1,200
<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>1.2</b>	ArcGIS Spatial Analyst Single Use License	\$2,000
	ArcGIS 3D Analyst Single Use License	\$2,000
	ArcGIS Geostatistical Analyst Single Use License	\$2,000
	ArcPress for ArcGIS Single Use License	\$240
	ArcGIS StreetMap USA Single Use License (U.S. data)	\$400
	MrSID Encoder for ArcGIS Single Use License	\$1,200
	ArcGIS Publisher Single Use License	\$2,000
	ArcGIS Survey Analyst Single Use License (expected availability February 2003)	\$2,000
	ArcGIS Tracking Analyst Single Use License (expected availability February 2003)	\$2,000
	ArcGIS ArcScan Single Use License (expected availability February 2003)	\$2,000
	Maplex for ArcGIS Single Use License (expected availability Q2 2003)	\$2,000
	ArcGIS Schematics Single Use License	\$2,800
	Primary Maintenance for ArcView 8.x Single Use License (without extensions)	\$400
	Secondary Maintenance for ArcView 8.x Single Use License (without extensions)	\$200
	Primary Maintenance for ArcView 8.x Single Use License with Extensions	\$1,000
	Secondary Maintenance for ArcView 8.x Single Use License with Extensions	\$800
	Primary Maintenance for ArcEditor Single Use (without extensions)	\$1,500
	Secondary Maintenance for ArcEditor Single Use (without extensions)	\$1,200
	Primary Maintenance for ArcEditor Single Use with Extensions	\$2,100
	Secondary Maintenance for ArcEditor Single Use with Extensions	\$1,800
<b>1.3</b>	<b>ArcGIS Upgrades</b>	
	ArcView 2.x or 3.x for Windows or Mac Upgrade to ArcView 8.x Single Use License (without extensions)	\$600
	ArcView 2.x or 3.x for Windows or Mac Upgrade to ArcView 8.x Single Use License (with one or more extensions)	\$1,200
	ArcView 2.x or 3.x for Windows or Mac Upgrade to ArcView 8.x Concurrent Use License (without extensions)	\$2,080
	ArcView 2.x or 3.x for Windows or Mac Upgrade to ArcView 8.x Concurrent Use License (with one or more extensions)	\$3,200
	ArcView 2.x or 3.x for UNIX Upgrade to ArcView 8.x Single Use License-Windows (without extensions)	\$600
	ArcView 2.x or 3.x for UNIX Upgrade to ArcView 8.x Single Use License-Windows (with one or more extensions)	\$1,200
	ArcView 2.x or 3.x for UNIX Upgrade to ArcView 8.x Concurrent Use License (without extensions)	\$600
	ArcView 2.x or 3.x for UNIX Upgrade to ArcView 8.x Concurrent Use License (with one or more extensions)	\$1,200
	ArcView 8.x Single Use License Upgrade to ArcView 8.x Concurrent Use License	\$1,600
	ArcView 8.x Single Use License Upgrade to ArcGIS 8.3 Single Use License (without extensions)	\$600
	ArcView 8.x Single Use License Upgrade to ArcGIS 8.3 Single Use License with Extensions	\$1,200
	MrSID for ArcGIS 8.1.x Upgrade to MrSID for ArcGIS 8.2 Single Use License	\$400



<b>1.4</b>	<b>ArcInfo 7.x or 8.0.x Software—UNIX/Windows NT</b>	
	ArcInfo 7.x or 8.0.x Floating License	\$7,100
	ArcInfo 7.x or 8.0.x Floating License Annual Maintenance (each) (Primary 1st, 11th, 21st, 31st...)	\$3,000
	ArcInfo 7.x or 8.0.x Floating License Annual Maintenance (each) (Secondary 2–10, 12–20...)	\$1,200
	ArcInfo 7.x or 8.0.x Extension (each) Floating License (ArcNetwork, ArcCOGO, ArcTIN, ArcGrid, or ArcScan)	\$1,800

<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>1.4</b>	ArcInfo 7.x or 8.0.x Extension Floating License Annual Maintenance (each) (Primary 1st, 11th, 21st, 31st...)	\$500
	ArcInfo 7.x or 8.0.x Extension Floating License Annual Maintenance (each) (Secondary 2–10, 12–20...)	\$200
	ArcInfo 7.x or 8.0.x Node Locked 3-Pak License Annual Maintenance (each) (Primary 1st, 11th, 21st, 31st...)	\$4,000
	ArcInfo 7.x or 8.0.x Node Locked 3-Pak License Annual Maintenance (each) (Secondary 2–10, 12–20...)	\$1,600
	ArcInfo 7.x or 8.0.x Extension Node Locked 3-Pak License Annual Maintenance (each) (Primary 1st, 11th, 21st, 31st...)	\$1,100
	ArcInfo 7.x or 8.0.x Extension Node Locked 3-Pak License Annual Maintenance (each) (Secondary 2–10, 12–20...)	\$440
	<b>Other ArcInfo 7.x or 8.0.x Licenses—UNIX/Windows NT</b>	
	ArcStorm First License (3 seats)	\$3,000
	ArcStorm Additional License (each additional seat)	\$500
	ArcStorm First License (3 seats) Annual Maintenance	\$500
	ArcStorm Additional License (each additional seat) Annual Maintenance	\$100
	ArcPress for ArcInfo Floating Seat License	\$1,400
	ArcPress for ArcInfo Floating Seat License Annual Maintenance	\$200

