

## “SOLE SOURCE” PROCUREMENT JUSTIFICATION

Sole source purchases are goods and services available from only one vendor. There may be just one vendor because of patents or copyrights or simply because the vendor is the only one which supplies the good or service. Using Department must provide a written explanation as to why only this particular product/service is acceptable and why no other will be suitable or acceptable to meet the need. A quote must accompany this form.

Department name: Community Development

1. Name of product or service: GIS Software Enterprise License Agreement
2. Name of product manufacturer: Environmental Systems Research Inst, Inc. (ESRI)
3. Name of “sole” product supplier or service provider: Same
4. Describe in general terms the product/service you are requesting and the intended application.

We are requesting a renewal of our GIS Enterprise License Agreement (ELA) with ESRI under their Small Government term contract. This is a renewal to have unlimited use of GIS software for all departments in the County that currently use the software. This is a renewal for a 3-year period starting on September 15, 2020. The previous (current) ELA was under the umbrella of an existing State of New Mexico pricing agreement with ESRI, price agreement number 60-000-16-00039AA. This existing procurement platform no longer syncs with the Small Government term contract that ESRI is moving the County into as the product listings and pricing no longer match, which is why we are having to move to sole source procurement.

5. Describe the unique features/capabilities/characteristics that distinguish it from other products/services.

ESRI is the only company that provides the software that we use and is only available through them as a single source. All formal GIS training for all professionals and other GIS users is only available with the use of ESRI GIS products. ESRI's primary software platforms, ArcGIS (including Desktop and recently Pro), offers its own complete GIS application suite, for static mapping and extensive spatial analyses, ArcSDE for storing spatial databases, mobile GIS applications for field data collection, ArcGIS Online for interactive web map applications, and ArcGIS Server for web-based spatial information sharing. ESRI's full suite of applications are now administered under ArcGIS Enterprise, which is the foundation and infrastructure for this GIS technology. ArcGIS offers extensive documentation, online training materials, and sample datasets, customer support through regional and local ESRI offices, which are based in over 80 countries. There are more native cartographic output options with ArcGIS. Different data frames can be added and linked. ArcGIS

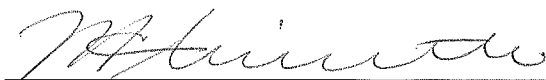
also has several advanced mapping built-in functionalities that cover georeferencing, map labeling, image analysis, spatial analysis, 3D image analysis, business analysis, network analysis and workflow management to name a few that other GIS platform don't have available.

6. How did you determine there was only one source for the product or service? Provide information on the research that was performed to locate suppliers for this product(s) or service(s). (Please furnish names, addresses and other documentation).

ESRI is the only company and manufacturer of their GIS products that we have used for over 27 years here at the County. There are a few other GIS systems out there, but they can't compete with ESRI with the wide range of its capabilities that others lack. They are unreliable and use data formats only available using their system. All people in the GIS field use ESRI for their GIS needs around the world. All colleges and universities train those in the GIS field using only ESRI. All businesses use ESRI. The data formats established by ESRI are the standard used in the GIS field and it is how all data is transferred between customers and businesses. All GIS professionals and users only use ESRI products and have for the last 30 years. The County has used ESRI not long after GIS software was first implemented in the GIS field. So, we are basically permanently grandfathered into using ESRI. We wouldn't be able to do our job without their product. All GIS professionals and other GIS users in the County are formally trained in the use of ESRI-based products for all things related to GIS and Cartography. If we were unable to purchase the renewal of this software, County staff wouldn't be able to complete any mapping or GIS services and the GIS Divisions of Community Development, the Assessor's Office, the Flood Commission or the Bureau of Elections wouldn't be able to perform their job.

7. What product supplier or service provider has your Department used until now to satisfy similar requirements?

ESRI is the only supplier and service provider that the all departments at the County utilize for their GIS needs now for the past 27 years.



Signature of Department Head

4/30/2020

Date

(Attach Quote and Use Additional Sheets As Necessary)

\*\*This form is used by Purchasing Department to determine if a "Sole Source" procurement criterion is met.  
Completing this form does not guarantee approval of this type of procurement.

## SOLE SOURCE LETTER

Environmental Systems Research Institute, Inc. (Esri)  
380 New York Street  
Redlands, CA 92373



**DATE:** July 29, 2019

**TO:** To Whom It May Concern

**FROM:** Jackie Ricks, Esri Contracts and Legal Services

**RE: Esri Sole Source Justification for Small Municipal and County Government Enterprise Agreement**

This letter confirms Esri, as owner and manufacturer, is the sole source provider of all U.S. domestic Small Municipal and County Government Enterprise Agreements (EA). The Small Municipal and County Government EA is a bundled package of term limited software licenses and maintenance that includes the right to copy.

Esri is the only source that can grant a right to copy and deploy Enterprise Software within your organization (Enterprise). Also, domestically Esri is the only source of maintenance (updates and technical support) for all Esri® software.

If you have further questions, please feel free to call our Contracts and Legal Services Department at 909-793-2853, extension 1990.

