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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

3/16/2021

BCC MEETING DATE

TO: Hunter S. Conrad, County Administrator

DATE: February 5, 2021

FROM: Jaime Locklear, Asst Director Purchasing

PHONE: 904 209-0158

SUBJECT OR TITLE: Misc. 21-65 Enterprise Agreement (Q-433791) for Small Utility Term Enterprise License Agreement with Environmental Systems Research Institute (ESRI), Inc.

AGENDA TYPE: Consent Agenda, Contract, Resolution

BACKGROUND INFORMATION:

On April 28, 2015 the County entered into a three (3) year Small Utilities Enterprise License Agreement with Environmental Systems Research Institute (ESRI) to purchase ArcGIS desktop software for Utility Department Staff access to GIS software, data and analysis and support. The initial agreement was renewed on March 18, 2018 for an additional three (3) year agreement which expires on April 30, 2021. The ERSI License and support is exclusive to ERSI. Since the initial agreement the County’s use of the software has increased from the original Meter Counts of 10,001 to 50,000 Small Utility Term Enterprise License Agreement to the next level of Meter Count of 50,001 to 100,000 increasing the previous three (3) year cost of seventy five thousand dollars (\$75,000.00) to the renewal cost of one hundred fifty one thousand four hundred fifty one dollars (\$151,451.00). Staff recommends awarding the License Agreement with ESRI for another three (3) years at a cost of one hundred fifty one thousand four hundred fifty one dollars (\$151,451.00) with the option for additional renewal period upon approval of funding and ESRI’s successful support and software performance for as long as the Utility Department requires operational use of the ESRI software.

1. IS FUNDING REQUIRED? Yes

2. IF YES, INDICATE IF BUDGETED. Yes

IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:

INDICATE FUNDING SOURCE: Utility Department annual: 4409-53120 (Office Admin-Contractual Services) \$21,000.00 4470-53120 (PV Admin-Contractual Services) \$7,000.00 4488-55102-6047-55102 (Unrestricted Rev Projects-Software-GIS & CMMS-Software) \$23,451.00

SUGGESTED MOTION/RECOMMENDATION/ACTION:

Motion to adopt Resolution 2021-_____, authorizing the County Administrator, or his designee, to execute Misc. 21-65 Enterprise Agreement (Q-433791), with Environmental Research System Institute, Inc., in substantially same form and format as attached hereto for a three (3) year agreement for a total cost \$151,451.00 renewable for as long as the ERSI software is required for operation by the Utility Department, St Johns County, FL.

For Administration Use Only:

Legal: RL 2/16/2021

OMB: LF 2/16/2021

Admin: Brad Bradley 2/18/2021

RESOLUTION NO. 2021 - ____

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO AWARD MISC. 21-65 ENTERPRISE AGREEMENT (Q-433791) TO ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI), AND TO EXECUTE AN AGREEMENT FOR COMPLETION OF THE WORK.

RECITALS

WHEREAS, the County desires to enter into a license agreement with Environmental Systems Research Institute, Inc. (ESRI) the Meter Counts 50,001 to 100,000 Small Utility Term Enterprise License Agreement for the Utility Department; and

WHEREAS, the license agreement is for three (3) consecutive calendar years to cover ESRI software support, maintenance and updates; and

WHEREAS, the license agreement is authorized renewable in three (3) consecutive calendar year increments for as long as the Utility Department operation requires the use of the software ; and

WHEREAS, the County has reviewed the terms, provisions, conditions and requirements of the proposed license agreement (attached hereto, an incorporated herein) and finds that entering into the license agreement to complete the work services serves a public purpose.

WHEREAS, the project will be funded by the SJC Utility Department.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to award Misc. 21-65 Enterprise Agreement (Q-433791) to Environmental Systems Research Institute, Inc., and to execute a contract for completion of the work as specified therein.