**2 ArcView 3.x and Extensions**

**2.1(a) UNIX**

ArcView 3.x for UNIX Single Use License Qty. 1-5	\$1,756
ArcView 3.x for UNIX Single Use License Qty. 6-25 (each)	\$1,581
ArcView 3.x for UNIX Single Use License Qty. 26+ (each)	\$1,405
ArcView 3.x for UNIX License Primary Maintenance	\$700
ArcView 3.x for UNIX License Secondary Maintenance	\$500
Upgrade for ArcView 3.2 for UNIX License to ArcView 3.3	\$99
Upgrade for ArcView 3.1 for UNIX License to ArcView 3.3	\$495
Upgrade for ArcView 3 for UNIX License to ArcView 3.3	\$495
Upgrade for ArcView 2.x for UNIX License to ArcView 3.3	\$495
Transfer of ArcView 3.x for UNIX to ArcView 3.x for Windows/Windows NT	\$500
ArcView Network Analyst Extension for UNIX Single Use License Qty. 1-5 (each)	\$2,246
ArcView Network Analyst Extension for UNIX Single Use License Qty. 6-25 (each)	\$2,121
ArcView Network Analyst Extension for UNIX Single Use License Qty. 26+ (each)	\$1,871
ArcView Network Analyst Extension for UNIX License Primary Maintenance	\$500
ArcView Network Analyst Extension for UNIX License Secondary Maintenance	\$200
ArcView Tracking Analyst Extension for UNIX Single Use License Qty. 1-5 (each)	\$2,246



ArcView Tracking Analyst Extension for UNIX Single Use License Qty. 6-25 (each)	\$2,121
ArcView Tracking Analyst Extension for UNIX Single Use License Qty. 26+ (each)	\$1,871
ArcView Tracking Analyst Extension for UNIX License Primary Maintenance	\$500
ArcView Tracking Analyst Extension for UNIX License Secondary Maintenance	\$200
ArcView Spatial Analyst Extension for UNIX Single Use License Qty. 1-5 (each)	\$2,696
ArcView Spatial Analyst Extension for UNIX Single Use License Qty. 6-25 (each)	\$2,546
ArcView Spatial Analyst Extension for UNIX Single Use License Qty. 26+ (each)	\$2,246
ArcView Spatial Analyst Extension for UNIX License Primary Maintenance	\$500
ArcView Spatial Analyst Extension for UNIX License Secondary Maintenance	\$200
ArcView 3D Analyst Extension for UNIX Single Use License Qty. 1-5 (each)	\$2,696
ArcView 3D Analyst Extension for UNIX Single Use License Qty. 6-25 (each)	\$2,546

<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>2.1(a)</b>	ArcView 3D Analyst Extension for UNIX Single Use License Qty. 26+ (each)	\$2,246
	ArcView 3D Analyst Extension for UNIX License Primary Maintenance	\$500
	ArcView 3D Analyst Extension for UNIX License Secondary Maintenance	\$200
<b>2.1(b)</b>	<b>Windows/Windows NT</b>	
	ArcView 3.x for Windows/Windows NT Single Use License Qty. 1-5 (each)	\$956
	ArcView 3.x for Windows/Windows NT Single Use License Qty. 6-25 (each)	\$861
	ArcView 3.x for Windows/Windows NT Single Use License Qty. 26+ (each)	\$765
	Primary Maintenance ArcView 3.x for Windows/Windows NT License (without extensions)	\$400
	Secondary Maintenance ArcView 3.x for Windows/Windows NT License (without extensions)	\$200
	Primary Maintenance ArcView 3.x for Windows/Windows NT License (with extensions)	\$1,000
	Secondary Maintenance ArcView 3.x for Windows/Windows NT License (with extensions)	\$800
	Upgrade for ArcView 3.2 for Windows License to ArcView 3.3	\$99
	Upgrade for ArcView 3.1 for Windows License to ArcView 3.3	\$395
	Upgrade for ArcView 3.0 for Windows License to ArcView 3.3	\$395
	Upgrade for ArcView 2.x for Windows License to ArcView 3.3	\$395
	ArcView Network Analyst Extension for Windows/Windows NT License Qty. 1-5 (each)	\$1,346
	ArcView Network Analyst Extension for Windows/Windows NT License Qty. 6-25 (each)	\$1,271
	ArcView Network Analyst Extension for Windows/Windows NT License Qty. 26+ (each)	\$1,121
	ArcView Tracking Analyst Extension for Windows/Windows NT License Qty. 1-5 (each)	\$1,346
	ArcView Tracking Analyst Extension for Windows/Windows NT License Qty. 6-25 (each)	\$1,271
	ArcView Tracking Analyst Extension for Windows/Windows NT License Qty. 26+ (each)	\$1,121
	ArcView Spatial Analyst Extension for Windows/Windows NT Single Use License Qty. 1-5 (each)	\$2,246
	ArcView Spatial Analyst Extension for Windows/Windows NT Single Use License Qty. 6-25 (each)	\$2,121
	ArcView Spatial Analyst Extension for Windows/Windows NT Single Use License Qty. 26+ (each)	\$1,871
	Upgrade ArcView Spatial Analyst 1.x to 2 for Windows/Windows NT	\$695
	ArcView 3D Analyst Extension for Windows/Windows NT Single Use License Qty. 1-5 (each)	\$2,246
	ArcView 3D Analyst Extension for Windows/Windows NT Single Use License Qty. 6-25 (each)	\$2,121
	ArcView 3D Analyst Extension for Windows/Windows NT Single Use License Qty. 26+ (each)	\$1,871