Sincerely,

Jackie Ricks  
Contract Coordinator



Contracts & Legal Services Dept.  
380 New York Street  
Redlands, CA 92373  
Voice 909.793.2853 Ext. 1-1990  
[jricks@esri.com](mailto:jricks@esri.com)



Environmental Systems Research Institute, Inc.  
380 New York St  
Redlands, CA 92373-8100  
Phone: (909) 793-2853 Fax: (909) 307-3049  
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of  
this quotation to your purchase order.  
Quote is valid from: 3/18/2020 To: 6/16/2020*

## Quotation # Q-410875

Date: April 8, 2020

Customer # 132337 Contract # ENTERPRISE  
AGREEMENT

County of Dona Ana  
Community Development Dept  
845 N Motel Blvd  
Las Cruces, NM 88007-8100

ATTENTION: Lee Galt  
PHONE: 575-525-5505  
EMAIL: leeg@donaanacounty.org

Material	Qty	Term	Unit Price	Total
168182	1	Year 1	\$115,000.00	\$115,000.00
Populations of 150,001-250,000 Small Government Term Enterprise License Agreement				
168182	1	Year 2	\$130,000.00	\$130,000.00
Populations of 150,001-250,000 Small Government Term Enterprise License Agreement				
168182	1	Year 3	\$150,000.00	\$150,000.00
Populations of 150,001-250,000 Small Government Term Enterprise License Agreement				
126959	7		\$665.00	\$4,655.00
Esri Training Pass per Day Up to 49 Days per Year One Year Term				

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

**For questions contact:**

Karen Wigglesworth

**Email:**

kwigglesworth@esri.com

**Phone:**

(303) 449-7779 x8217

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

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



Environmental Systems Research Institute, Inc.  
380 New York St  
Redlands, CA 92373-8100  
Phone: (909) 793-2853 Fax: (909) 307-3049  
DUNS Number: 06-313-4175 CAGE Code: OAMS3

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County of Dona Ana  
Community Development Dept  
845 N Motel Blvd  
Las Cruces, NM 88007-8100

ATTENTION: Lee Galt  
PHONE: 575-525-5505  
EMAIL: leeg@donaanacounty.org

Subtotal:	\$399,655.00
Sales Tax:	\$238.57
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$399,893.57

This training pass is intended for 7 days of instructor-led training classes, for a 12 month term from date of purchase. A Customer Service Representative will request that you appoint a Training Pass Administrator. Detailed information about the Training Pass and Training Pass Administrator duties can be found at <http://www.esri.com/trainingpass>. If you have questions, please contact Esri Training at 1.800.447.9778 x 1-5757. Thank you!

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

**For questions contact:**

Karen Wigglesworth

**Email:**

kwigglesworth@esri.com

**Phone:**

(303) 449-7779 x8217

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

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

**Esri Use Only:**

Cust. Name \_\_\_\_\_  
 Cust. # \_\_\_\_\_  
 PO # \_\_\_\_\_  
 Esri Agreement # \_\_\_\_\_



## SMALL ENTERPRISE AGREEMENT COUNTY AND MUNICIPALITY GOVERNMENT (E214-6)

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

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

**Table A**  
**List of Products**

**Uncapped Quantities****Desktop Software and Extensions (Single Use)**

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

**Enterprise Software and Extensions**

ArcGIS Enterprise and Workgroup  
 (Advanced and Standard)  
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,  
 ArcGIS Spatial Analyst, ArcGIS Geostatistical  
 Analyst, ArcGIS Network Analyst, ArcGIS  
 Schematics, ArcGIS Workflow Manager

ArcGIS Monitor

**Enterprise Additional Capability Servers**

ArcGIS Image Server

**Developer Tools**

ArcGIS Engine  
 ArcGIS Engine Extensions: ArcGIS 3D Analyst,  
 ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase  
 Update, ArcGIS Network Analyst, ArcGIS Schematics  
 ArcGIS Runtime (Standard)  
 ArcGIS Runtime Analysis Extension

**Limited Quantities**

One (1) Professional subscription to ArcGIS Developer  
 Two (2) Esri CityEngine Single Use Licenses  
 1,000 ArcGIS Online Viewers  
 1,000 ArcGIS Online Creators  
 110,000 ArcGIS Online Service Credits  
 1,000 ArcGIS Enterprise Creators  
 15 Insights in ArcGIS Enterprise  
 15 Insights in ArcGIS Online  
 200 Tracker for ArcGIS Enterprise  
 200 Tracker for ArcGIS Online  
 7 ArcGIS Parcel Fabric User Type Extensions (Enterprise)  
 7 ArcGIS Utility Network User Type Extensions (Enterprise)

**OTHER BENEFITS**

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

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

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

**Term of Agreement:** Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

\_\_\_\_\_  
(Customer)

By: \_\_\_\_\_  
Authorized Signature

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

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

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

### CUSTOMER CONTACT INFORMATION

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

Fax: \_\_\_\_\_

City, State, Postal Code: \_\_\_\_\_

E-mail: \_\_\_\_\_

Country: \_\_\_\_\_

Quotation Number (if applicable): \_\_\_\_\_

## 1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

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

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

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

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

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

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

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

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

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

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

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

## 2.0—ADDITIONAL GRANT OF LICENSE

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

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

## 3.0—TERM, TERMINATION, AND EXPIRATION

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

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

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

**3.4 Termination for Lack of Funds.** For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if



Customer is unable to secure funding through the legislative or governing body's approval process.

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

## 4.0—PRODUCT UPDATES

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

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

## 5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

### a. Tier 1 Support

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

### b. Tier 2 Support

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

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

## 6.0—ENDORSEMENT AND PUBLICITY

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

## 7.0—ADMINISTRATIVE REQUIREMENTS

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

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

## 8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

### 8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if

Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.
- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

**8.2 Order Requirements.** Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
  - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
  - (2) Order number
  - (3) Applicable annual payment due

## 9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be

no decrease in Fee as a result of any Ownership Change.

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