Section 3. Upon Board approval, the County Administrator, or designee, is authorized to execute an agreement in substantially the same form and format as the attached draft on behalf of the County to complete the project as specifically provided in Misc. 21-65 Enterprise Agreement (Q-433791).

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this ____ day of _____, 2021.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: _____
Jeremiah R. Blocker, Chair

**ATTEST: ST JOHNS COUNTY, FL
CLERK OF CIRCUIT COURT &
COMPTROLLER**

Brandon J. Patty, Clerk

By: _____
Deputy Clerk



Quotation # Q-433791

Date: January 27, 2021

Customer # 199282 Contract # ENTERPRISE AGREEMENT

County of Saint Johns
Utilities Dept
1205 State Road 16
Saint Augustine, FL 32084-8548

ATTENTION: Tom Tibbitts
PHONE: (904) 209-2636
EMAIL: ttibbitts@sjcfl.us

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

*To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 1/25/2021 To: 7/24/2021*

Material	Qty	Term	Unit Price	Total
168090	1	Year 1	\$50,000.00	\$50,000.00
Meter Counts 50,001 to 100,000 Small Utility Term Enterprise License Agreement				
168090	1	Year 2	\$50,000.00	\$50,000.00
Meter Counts 50,001 to 100,000 Small Utility Term Enterprise License Agreement				
168090	1	Year 3	\$50,000.00	\$50,000.00
Meter Counts 50,001 to 100,000 Small Utility Term Enterprise License Agreement				
173829	1		\$1,451.00	\$1,451.00
ArcGIS Drone2Map for ArcGIS Enterprise Term License				

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: Robyn Garrett	Email: rgarrett@esri.com	Phone: (704) 541-9810 x8640
<p>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.</p>		

GARRETTT

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



Quotation # Q-433791

Date: January 27, 2021

Customer # 199282 Contract # ENTERPRISE AGREEMENT

County of Saint Johns
Utilities Dept
1205 State Road 16
Saint Augustine, FL 32084-8548

ATTENTION: Tom Tibbitts
PHONE: (904) 209-2636
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Phone: (909) 793-2853 Fax: (909) 307-3049
DUNS Number: 06-313-4175 CAGE Code: OAMS3

*To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 1/25/2021 To: 7/24/2021*

Subtotal:	\$151,451.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$151,451.00

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: Robyn Garrett	Email: rgarrett@esri.com	Phone: (704) 541-9810 x8640
<p>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.</p>		

GARRETT

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
SMALL UTILITY
(E215-3)**

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 Monitor
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager

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) ArcGIS CityEngine Single Use Licenses
100 ArcGIS Online Viewers
100 ArcGIS Online Creators
17,500 ArcGIS Online Service Credits
100 ArcGIS Enterprise Creators
10 ArcGIS Insights in ArcGIS Enterprise
10 ArcGIS Insights in ArcGIS Online
50 ArcGIS Tracker for ArcGIS Enterprise
50 ArcGIS Tracker for ArcGIS Online
100 ArcGIS Utility Network User Type Extensions (Enterprise)
1 ArcGIS Business Analyst Web App

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	3
Number of Tier 1 Help Desk individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested*	2
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.