	ArcView Image Analysis Extension for Windows/Windows NT Single Use License Qty. 1-5	\$2,246 (each)
	ArcView Image Analysis Extension for Windows/Windows NT Single Use License Qty. 6-25	\$2,121 (each)
	ArcView Image Analysis Extension for Windows/Windows NT Single Use License Qty. 26+	\$1,871 (each)
	ArcView Image Analysis Extension for Windows/Windows NT License Primary Maintenance	\$500
	ArcView Image Analysis Extension for Windows/Windows NT License Secondary Maintenance	\$200
	Upgrade ArcView StreetMap 1 to 1.1 for Windows/Windows NT (U.S. data)	\$250
	Upgrade ArcView Image Analysis 1 to 1.1	\$199
<b>2.2</b>	<b>ArcView StreetMap and StreetMap 2000</b>	
	ArcView StreetMap 1.x for Windows/Windows NT License (U.S. data)	\$495
	ArcView StreetMap 2000 (U.S. data)	\$8,995
<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>2.2</b>	ArcView StreetMap 2000 Annual Upgrade Subscription (U.S. data)	\$4,998
	Upgrade ArcView StreetMap 2000 1 to 1.1 (U.S. data)	\$5,500
<b>2.3</b>	<b>ArcView Business Analyst (U.S. data)</b>	
	ArcView Business Analyst License (U.S. data)	\$9,595
	ArcView Business Analyst Extension Pack License (U.S. data)	\$7,435
	ArcView Business Analyst Local Government License (U.S. data)	\$7,995
	ArcView Business Analyst Extension Pack Local Government License (U.S. data)	\$6,995
	Upgrade from ArcView Business Analyst 1.x to 2 (per License/Seat) (U.S. data)	\$5,000
	Upgrade from ArcView Business Analyst 1.x to 2 Extension Pack per License (U.S. data)	\$4,000
	ArcView Business Analyst Extension Primary Maintenance (per License/Seat) (U.S. data)	\$4,000
	ArcView Business Analyst Extension Secondary Maintenance (per License/Seat) (U.S. data)	\$2,500
	ArcView Business Analyst Extension Pack Primary Maintenance (per License/Seat) (U.S. data)	\$3,000
	ArcView Business Analyst Extension Pack Secondary Maintenance (per License/Seat) (U.S. data)	\$2,500
	ArcView Business Analyst Local Government Primary Maintenance (per License/Seat)	\$4,000
	ArcView Business Analyst Local Government Secondary Maintenance (per License/Seat)	\$2,500
	ArcView Business Analyst Local Government Extension Pack Primary Maintenance (per License/Seat)	\$3,000
	ArcView Business Analyst Local Government Extension Pack Secondary Maintenance (per License/Seat)	\$2,500
<b>2.4</b>	<b>ArcPress for ArcView</b>	
	ArcPress for ArcView UNIX License	\$295
	ArcPress for ArcView Windows/Windows NT License	\$295
<b>3</b>	<b>MapObjects</b>	
	MapObjects--Windows Edition Developer's Kit (includes MapObjects--Windows Edition and 50 Deployments)	\$4,000
	MapObjects--Java Standard Edition Developer Kit (includes MapObjects--Java Standard Edition and 50 Deployments)	\$4,000
	Additional MapObjects--Windows Edition Developer License	\$800
	Additional MapObjects--Java Standard Edition Developer License	\$800
	25-Pak Additional MapObjects--Windows Edition Deployments	\$2,000



25-Pak Additional MapObjects-Java Standard Edition Deployments	\$2,000
Annual Renewal of MapObjects Internet Deployment License (for licenses obtained under a\$1,000 discontinued program)	
MapObjects--Windows Limited Deployment Site License Kit	\$16,000
MapObjects--Java Limited Deployment Site License Kit	\$16,000
MapObjects--Windows Edition Developer's Kit Maintenance	\$1,000
MapObjects--Java Standard Edition Developer's Kit Maintenance	\$2,000
Additional MapObjects--Windows Edition Developer License Maintenance	\$200
Additional MapObjects--Java Standard Edition Developer Licenses Maintenance	\$200
MapObjects--Windows Limited Deployment Site License Kit Maintenance	\$3,000
MapObjects--Java Limited Deployment Site License Kit Maintenance	\$4,000
MapObjects--Java Standard Edition Internet Developer's Kit (Three Developer Licenses and\$6,000 Internet Deployment License for One Web Server)	
MapObjects--Java Standard Edition Internet Deployment License for One Additional Web\$4,000 Server	
Additional MapObjects--Java Standard Edition Developer License	\$800

<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>3</b>	MapObjects--Java Standard Edition Internet Developer's Kit (Three Developer Licenses and\$1,500 Internet Deployment License for One Web Server Maintenance)	
	MapObjects--Java Standard Edition Internet Deployment License for One Additional Web\$1,000 Server Maintenance	
	Additional MapObjects--Java Standard Edition Developer Maintenance	\$200
	Upgrade MapObjects--Windows Edition 1.x to MapObjects 2.2 Development License	\$1,000
	Upgrade MapObjects--Windows Edition 2 to MapObjects--Windows Edition 2.2 Development\$700 License	
	Upgrade MapObjects--Windows Edition 2.1 to MapObjects Windows--Editions 2.2 Development	\$250
	MapObjects LT 2 License	\$1,000
	MapObjects--Windows Edition StreetMap Developer's Kit (1 Development License and 50 Deployment Licenses)	\$595
	Additional MapObjects--Windows Edition StreetMap Deployment License 25 Pak	\$50
	Additional MapObjects--Windows Edition StreetMap Development License	\$495
<b>4</b>	<b>ArcSDE</b>	
<b>4.1</b>	ArcSDE Installation Kit	\$400
<b>4.2</b>	<b>ArcSDE 8 Server and Processor License</b>	
	ArcSDE 8 Server and two Processors (incl. License for 1 Server and 2 Processors, 5 Read and \$10,000 Write Connection Licenses)	
	ArcSDE 8 License for One Additional Processor	\$2,500
	ArcSDE 8 Read and Write Server Connection License	\$1,000
	ArcSDE 8 Read-Only Server Connection License	\$500
	Primary Maintenance for ArcSDE or SDE, 1 Server, 5 Connects	\$3,600
	Secondary Maintenance for ArcSDE or SDE, 1 Server, 5 Connects	\$1,500
	Maintenance for ArcSDE 8 or SDE 3 Server License with Two CPUs	\$3,000
	Maintenance for ArcSDE 8 or SDE 3 Additional Processor License	\$500
	Maintenance for ArcSDE 8/SDE 3 Read and Write Server Connection License	\$150
	Maintenance for ArcSDE 8/SDE 3 Read-Only Server Connection License	\$150



	ArcSDE 8.3 Single Use License Per Notebook Computer	\$1,000
	Maintenance for ArcSDE 8.3 Single Use License Per Notebook Computer	\$200
<b>5</b>	<b>ArcIMS</b>	
<b>5.1</b>	ArcIMS Standard Edition Server/CPU License	\$7,500
	ArcIMS Standard Edition Additional CPU License	\$5,000
	ArcIMS Standard Edition Server/CPU Annual Maintenance	\$1,500
	ArcIMS Standard Edition Additional CPU Annual Maintenance	\$1,000
	ArcIMS Additional Development License Annual Maintenance Fee (each)	\$200
	ArcIMS SLG Edition Server/CPU License-Includes ArcIMS and ArcSDE Intranet Deployment License for One Server and First CPU and ArcIMS Software-Limited to 10 Named Users	\$5,000
	Maintenance for ArcIMS SLG Edition Server/CPU License	\$1,500
	Upgrade of SLG License to ArcIMS Standard Edition License	\$2,500
<b>5.2</b>	<b>ArcIMS Route Server</b>	
	ArcIMS Route Server License for One Server/CPU	\$3,000
	Annual Maintenance for ArcIMS Route Server License for One Server/CPU	\$600
	ArcIMS Route Server Additional CPU License	\$1,500
	Annual Maintenance for ArcIMS Route Server Additional CPU License	\$300
	Data Pack--Tele Atlas MultiNet USA License for One Server/CPU	\$10,000
<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>5.2</b>	Annual Update Data Pack--Tele Atlas MultiNet USA License for one Server/CPU	\$5,000
	Data Pack--Tele Atlas MultiNet USA Additional CPU License	\$5,000
	Annual Update--Data Pack-Tele Atlas MultiNet USA Additional CPU License	\$2,500
	Data Pack--GDT USA Data Pack License for up to 5,000,000 Transactions	\$10,000
	Data Pack--GDT USA Data Pack License for up to 20,000,000 Transactions	\$25,000
	Data Pack--GDT USA Data Pack License for up to 60,000,000 Transactions	\$75,000
<b>6</b>	<b>Desktop Mapping Software</b>	
<b>6.1</b>	<b>PC ARC/INFO</b>	
	PC ARC/INFO Single Use License	\$2,396
	PC ARC/INFO 4.0 Upgrade per License	\$295
	PC ARC/INFO Single Use License Maintenance	\$845
<b>7</b>	<b>Business Applications Software</b>	
<b>7.1</b>	<b>ArcLogistics Route</b>	
	ArcLogistics Route for Windows/Windows NT Single Use License (U.S. data)	\$9,600
	ArcLogistics Route Annual Maintenance (U.S. data)	\$2,000
	ArcLogistics Route Additional Service Area (U.S. data)	\$1,600
	ArcLogistics Route Additional Service Area (U.S. data) Annual Maintenance	\$1,000
	ArcLogistics Route No Data License	\$8,000
	ArcLogistics Route No Data License Annual	\$1,000
	ArcLogistics Route for Citrix License (U.S. data) 5-Pak	\$24,000
	ArcLogistics Route for Citrix License (U.S. data) 5-Pak Annual Maintenance	\$6,000
	ArcLogistics Route for Citrix License (U.S. data) 25-Pak	\$80,000
	ArcLogistics Route for Citrix License (U.S. data) 25-Pak Annual Maintenance	\$20,000
	ArcLogistics Route No Data License for Citrix 5-Pak	\$20,000
	ArcLogistics Route No Data License for Citrix 5-Pak Annual Maintenance	\$5,000
	ArcLogistics Route No Data License for Citrix 25-Pak	\$60,000