RIDER 1

St. John's County Supplemental Terms and Conditions

1. The following St. Johns County Supplemental Terms and Conditions are hereby incorporated into the Environmental Systems Research Institute, Inc., (ESRI) Terms of Use and Conditions for the Utilities Department between St. Johns County, FL ("County") and ESRI as Rider 1. In the event of a conflict or inconsistency between this Rider 1 and ESRI Terms of Use and Conditions the Utility Department, St Johns County, FL., the provisions of Rider 1 shall prevail. The parties agree as follows:
2. Compensation:
 - A. The County shall compensate ESRI an amount of one hundred fifty one thousand four hundred fifty one dollars (\$151,451.00) a three (3) term for services to be provided in accordance with the mutually agreed to ESRI Terms of Use and Conditions the Utility Department, St Johns County, FL., and this Rider 1. The maximum amount available as compensation to ESRI under this Agreement shall not exceed one hundred fifty one thousand four hundred fifty one dollars (\$151,451.00) for the three (3) year period which shall be the amount budgeted by the St. Johns County Utility Department for services delivered in accordance with the Contract Documents.
 - B. It is strictly understood that ESRI is not entitled to the above-referenced amount of compensation. Rather, ESRI's compensation shall be based upon ESRI's providing the Services, detailed in the Contract Documents, which are not the subject of a good faith dispute.
 - C. The County reserves the right to pro-rate or refuse payment of any submitted invoice where services were not performed in accordance with the terms of the Contract Documents.
3. Availability of Funds.

The County's obligations under this Agreement are subject to the availability of lawfully appropriated funds. While the County will make all reasonable efforts, in order to provide funds needed to perform under this Agreement, (and the County agrees that it shall not execute and submit an Order Form for the purchase of any products or services from ESRI unless it has properly secured funding for such purchase), the County makes no express commitment to provide such funds in any given County Fiscal Year. Moreover, it is expressly noted that ESRI cannot demand that the County provide any such funds in any given County Fiscal Year.
4. Permits and Licenses.

To the extent that ESRI needs to obtain/require, and maintain permits, certifications, and/or licenses, in order to perform the Services noted in this Agreement, then ESRI shall be responsible for securing, obtaining/acquiring, and maintaining, at ESRI's sole expense, any, and all, permits, certifications, licenses, and/or approvals required by Federal, State, and/or County law, rule, regulation, or ordinance.
5. Independent ESRI Relationship.

ESRI is, and shall be, in the performance of all work services and activities under this Contract Agreement, an independent ESRI, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to ESRI's sole direction, supervision, and control.

ESRI shall exercise control over the means and manner in which it and its employees perform the work, and in all respects ESRI's relationship and the relationship of its employees to the County shall be that of an independent ESRI and not as employees or agents of the County. ESRI does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.
6. Amendments to this Contract Agreement.

Both the County and ESRI acknowledge that this Agreement constitutes the complete agreement and understanding of the parties. Further, both the County and ESRI acknowledge that any change, amendment, modification, revision, or extension of this Agreement (other than termination, as noted elsewhere in this Agreement) shall be in writing, and shall be executed by duly authorized representatives of both the County, and ESRI.

7. Duration & Renewal.

This Agreement shall become effective upon signature by all parties, shall be in effect for an initial contract term of three (3) consecutive calendar years, and may be renewed, in unlimited three (3) year periods, upon satisfactory performance by ESRI, mutual agreement by both parties, and the availability of funds. While this Agreement may be renewed as stated in this Article, it is expressly noted that St. Johns County is under no obligation to renew or extend this Agreement. It is further expressly understood that the option of renewal is exercisable only by St. Johns County, and only upon the County's determination that ESRI has satisfactorily performed the Services noted in the Contract Documents.

8. Public Records

- A. The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.
- B. In accordance with Florida law, to the extent that ESRI's performance under this Agreement constitutes an act on behalf of the County, ESRI shall provide access to all public records made or received by ESRI in conjunction with this Agreement. Specifically, if ESRI is expressly authorized, and acts on behalf of the County under this Agreement, ESRI shall:
- (1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services described herein;
 - (2) Provide the public with access to public records related to this Agreement on the same terms and conditions that the County would provide the records, and at a cost that does not exceed the costs provided in Chapter 119, Florida States, or as otherwise provided by applicable law;
 - (3) Ensure that public records related to this Agreement that are exempt or confidential and exempt from public disclosure are not disclosed except as authorized by applicable law; and
 - (4) Meet all requirements for retaining public records, and transfer at ESRI's sole cost and expense, all public records in the possession of ESRI upon termination of this Agreement. ESRI shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirements in accordance with applicable State and Federal provisions. Any public records stored electronically must be provided to the County in a format that is compatible with information technology systems maintained by the County.
- C. Failure by ESRI to grant such public access shall be grounds for immediate, unilateral termination of this Agreement by the County. ESRI shall promptly provide the County notice of any request to inspect or copy public records related to this Agreement in ESRI's possession and shall promptly provide the County a copy of ESRI's response to each such request.