ArcLogistics Route No Data License for Citrix 25-Pak Annual Maintenance	\$15,000
ArcLogistics Route for Windows/Windows NT Single Use License (U.S. data) for Local Government	\$6,000
ArcLogistics Route Annual Maintenance (U.S. data) for Local Government	\$1,600
ArcLogistics Route No Data License for Local Government	\$5,000
ArcLogistics Route No Data License for Local Government Annual Maintenance	\$1,000
ArcLogistics Route for Citrix License (U.S. data) 3-Pak for Local Government	\$18,000
ArcLogistics Route for Citrix License (U.S. data) 3-Pak for Local Government Annual Maintenance	\$3,600
ArcLogistics Route for Citrix License (U.S. data) 5-Pak for Local Government	\$24,000
ArcLogistics Route for Citrix License (U.S. data) 5-Pak for Local Government Maintenance	\$6,000
ArcLogistics Route for Citrix License (U.S. data) 25-Pak for Local Government	\$80,000
ArcLogistics Route for Citrix Licenses (U.S. data) 25-Pak for Local Government Annual Maintenance	\$20,000
ArcLogistics Route No Data License for Citrix 3-Pak for Local Government	\$15,000
ArcLogistics Route No Data License for Citrix 3-Pak for Local Government Annual Maintenance	\$3,000
ArcLogistics Route No Data License for Citrix 5-Pak for Local Government	\$20,000
ArcLogistics Route No Data License for Citrix 5-Pak for Local Government Annual Maintenance	\$5,000

<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>7.1</b>	ArcLogistics Route No Data License for Citrix 25-Pak for Local Government	\$60,000
	ArcLogistics Route No Data License for Citrix 25-Pak for Local Government Annual Maintenance	\$15,000
<b>7.2</b>	<b>BusinessMAP 3</b>	
	BusinessMAP 3	\$349
<b>7.3</b>	<b>RouteMAP IMS</b>	
	RouteMAP IMS Server/CPU License	\$3,000
	RouteMAP IMS Additional CPU License	\$500
	RouteMAP IMS Maintenance Server/CPU License	\$1,000
	RouteMAP IMS Maintenance for Additional CPU	\$500
	RouteMAP IMS Data Pack USA Server/CPU License	\$3,000
	RouteMAP IMS Data Pack USA Additional CPU License	\$500
	RouteMAP IMS Data Pack USA Maintenance Server/CPU License	\$1,000
	RouteMAP IMS Data Pack USA Maintenance for Additional CPU License	\$500
	RouteMAP IMS Data Pack CANADA Server/CPU License	\$6,600
	RouteMAP IMS Data Pack CANADA Additional CPU License	\$2,000
	RouteMAP IMS Data Pack CANADA Maintenance Server/CPU License	\$4,000
	RouteMAP IMS Data Pack CANADA Maintenance for Additional CPU License	\$1,500
<b>8</b>	<b>Other Software</b>	
<b>8.1</b>	<b>NetEngine</b>	
	NetEngine Standard Developer's Kit (incl. 1 Developer Seat and 10 Deployment Licenses)	\$10,000
	NetEngine Internet Developer's Kit (incl. 1 Developer Seat and 1 Network Server)	\$6,000
	Additional Developer Seat	\$2,000
	Additional Network Server Deployment License (12 Months, 1 Server)	\$4,000
	NetEngine 10-Pak Deployment License	\$8,000
	NetEngine Annual Renewal (Internet Developer's Kit or Deployment License)	\$1,000



	NetEngine Standard Developer's Kit Upgrade 1.x to 1.2	\$1,500
	NetEngine Internet Developer's Kit Upgrade 1.x to 1.2	\$1,000
	NetEngine Internet/Standard Developer Kit Annual Software Maintenance	\$2,000
	Additional Developer Seat Annual Software Maintenance (each)	\$500
<b>8.2</b>	<b>Maplex</b>	
	Maplex First Single Use License	\$15,000
	Maplex Second Single Use License	\$14,000
	Maplex Third Single Use License	\$11,500
	Maplex Single Use License Annual Primary Maintenance	\$3,750
	Maplex Single Use License Annual Secondary Maintenance	\$1,500
<b>8.3</b>	<b>Reserved</b>	
<b>8.4</b>	<b>ArcPad</b>	
	ArcPad Single Use License	\$396
	ArcPad Single Use License Support	\$295
	ArcPad Application Builder Single Use License	\$1,200
	ArcPad Application Builder Primary Maintenance	\$500
	ArcPad Application Builder Secondary Maintenance	\$300
	ArcPad 5.x to ArcPad 6 Upgrade	\$150
<b>9</b>	<b>Software Media Kits and Hardware Keys</b>	
	Additional Install Kit for ArcInfo	\$400
	Additional Windows/Windows NT Hardware Key	\$50
<b>Section</b>	<b>Description</b>	<b>Price</b>
<b>10</b>	<b>Reserved</b>	
<b>11</b>	<b>Reserved</b>	
<b>12</b>	<b>Software Support and Services</b>	
<b>12.1</b>	<b>ASAP Technical Support</b>	
	ArcView Network Analyst or ArcView Tracking Analyst for Windows ASAP Support	\$349
	PC ARC/INFO ASAP Support	\$595
	ArcView 3D Analyst for Windows or ArcView Spatial Analyst/ArcView Image Analysis for Windows ASAP Support	\$349
	ArcView 3D Analyst for UNIX or ArcView Spatial Analyst for UNIX ASAP Support	\$349
	ArcView Network Analyst for UNIX or ArcView Tracking Analyst for UNIX ASAP Support	\$349
	ArcView 3.x for UNIX ASAP Support	\$549
	ArcView 3.x for Windows or Macintosh ASAP Support	\$349
<b>12.2</b>	<b>Developer Support Program</b>	
	IMS Developers Priority Support	\$1,495
	IMS Developers Pay-As-You-Go Support (per incident)	\$150
	MapObjects LT Developers Priority Support	\$395
	MapObjects LT Pay-As-You-Go Support (per incident)	\$60
	ArcInfo Workstation Developers Priority Support	\$2,000
	ArcInfo Workstation Developers Pay-As-You-Go Support (per incident)	\$175
	ArcGIS Desktop Developers Priority Support	\$2,000
	ArcGIS Desktop Developers Pay-As-You-Go Support	\$175
	ArcView 3.x, Avenue, Grid I/O Desktop Developers Priority Support	\$795
	ArcView 3.x, Avenue, Grid I/O Desktop Developers Pay-As-You-Go Support (per incident)	\$80
	Cross Product Plan Developers Priority Support	\$1,995



Premium Support Services at an Hourly Rate--36 Hours \$7,500  
 Premium Support Services at an Hourly Rate--One Additional Hour (must be ordered at the \$207 same time as initial block of 36 hours)

**12.3 Reserved**

**12.4 Installation Services and Training**

Single Workstation Installation of ArcInfo and Extensions in USA \$2,500  
 Multiple (up to 5) Workstation Installations of ArcInfo and Extensions at One Site in the USA \$3,500  
 ArcIMS Implementation--Service for the ArcIMS Standard Edition Server/CPU License. \$3,500  
 Consists of up to 20 hours of travel and on-site support, over 2 days.  
 Standard Training per Person per Day at ESRI USA Training Centers \$400  
 Standard Training per Instructor per Day at Client Site in USA \$3,050  
 Nonstandard Training per Person per Day at ESRI USA Training Centers \$450  
 Nonstandard Training Course at Client Site in USA \$3,520  
 Standard Workshops per Person per Day at ESRI USA Training Center \$300  
 Standard Workshops at Client Site in USA \$2,290

**12.5 Virtual Campus**

ESRI Virtual Campus Training Course Pricing (4 to 7 modules) 1-4 Seats (each) \$100  
 ESRI Virtual Campus Training Course Pricing (4 to 7 modules) 5-9 Seats (each) \$95  
 ESRI Virtual Campus Training Course Pricing (4 to 7 modules) 10+ Seats (each) \$90

**ESRI Virtual Campus Subscription Pricing Education Subscriptions (for all Virtual Campus courses)**

Annual Premium Subscription 25 Seats \$2,250  
 Annual Premium Subscription 50 Seats \$4,250

**Section Description Price**

**12.5** Annual Premium Subscription 100 Seats \$7,000  
 Annual Premium Subscription 500 Seats \$30,000  
 Annual Premium Subscription 1,000 Seats \$50,000  
 Annual Standard Subscription 25 Seats \$2,125  
 Annual Standard Subscription 50 Seats \$4,000  
 Annual Standard Subscription 100 Seats \$6,000  
 Annual Standard Subscription 500 Seats \$25,000  
 Annual Standard Subscription 1,000 Seats \$40,000

**APPENDIX D, TIME & MATERIALS RATE SCHEDULE****Effective January 1, 2003**

Hourly time and materials labor rates have been provided for each labor category for calendar year 2003. The hourly labor rates for services that are performed after 2003 will be escalated seven and one-half percent (7.5%) each year. Other direct costs, such as travel, reproduction, subcontractor, telecommunication/freight, or materials, will be charged a material handling fee and invoiced. All travel will be billed according to the current State of Michigan travel schedule.

ESRI reserves the right to provide fixed price quotations for professional services requests that require deliverables other than hours and/or are over twenty-five thousand dollars (\$25,000). Work performed under fixed price orders **will require additional terms and conditions and** will be invoiced monthly based on percent complete.