7. Severability.

If any word, phrase, sentence, part, subsection, section or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement/Contract, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

8. Termination.

This Agreement may be terminated by the County without cause upon at least sixty (60) calendar days advance written notice to ESRI of such termination without cause. This Agreement may be terminated by the County with cause provided that ESRI does not cure such deficiency within thirty (30) days of written notice by County of ESRI's breach. Such written notice shall indicate the exact cause for termination.

9. Notice of Default / Right to Cure

- A. Should ESRI fail to perform (default) under the terms of this Agreement, then the County shall provide written notice to ESRI, which such notice shall include a timeframe of no fewer than five (5) consecutive calendar days in which to cure the default. Failure by ESRI to cure the default, or take acceptable corrective action within the timeframe provided in the notice of default (or any such amount of time as mutually agreed to by the parties in writing), shall constitute cause for termination of this Agreement.
- B. It is expressly noted that, should the County issue more than one notice of default to ESRI during the term of this Agreement, such action shall constitute cause for termination of this Agreement.
- C. Consistent with other provisions in this Agreement, ESRI shall be paid for Services authorized and due under this Agreement signed between the parties. If the County terminates because of a ESRI breach, ESRI will refund any unused and prepaid fees. If the County terminates without cause, ESRI will not refund any prepaid fees.
- D. Upon receipt of notice of termination, except as otherwise directed by the County in writing, ESRI shall:
 1. Stop work on the date to the extent specified.
 2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
 3. This not a works for hire arrangement. Customer is not receiving any work product from ESRI.
 4. Continue and complete all parts of the work that have not been terminated.

10. Personnel.

ESRI represents that it has, or shall secure at its own expense, all necessary personnel required to perform the Services as noted in the Contract Documents. It is expressly understood that such personnel shall not be employees of, or have any contractual relationship with the County. All of the Services required hereunder shall be performed by ESRI, or under its supervision. All personnel engaged in performing the Services shall be fully qualified and, if required, authorized or permitted under federal, state and local law to perform such Services. Any changes or substitutions in ESRI's key personnel must be made known to the County's representative and written approval granted by the County before said change or substitution can become effective. ESRI warrants that all Services shall be performed by skilled and competent personnel to the highest professional standards in the field.

11. Subcontracting.

The County reserves the right to approve the use of any sub-contractor, or to reject the selection of a particular sub-contractor to perform any Implementation Services work described in the Contract Documents. ESRI is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If a sub-contractor fails to satisfactorily perform in accordance with the Contract Documents, and it is necessary to replace the sub-contractor to complete the Implementation Services work in a timely fashion, ESRI shall promptly do so. The County reserves the right to disqualify any sub-contractor, vendor, or material supplier based upon prior unsatisfactory performance.

12. Governing Law and Venue.

This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

13. Insurance.

ESRI, at its sole expense, shall secure and maintain insurance coverage in the types and amounts provided in the attached Insurance Requirements for the duration of this Agreement.

ESRI shall not commence work under this Agreement until it has obtained all insurance required under this section. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. ESRI shall furnish proof of Insurance to the County prior to the commencement of operations. The Certificate(s) shall clearly indicate ESRI has obtained insurance of the type, amount, and classification as required by contract and that it will provide written notice within thirty (30) days of a material change or cancellation of the insurance. Compliance with the foregoing requirements shall not relieve ESRI of its liability and obligations under this Agreement.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida
500 San Sebastian View
St. Augustine, FL 32084

ESRI shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate to protect ESRI from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by ESRI or by anyone directly employed by or contracting with ESRI.

ESRI shall maintain during the life of this Agreement, Technology Errors & Omissions/Professional Liability with minimum limits of \$3,000,000 per occurrence and aggregate. The Technology Errors & Omissions/Professional Liability Insurance shall cover ESRI and third parties, at a minimum, the following: Liability for Technology Products/Services, Data Breach, Media Content, Privacy Liability, and Network Security. Coverage retro date shall be prior to commencement of job.

ESRI shall maintain during the life of this Agreement, Cyber Liability & Data Storage Insurance with minimum limits of \$2,000,000 per occurrence, \$3,000,000 aggregate. The Cyber Liability Insurance shall cover, at a minimum, the following: Data Loss and System Damage Liability; Security Liability; Privacy Liability; and Privacy/Security Breach Response Coverage, including Notification Expenses. The Cyber Liability Insurance may be included as part of the Professional Liability Insurance required above.

ESRI shall maintain during the life of this Agreement, Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 combined single limit for bodily injury and property damage liability to protect ESRI from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned vehicles, including rented/hired automobiles whether such operations be by ESRI or by anyone directly or indirectly employed by a ESRI.

ESRI shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as is required by the law for all of its employees per Florida Statute 440.02.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

14. Indemnification.

ESRI shall indemnify, defend and hold harmless the County and its officers and employees from claims, liabilities, damages, losses, and costs, including court costs, expert witness and professional consultation services, and attorneys' fees, arising out of ESRI's errors, omissions, or negligence. ESRI shall not be liable to, nor be required to indemnify the County for, any portions of damages arising out of any error, omission, or negligence of the County or its officers and employees.

15. Successors & Assigns.

The County and ESRI each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor ESRI shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other, which consent not to be unreasonably withheld. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and ESRI.

16. Remedies.

Unless expressly stated, no remedy herein conferred upon any party is intended to be exclusive, or any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or nor or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof. In any

action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees as may be awarded by a court of competent jurisdiction.

17. Conflict of Interest.

ESRI represents that it presently has no interest and shall acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of services required hereunder. ESRI further represents, to the best of its knowledge, that no person having any interest shall be employed for said performance. ESRI shall promptly notify the County in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence ESRI's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that ESRI may undertake and request an opinion of ESRI, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by ESRI. The County agrees to notify ESRI of its opinion by certified mail within 30 days of receipt of notification by ESRI. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by ESRI, the County shall so state in the notification and ESRI shall, at his/her option enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by ESRI under the terms of this Contract Agreement.

18. Excusable Delays.

ESRI shall not be considered in default by reason of any delay in performance if such delay arises out of causes reasonably beyond ESRI's control and without its fault or negligence. Such cases may include, but are not limited to: acts of God; the County's ommissive and commissive failures; natural or public health emergencies; freight embargoes; and severe weather conditions. If delay is caused by the failure of ESRI's sub-contractor(s) to perform or make progress, and if such delay arises out of causes reasonably beyond the control of ESRI and its sub-contractor(s) and is without the fault or negligence of either of them, ESRI shall not be deemed to be in default. Upon ESRI's request, the County shall consider the facts and extent of any delay in performing the work and, if ESRI's failure to perform was without its fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the County's right to change, terminate, or stop any or all of the Work at any time.

19. Arrears.

ESRI shall not pledge the County's credit, or make it a guarantor of payment, or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. ESRI further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

20. Ownership of Documents.

ESRI acknowledges that all information provided by County to ESRI shall remain solely and exclusively owned by County. Finished and unfinished documents or materials prepared by ESRI under this Agreement remains the property of ESRI. ESRI is granting County a license to use the software applications and any documents developed and/or produced in connection with that license, and subject to the software license agreement; such licenses contain confidential or proprietary information and shall remain the property of ESRI. The rights County will receive under the license agreement are rights to use the ESRI software license applications and related materials. County is not entitled to any rights to the title or ownership of any source code, object code, design and design documents, flow charts and/or specifications, or any work product produced by ESRI, such as reports, schedules, displays, exhibits, other documentation, etc. ESRI claims all rights to its proprietary and confidential information including, but not limited to, its pricing, terms, conditions, specifications, software documentation, the ESRI terms, and Services Scope Statement, Professional Services Work Order or Statement of Work, or any other similar document.

21. Contingent Fees.

ESRI warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ESRI to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for ESRI, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

22. Access & Audits.

ESRI shall maintain adequate records to justify all charges, expenses, and costs paid by County under this Agreement for at least three (3) years after completion of this Agreement. The County shall have access to such ESRI books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the County's cost, upon ten (10) days written notice.

23. Nondiscrimination.

ESRI warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age or national origin.

24. Entirety of Contractual Agreement.

The County and ESRI agree that this Agreement, signed by both parties sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein, or are incorporated by reference into this Agreement. None of the provisions, terms, conditions, requirements, or responsibilities noted in this Agreement may be amended, revised, deleted, altered, or otherwise changed, modified, or superseded, except by written instrument, duly executed by authorized representatives of both the County, and ESRI.

25. Enforcement Costs.

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all reasonable expenses even if not taxable as court costs (including, without limitation, all such reasonable fees, costs and expenses incident to appeals), incurred in that action or proceedings, in addition to any other relief to which such party or parties may be entitled, and if awarded by a court of competent jurisdiction.

26. Authority to Practice.

ESRI hereby represents and warrants that it has and shall continue to maintain all license and approvals required to conduct business, and that it shall at all times, conduct its business activities in a reputable manner.

27. Severability.

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such items or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

28. Amendments & Modifications.

No amendments or modifications of this Agreement shall be valid unless in writing and signed by each of the parties. If the County instructs in writing, ESRI shall suspend work on that portion of the project, pending the County's decision to proceed with the change. If the County elects to make the change, the County shall issue a Change Order for changes, or a contract change order, if the original contract is to be changed or amended ESRI shall not commence work on any such change until such written change order has been issued and signed by each of the parties.

29. Florida Law & Venue.

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in St. Johns County, Florida.

30. Arbitration.

Neither party shall be obligated to arbitrate or permit any arbitration with respect to resolving any disputes under any of the Contract Documents or in connection with the project in any manner whatsoever.

31. Notices.

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

St. Johns County Purchasing Department
Attn: Leigh A. Daniels, Purchasing Manager
500 San Sebastian View
St. Augustine, FL 32084

and if sent to ESRI shall be mailed to:

ESRI
Attn: _____

32. Headings.

The heading preceding the articles and sections herein are solely for convenience of reference and shall not constitute a part of this Agreement, or affect its meaning, construction or effect.

33. No Third Party Beneficiaries.

Both the County and ESRI explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

34. Use of County Logo.

Pursuant to, and consistent with, St. Johns County Ordinance 92-2 and Administrative Policy 101.3, ESRI may not manufacture, use, display, or otherwise use any facsimile or reproduction of the County Seal/Logo without express written approval of the Board of County Commissioners of St. Johns County, Florida.

35. Survival.

It is explicitly noted that the following provisions of this Agreement, to the extent necessary, shall survive any suspension, termination, cancellation, revocation, and/or non-renewal of this Agreement, and therefore shall be both applicable and enforceable beyond any suspension, termination, cancellation, revocation, and/or non-renewal: (1) Truth-in-Negotiation; (2) Federal and State Taxes; (3) Insurance; (4) Indemnification; (5) Access and Audits; (6) Enforcement Costs; and (7) Access to Records.

St. Johns County/Florida

Sign: _____
Print Name: _____
Title: _____
Date: _____

Environmental Systems Research Institute, Inc. (ESRI)

Sign: _____
Print Name: _____
Title: _____
Date: _____