**Principal****Hourly Rate: \$260/Hour**

These staff work as program directors or project advisors providing project vision, strategic consulting, and program management for all types of geographic information system (GIS) projects. These staff apply market/application domain expertise with extensive experience in GIS and related technologies to ensure the successful completion of the program. Consulting activities may include strategic planning, review and oversight of requirements definition, application and database design, and system integration consulting. Management activities may include defining program requirements, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. These staff work with senior client staff and have the support of senior Environmental Systems Research Institute, Inc. (ESRI), corporate staff to ensure successful project completion.

**Senior Consultant****Hourly Rate: \$197/Hour**

These staff work as project managers or project advisors providing strategic consulting and program management for all types of GIS projects. These staff apply market/application domain expertise with extensive experience in GIS and related technologies to ensure the successful completion of the program. Consulting activities may include strategic planning, GIS workshops and seminars, requirements definition, application and database design and development, and system integration consulting. Management activities may include defining program requirements, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. They design comprehensive work plans that employ structured systems methodologies, which define project deliverables, milestones, and realistic schedules.

**Consultant****Hourly Rate: \$156/Hour**

These staff provide day-to-day consulting and management of contracted projects within ESRI. They work under the guidance of senior ESRI consulting staff and support the design and implementation of defined work plans. They provide traditional consulting services and also provide design and management support to application development projects and database conversion projects. They conduct detailed requirements interviews, document application requirements, develop logical and physical database designs using computer-aided software engineering (CASE) tools and entity-relationship (E-R) diagramming methodologies, design and develop software and database quality assurance/quality control (QA/QC) programs, and provide management oversight of daily technical activities. They work with senior consulting and technical staff to design comprehensive work plans that employ structured systems methodologies, which define project deliverables, milestones, and realistic schedules. These staff also work with ESRI administrative staff to ensure that progress and financial reporting is provided according to contract requirements.

**Senior Technical Designer****Hourly Rate: \$203/Hour**

These staff are the senior technical staff at ESRI. They provide the overall technical vision and system architecture for large complex systems. They ensure that sound software engineering principles and life cycle methodologies are applied to projects. They are actively involved in systems architecture design, application software design, database process design, and all phases of coding including the conduct of design and code



reviews. They may serve as the principal investigator in focused studies or research and development (R&D) projects. While staff in this category have broad technical knowledge of GIS applications and related technologies, they also provide specific expertise in areas such as Internet applications, data warehousing, spatial analysis, and modeling. They are proficient in ESRI® software languages, as well as third-generation programming languages, Internet markup languages, and other technologies.

**Technical Designer**

**Hourly Rate: \$164/Hour**

GIS system/software developers design technical project plans for the implementation of application software projects and database development projects. They oversee the day-to-day technical activities of the project team and ensure that appropriate systems methodologies are employed. They design and develop QA/QC programs and oversee design and code reviews, database reviews, and other QA/QC activities throughout the project life cycle. They will perform detailed software design, detailed database conversion design, and be directly involved in the coding and implementation of the more complex and strategic portions of application software and database conversion projects. They are proficient in ESRI software languages, as well as third-generation programming languages, Internet markup languages, and other technologies.

**Technical Analyst**

**Hourly Rate: \$128/Hour**

Staff in this category work independently to perform software coding and write software documentation to design specifications developed by senior staff. They also design and implement data conversion procedures. These staff also perform software and database quality control. They are very proficient in the coding of software and processing of digital databases. They are proficient in ESRI software languages, as well as third-generation programming languages, Internet markup languages, and other technologies.

**Database Analyst**

**Hourly Rate: \$108/Hour**

These staff provide database development support in creating cartographic and digital data products. Areas of expertise include performing data conversion, migration, and translation activities utilizing advanced processing techniques in ARC/INFO® and/or ArcInfo™ software. Additionally, these staff design and implement efficient production tools and coordinate work flow with project personnel.

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**APPENDIX E, IMPLEMENTATION SERVICES**

**WARRANTY:** ESRI warrants that for a period of thirty (30) days after acceptance of a deliverable that the deliverable will conform, in a manner consistent with professional and technical standards in the software industry, with applicable written specifications included in the corresponding task or delivered to Licensee pursuant to this Addendum.

**Disclaimer**

1. THE WARRANTY SET FORTH IS IN LIEU OF, AND THIS ADDENDUM EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT.
2. IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY MAP DATA. SUCH MAP DATA MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET LICENSEE'S NEEDS OR EXPECTATIONS. LICENSEE SHOULD NOT RELY ON ANY MAP DATA UNLESS LICENSEE HAS VERIFIED THE MAP DATA AGAINST ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

**LIMITATION OF LIABILITY:** In no event shall ESRI be liable to Licensee for any indirect, special, exemplary, consequential, or incidental damages or lost profits arising out of, or related to, this Addendum, even if it has been advised of the possibility of such damages. ESRI's liability for direct damages shall in no event exceed the amount actually paid by the Licensee for the portion of the professional services involved.

**NONHIRE OF CONTRACTOR PERSONNEL:** It is hereby mutually agreed that Licensee will not solicit for hire any employee(s) of ESRI's technical staff, who is (are) associated with efforts called for under this effort, for a period of one (1) year thereafter.

**COMPENSATION:** Services are provided and invoiced on a time and materials basis in accordance with the not-to-exceed total cost. Labor is invoiced based on actual hours provided. For services provided beyond the date the quote is effective or delivered in a new calendar year, ESRI reserves the right to increase the labor rates up to seven and one-half percent (7.5%) per year. Other direct costs included in the quote, such as travel, will be invoiced at actual cost. All travel expenses will be billed according to the current State of Michigan travel schedule. The client will be invoiced on a monthly basis for work provided in the previous month. Payment terms are forty-five (45) days from receipt of an invoice. Payment shall be made to the address identified on original ESRI invoices.

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

**UCC INAPPLICABILITY:** Services and/or custom programs provided under an order will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

**LICENSE GRANT:** Subject to the terms and conditions set forth in this Addendum, ESRI hereby grants to Licensee a nonexclusive, royalty-free, worldwide license in the deliverables to use and reproduce the deliverables in connection with Licensee's authorized use of the ESRI® software and data for support of which the deliverables were supplied ("Software" and "Data," respectively).



**PATENTS AND INVENTIONS:** Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Addendum. The parties shall jointly own any Invention made jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to ESRI an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.

Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.

A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.

Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which shall not be unreasonably withheld.

**CONFIDENTIALITY, OWNERSHIP, AND EXPORT CONTROLS:** Except as specifically granted in this Addendum, ESRI or its licensors own and retain all right, title, and interest in the deliverables.

The deliverables are ESRI confidential and Licensee shall preserve and protect their confidentiality. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile deliverables delivered only in object code, executable code, or similar formats (collectively, "Secure Formats"). For deliverables delivered in source code or other human-readable formats, Licensee shall have met its obligations under this Addendum if its disclosure of deliverables is limited to deliverables in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such deliverables is withheld from such disclosure, and the person or entity in receipt of such deliverables similarly agrees not to perform such acts or allow others to do so.

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

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



## APPENDIX F, CLIENT SITE TRAINING TERMS

Whereas, the CLIENT wishes to arrange for training of its employees, the following terms shall be followed as applicable.

### I—SCOPE

ESRI agrees to conduct training courses pursuant to the terms contained herein.

**Course Description:** The ESRI® Software training course(s) to be conducted, the location, the dates during which the courses are to be conducted, the number of participants, and the prices to be paid to ESRI are as set forth in the ESRI Course Catalog or at ESRI's training Web site, which is incorporated by this reference. All courses shall be conducted in substantial conformity with the most current ESRI training course brochure(s). ESRI reserves the right to modify course content when necessary due to Software technical abilities or limitations.

**ESRI's Responsibility:** ESRI shall provide an instructor qualified to conduct the course(s), as well as all necessary training materials sufficient for the number of registered participants.

**ESRI's scheduling coordinator,** through whom all course(s), dates, and locations shall be confirmed, can be contacted at 909-793-2853, extension 1523.

**CLIENT's Responsibility:** Where courses are to be conducted at CLIENT's facilities, CLIENT shall provide physical training facilities that meet the following minimum requirements:

- CLIENT shall, where possible, provide a one (1)-room facility, sufficient for a training course for up to twelve (12) persons (or such other number as may be agreed to by ESRI's scheduling coordinator). The facility shall have appropriate climate control, lighting, and sufficient power and number of outlets to accommodate the required number of computers and other equipment to be used.
- CLIENT shall supply all computer hardware for the training course. Computers must be platforms fully supported by ESRI. All computer hardware shall be configured with an appropriate release of an operating system to run the current release version of the required Software. There shall be a minimum of one (1) color monitor for every participant. Other peripheral devices including, but not limited to, digitizers and plotters/printers, as required by the training course being conducted, shall be Class 1 supported.
- CLIENT shall be responsible for providing one (1) high-resolution PC projector and screen as well as one (1) large writing board.
  - CLIENT shall limit the number of course participants to twelve (12) students per course. Additional students, up to a maximum of fifteen (15), may be added to some classes for an additional fee.
  - CLIENT agrees that all participants shall be regular employees of CLIENT who meet the prerequisites set forth in the ESRI training brochure(s).
  - CLIENT shall issue a purchase order and pay invoices pursuant to the terms set forth in Section III below.
  - CLIENT shall complete and submit an ESRI Client Site Request form not less than four (4) weeks prior to the start of any course. Final schedule is subject to mutual agreement.

### II—SOFTWARE LICENSES

The terms of the ESRI license agreement as amended in this Contract shall be applicable to all CLIENT course participants and for all Software and documentation licensed for use in any training course to be conducted. For on-site training, temporary Software licenses may be issued by ESRI where there is an insufficient number of Software licenses available at the training facility. CLIENT shall deinstall the temporary Software licenses at the conclusion of the training course.



**III—PERFORMANCE AND PAYMENT**

Upon completion of each training course, ESRI shall invoice CLIENT and CLIENT shall pay said invoice within forty-five (45) days of receipt thereof.

**IV—EXPORT CONTROL REGULATIONS**

ESRI's technology is subject to U.S. export control laws and regulations—ESRI's Software, data, documentation, and any underlying information or technology may not be exported, reexported, or provided in whole or in part to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation.