



London Breed  
Mayor

Micki Callahan  
Human Resources Director

Date: August 3, 2018

To: The Honorable Civil Service Commission

Through: Micki Callahan *Micki Callahan*  
Human Resources Director

From: Amy Nuque, MTA  
Jolie Gines, TIS  
Taraneh Moayed, PUC  
Shamica Jackson/Bill Irwin, PUC  
Jacquie Hale, DPH

Subject: **Personal Services Contracts Approval Request**

This report contains six (6) personal services contracts (PSCs) in accordance with the revised Civil Service Commission (CSC) procedures for processing PSCs that became effective on November 5, 2014.

The services proposed by these contracts have been reviewed by Department of Human Resources (DHR) staff to evaluate whether the requesting departments have complied with City policy and procedures regarding PSCs. The proposed PSCs have been posted on the DHR website for seven (7) calendar days. CSC procedures for processing PSCs require that any appeal of these contracts be filed in the office of the CSC, Executive Officer during the posting period.

No timely appeals have been filed regarding the PSCs contained in this report. These proposed PSCs are being submitted to the CSC for ratification/approval.

DHR has prepared the following cost summary for personal services contracts that have been processed through the Department of Human Resources to date:

| Total of this Report | YTD Expedited Approvals<br>FY2018-2019 | Total for FY2018-2019 |
|----------------------|--|-----------------------|
| \$24,831,804         | \$123,936,423                          | \$406,604,805         |

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Municipal Transportation Agency  
1 South Van Ness Ave., 6<sup>th</sup> Floor  
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San Francisco, CA 94102  
SJ: (415) 554-0727  
BI: (415) 934-3975

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(415) 554-2609

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## POSTING FOR

August 20, 2018

### PROPOSED PERSONAL SERVICES CONTRACTS – REGULAR

Commission Hearing Date

2018-08-20

APPLY

| PSC No        | Dept Designation                           | PSC Amount     | Description of Work   | PSC Estimated Start Date | PSC Estimated End Date | Type of Approval |
|---------------|--|----------------|---|--------------------------|------------------------|------------------|
| 42643 - 17/18 | MUNICIPAL<br>TRANSPORTATION<br>AGENCY      | \$688,200.00   | The Transit Corridors Study will identify and prioritize the next pipeline of public transportation investments for San Francisco. This study will identify priority transit corridors, make recommendations for mode and service characteristics, estimate the projects' benefits and costs, and prioritize investments. The study's findings will be incorporated into the San Francisco Transportation Plan and regional Plan Bay Area.  | October 1, 2018          | October 1, 2021        | REGULAR          |
| 49079 - 17/18 | GENERAL SERVICES<br>AGENCY -<br>TECHNOLOGY | \$4,500,000.00 | VMware Technical Account Managers and Engineers will assist City Staff in implementing VMware Server Virtualization software products and work with City Staff to maximize the efficiency and utilization of VMware Products. These services require technical expertise and knowledge of proprietary VMware software products that City Staff do not have. Engineering services may be utilized on an as needed project basis. Technical Account Managers are assigned to specific Departments to work with City Engineers. Department of Technology is submitting this Request for Citywide Services as part of a new Enterprise License Agreement which will be available for use by all City Departments.   | November 1, 2018         | December 31, 2021      | REGULAR          |
| 45582 - 17/18 | PUBLIC UTILITIES<br>COMMISSION             | \$9,993,604.00 | The purpose of this Agreement is to purchase the proprietary Aclara One Advanced Metering Infrastructure System ("Aclara One AMI System") from Aclara Technologies LLC ("Aclara") for the primary purpose of billing the electric customers of the San Francisco Public Utilities Commission ("SFPUC") Power Enterprise. This procurement has been authorized by the office of Contract Administration pursuant to section 21.30(d) of the San Francisco Administrative Code. The Aclara One AMI System consists primarily of hardware and software, but will also include an element of technical services related to its installation and maintenance. The system will cost \$9,993,604 over ten years and consists of:<br>Hardware: \$8,512,878<br>Software as a Service ("SaaS") Subscription: \$984,879<br>Installation Services: \$290,547<br>Hardware Maintenance: \$205,300<br>Although the cost of hardware is estimated to be \$8,512,878, the actual cost will depend on the rate of growth of SFPUC's Power customers which, in turn, will determine the number of meters actually purchased under this contract. The estimated cost of \$8,512,878 assumes an annual growth target of 37% per year over ten years. However, this is a very unlikely target rate and, as such, the total system hardware will likely be far below the estimated cost of \$8,512,878.<br>With regard to the implementation services, Aclara will install its system through 5 phases:<br>Phase 1: Project Kick-Off. Aclara will facilitate a kickoff meeting onsite to walkthrough the project schedule, introduce team members and roles, client responsibility, upcoming tasks. Additionally, during this meeting the project governance will be established. This includes communications plan, team meetings, status reporting, and issues | September 1, 2018        | August 31, 2028        | REGULAR          |



| PSC No        | Dept Designation            | PSC Amount     | Description of Work   | PSC Estimated Start Date | PSC Estimated End Date | Type of Approval |
|---------------|-----------------------------|----------------|---|--------------------------|------------------------|------------------|
|               |                             |                | <p>management.</p> <p>Phase 2: Requirements &amp; Design. Aclara will conduct frequency scans to identify the frequencies required for the solution. Aclara network engineers select the frequencies and complete the application process.</p> <p>Phase 3: Configuration &amp; Network Deployment. Aclara and SFPUC will collaborate on the rollout of the Data Collector Units (DCUs). Deliverables will include:</p> <ul style="list-style-type: none"> <li>• Commissioning of DCUs</li> <li>• Two-Way Automatic Communication System (TWACS) Network deployment</li> <li>• Installation and configuration of base Aclara One AMI System</li> <li>• Data Validation workshop</li> <li>• Start of System Integration Acceptance testing</li> </ul> <p>Phase 4: Testing, Training &amp; Acceptance. Aclara will provide training for the network system administrators, field personnel and customer service representatives. System testing results will be documented and, upon successful completion, a certificate of acceptance will be provided to the utility for signature.</p> <p>Phase 5: Mass Deployment and Post Installation Hardware Maintenance. Aclara will provide a comprehensive system maintenance plan by which to repair and replace most system hardware that is no longer under warranty.</p> |                          |                        |                  |
| 47235 - 18/19 | PUBLIC UTILITIES COMMISSION | \$4,000,000.00 | <p>Provide complete technical security systems design, integration and construction management services for the San Francisco Public Utilities Commissions(SFPUC's) Department of Homeland Security and for the Capital Improvement and Repair and Readiness Programs in accordance with the American Water Works Association's Security Guidelines for Water Utilities and Risk Assessment Methodology-Water Certification.</p>  | December 1, 2018         | December 1, 2023       | REGULAR          |

**TOTAL AMOUNT \$19,181,804**



Published on *Personal Services Request Database* (<http://apps.sfgov.org/dhrdrupal>)

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## Posting For August 20, 2018

### Proposed Modifications to Personal Services Contracts

Commission Hearing Date

2018-08-20

**APPLY**

| PSC Number                    | Commission Hearing Date | Department                                  | Additional Amount | Cumulative Total | Description   | Start Date | End Date   | Approval Type |
|-------------------------------|-------------------------|---|-------------------|------------------|---|------------|------------|---------------|
| 37663 - 17/18 - MODIFICATIONS | August 20, 2018         | GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS | \$650,000         | \$750,000        | Training users on the citywide Enterprise Licensed Environmental Systems Research Institute Geographic Information System (GIS) software products, and Geographic Information System Project consulting, on an as-needed basis.               | 07/03/2018 | 06/30/2021 | REGULAR       |
| 4105 10/11 - MODIFICATIONS    | August 20, 2018         | PUBLIC HEALTH -- DPH                        | \$5,000,000       | \$14,990,000     | Intermittent, as-needed pharmacist and pharmacy technician registry services for use during unusually high patient activity, workload peaks or low staffing levels of Civil Service employees due to unscheduled staff absences or shortages. | 01/01/2019 | continuing | CONTINUED     |

**TOTAL AMOUNT \$5,650,000**

**Regular/Continuing/Annual  
Personal Services Contracts**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Transportation Analysis, Cost Estimation, Project Prioritization

Funding Source: Operating Funds

PSC Amount: \$688,200

PSC Est. Start Date: 10/01/2018

PSC Est. End Date 10/01/2021

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

The Transit Corridors Study will identify and prioritize the next pipeline of public transportation investments for San Francisco. This study will identify priority transit corridors, make recommendations for mode and service characteristics, estimate the projects' benefits and costs, and prioritize investments. The study's findings will be incorporated into the San Francisco Transportation Plan and regional Plan Bay Area.

**B. Explain why this service is necessary and the consequence of denial:**

Despite rapid growth in the past decade, San Francisco is approaching the end of its pipeline of transformative transportation investments and given the long time horizon for new projects, it is important to start planning immediately. The city will have no way of identifying the most important public transportation projects without this study.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

This long-range, citywide planning approach that integrates work at SFMTA with the Planning Department and the SFCTA has not been performed before in the city.

**D. Will the contract(s) be renewed?**

No

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**

not applicable

**2. Reason(s) for the Request**

**A. Indicate all that apply (be specific and attach any relevant supporting documents):**

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

B. Explain the qualifying circumstances:

The Transit Corridors study is intended to be completed within one year in order to meet external deadlines for the Regional Transportation Plan. The scope of the study includes many different skill areas. Some city staff has these skill areas, but they are scattered throughout many departments and divisions and have numerous other responsibilities. Some of these staff will assist in supervising the consultant team. This project is "as-needed" because we have been awarded \$688,000 in grant funding, which we do not always have available. Given the short timeframe for delivery, it would be an enormous addition to the workloads of city staff and will disappear once the project has been completed.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Transportation analysis and engineering services, ridership forecasting, design and decision analysis

B. Which, if any, civil service class(es) normally perform(s) this work? 5207, Assoc Engineer; 5241, Engineer; 5283, Planner 5; 5289, Transportation Planner III; 5290, Transportation Planner IV; 5502, Project Manager 1; 5504, Project Manager 2;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

City staff in the classifications listed above will be involved in this planning effort. But the staff need is too high, broad, and short-term to complete entirely with internal staff.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

This project has a very large staff need in a very short timeframe. The division is hoping to have the project complete by December 2019 in order to meet external deadlines for the Regional Transportation Plan. This is a one-off project and not a continuous program. Appropriate city staff in the classifications listed above will already be involved.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. This is a one-off project on a short time frame.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. No, this contract is intended to augment staff expertise for a short-term planning need. There are no particular skills that will be passed along to city staff, but due to the grant-based funding and short timeframe, it is not practical to deliver this work using only city staff.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. **Union Notification:** On 07/26/2018, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, HR, 6th Fl San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 42643 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/20/2018

# **Receipt of Union Notification(s)**

## Choi, Suzanne (HRD)

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**From:** Paul Kim <pkim@ifpte21.org>  
**Sent:** Friday, July 27, 2018 2:55 PM  
**To:** Nuque, Amy (MTA); Eugene Cassidy; wendywong26@yahoo.com; Timothy Mathews; Kristen Schumacher; L21PSC Review; DHR-PSCCoordinator, DHR (HRD)  
**Subject:** RE: Receipt of Notice for new PCS over \$100K PSC # 42643 - 17/18 -

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Yes, the Union agrees to waive the 30 day review period for PSC 42643-17/18. Let me know if you need anything else.

**Paul Kim**  
**Lead Representative/Organizer**  
IFPTE Local 21  
1167 Mission St, 2<sup>nd</sup> Floor  
San Francisco, CA 94103  
(415) 914-7351

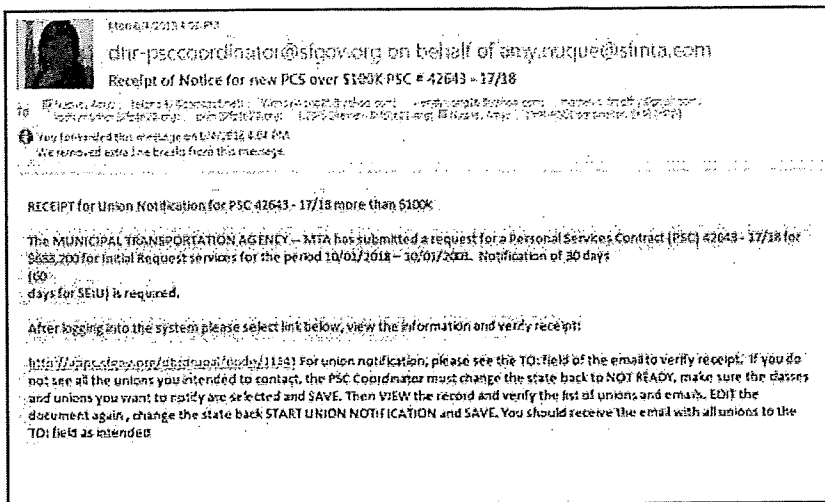


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**From:** Nuque, Amy [<mailto:Amy.Nuque@sfmta.com>]  
**Sent:** Thursday, July 26, 2018 2:25 PM  
**To:** Eugene Cassidy <[ecassidy@ifpte21.org](mailto:ecassidy@ifpte21.org)>; wendywong26@yahoo.com; Timothy Mathews <[tmathews@ifpte21.org](mailto:tmathews@ifpte21.org)>; Kristen Schumacher <[kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org)>; Paul Kim <[pkim@ifpte21.org](mailto:pkim@ifpte21.org)>; L21PSC Review <[L21PSCReview@ifpte21.org](mailto:L21PSCReview@ifpte21.org)>; DHR <[dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)>  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 42643 - 17/18 -

Hi All: Please waive 30 day Union review for PSC 42643 17/18 due to type error on PSC end date (10/01/2001 and correct date 10/01/2021). All the information submitted June 4<sup>th</sup> are same. See copy of Union Notification below. We apologize for any inconvenience we may have caused you.





Thank you,

**Amy Nuque**

Human Resources Division – Employee & Labor Relations Section (Reasonable Accommodation /Personal Services Contract )  
San Francisco Municipal Transportation Agency  
1 S Van Ness Ave, 6<sup>th</sup> Fl  
San Francisco, CA 94103  
Phone: 415.646.2802  
Fax: 415.701.4402  
[www.sfmta.com](http://www.sfmta.com)



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-----Original Message-----

From: [dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org) [mailto:[dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)] On Behalf Of [amy.nuque@sfmta.com](mailto:amy.nuque@sfmta.com)  
Sent: Thursday, July 26, 2018 2:09 PM  
To: Nuque, Amy <[Amy.Nuque@sfmta.com](mailto:amy.nuque@sfmta.com)>; [ecassidy@ifpte21.org](mailto:ecassidy@ifpte21.org); [WendyWong26@yahoo.com](mailto:WendyWong26@yahoo.com); [wendywong26@yahoo.com](mailto:wendywong26@yahoo.com); [tmathews@ifpte21.org](mailto:tmathews@ifpte21.org); [kschumacher@ifpte21.org](mailto:kschumacher@ifpte21.org); [pkim@ifpte21.org](mailto:pkim@ifpte21.org); [L21PSCReview@ifpte21.org](mailto:L21PSCReview@ifpte21.org); Nuque, Amy <[Amy.Nuque@sfmta.com](mailto:amy.nuque@sfmta.com)>; DHR-PSCCoordinator, DHR (HRD) <[dhr-psccordinator@sfgov.org](mailto:dhr-psccordinator@sfgov.org)>  
Subject: Receipt of Notice for new PCS over \$100K PSC # 42643 - 17/18

RECEIPT for Union Notification for PSC 42643 - 17/18 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 42643 - 17/18 for \$688,200 for Initial Request services for the period 10/01/2018 – 10/01/2021. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/11141> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS

Dept. Code: TIS

Type of Request:         Initial         Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:         Expedited     Regular         Annual         Continuing     (Omit Posting)

Type of Service: VMware Professional Services

Funding Source: General Funds and Enterprise Funds

PSC Amount: \$4,500,000

PSC Est. Start Date: 11/01/2018

PSC Est. End Date 12/31/2021

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

VMware Technical Account Managers and Engineers will assist City Staff in implementing VMware Server Virtualization software products and work with City Staff to maximize the efficiency and utilization of VMware Products. These services require technical expertise and knowledge of proprietary VMware software products that City Staff do not have. Engineering services may be utilized on an as needed project basis. Technical Account Managers are assigned to specific Departments to work with City Engineers. Department of Technology is submitting this Request for Citywide Services as part of a new Enterprise License Agreement which will be available for use by all City Departments.

**B. Explain why this service is necessary and the consequence of denial:**

VMware software products allow for multiple operating systems or application environments to be installed on software yet imitates dedicated hardware from a single physical computer. The software emulates the PC client or server's central processing unit, memory, hard disk, network and other hardware resources completely, enabling virtual machines to share the resources. Multiple operating systems can run in the same server, eliminating the need to dedicate a single machine to one application. The user of a virtual machine has the same experience as they would on dedicated hardware. This capability limits the cost by reducing the need for physical hardware systems. These services are necessary to support over 20 City departments with their server virtualization efforts. If denied, these critical information technology infrastructure projects will be jeopardized, because each department will be required to invest in equipment and staff to expand its datacenter needs.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

This service has been provided in the past by VMware staff. PSC# 46518 – 14/15 was approved by the Commission on August 17, 2015, in the amount of \$4,500,000. The duration of the approved PSC# 46518 – 14/15 began September 1, 2015, and ends on October 31, 2018. The original approved amount of \$4,500,000 was to be used on an as-needed basis. The original ELA was awarded to a reseller know as Eaton & Associates, as a result of a competitive bid process. The agreement provided for three one-year options to renew, however, DT plans to request OCA to publish a new competitive solicitation for continued use of the VMware products and services. The new solicitation will be for a new Enterprise Agreement with a 3-year term. The scope of the services described here is identical to those identified in the initial PSC.

**D. Will the contract(s) be renewed?**

Yes, the City will continue to use VMware Products.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**

not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

Engineering Services and Technical Account Manager services require proprietary technical knowledge that City staff do not have. Additionally, engineering services will be utilized on an as-needed, project basis.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Knowledge of proprietary VMware Products and Implementation. Experience managing VMware Server Virtualization Implementations and training Engineers on various VMware products. Knowledge of server virtualization, programming VMware products, and business process analysis. Experience improving various business processes related to server management and virtualization.

B. Which, if any, civil service class(es) normally perform(s) this work? 1043, IS Engineer-Senior; 1044, IS Engineer-Principal;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

None, due to the required proprietary technical knowledge.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Training and Project Consulting Services require extensive technical knowledge, expertise and access to proprietary VMware Software. Additionally, potential Project Consulting Services may require access to VMware source code, which current civil service classes do not have.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, because the services require technical knowledge and expertise with proprietary VMware Software, and possibly access to VMware source code. Additionally, such services will only be required on an as-needed project basis.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
Yes. See attached VMware Training Description

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
Yes.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Yes. OCA will to conduct a formal solicitation for a new ELA, therefore, it is unknown at this time which reseller will be selected. However, regardless of which reseller is selected following a competitive solicitation, all services will be provided by VMware employees who have technical knowledge and expertise in working with proprietary VMware software products. Such services are currently being provided by VMware employees pursuant to the current ELA in place.

7. **Union Notification:** On 06/21/2018, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: One South Van Ness, 2nd Floor San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 49079 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/20/2018

# **Receipt of Union Notification(s)**

## Choi, Suzanne (HRD)

---

**From:** dhr-psccordinator@sfgov.org on behalf of jolie.gines@sfgov.org  
**Sent:** Thursday, June 21, 2018 5:16 PM  
**To:** Gines, Jolie (TIS); ecassidy@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; mathews.timothy@gmail.com; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; Dere, Wilfred (TIS); DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 49079 - 17/18

RECEIPT for Union Notification for PSC 49079 - 17/18 more than \$100k

The GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS has submitted a request for a Personal Services Contract (PSC) 49079 - 17/18 for \$4,500,000 for Initial Request services for the period 11/01/2018 – 12/31/2021. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/11210> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

# **Additional Attachment(s)**



## Will train 1043 and 1044 IS Engineering Classes

Optional VMware Training includes the following courses available to City Departments, on an as-needed basis, and is dependent on each Department's plan to implement new VMware products or upgrade existing products. Training credits can be purchased in bulk to maximize discounts, then used to redeem Training Courses or other services. These training courses are essential for Department Network Engineers to use the VMware products to maintain virtual network infrastructure and stay up to date as new versions are released.

Approximate Training Hours Currently Scoped out: TBD, based on City Departments feedback and projection for growth over the next three years.

Courses initially identified as beneficial for City Departments may include but are not limited to the following:

**VMware NSX Install, Configure Manage:** This comprehensive, fast-paced training course focuses on installing, configuring, and managing VMware NSX™. This course covers NSX as a part of the software-defined data center platform, implementation use cases along with features of NSX, and functionality operating at Layer 2 through Layer 7 of the Open Systems Interconnection model. Lecture and hands-on lab activities support the student's understanding of NSX features, functionality, and on-going management and control.

**VMware vSphere: Install, Configure, Manage [V6]:** VMware vSphere: Install, Configure, Manage features intensive hands-on training that focuses on installing, configuring, and managing VMware vSphere® 6, which includes VMware ESXi™ 6 and VMware vCenter Server™ 6. This course prepares you to administer a vSphere infrastructure for an organization of any size and forms the foundation for most other VMware technologies in the software-defined data center.

**VMware vSphere: Design and Deploy Fast Track [V6]:** This extended-hours training course equips you with the knowledge, skills, and abilities to design and deploy a VMware vSphere® 6.0 virtual infrastructure. You follow a proven approach to design and deploy a virtualization solution that is available, scalable, manageable, and secure. This course discusses the benefits and risks of available design alternatives and provides information to support making sound design decisions.

**VMware vSphere: What's New [V5.5 to V6]:** VMware vSphere: What's New is a hands-on training course that explores the newest features and enhancements in VMware vCenter Server™ 6 and VMware ESXi™ 6. Real-world use case deployment scenarios, hands-on lab exercises, and lecture material teach the skills you need to effectively implement and configure VMware vSphere® 6. This class is recommended for customers who want to deploy vSphere 6 into their existing vSphere environment.

**VMware vCenter Site Recovery Manager: Install, Configure, Manage:** This two-day, hands-on training course equips experienced VMware vSphere® administrators with the knowledge to install, configure, and manage VMware vCenter™ Site Recovery Manager™ 5.8. This course also equips vSphere administrators with the knowledge to assist in writing and testing disaster recovery plans that use vCenter Site Recovery Manager.

**VMware vCloud Networking and Security for vSphere Professionals:** This intensive training course focuses on installing, configuring, and managing VMware vCloud® Networking and Security™ for VMware® vSphere® professional use. vCloud Networking and Security is a suite of security virtual appliances built for VMware® vCenter Server™ and VMware ESXi™ integration. vCloud Networking and Security is a critical security component for protecting virtualized data centers from attacks and helping you to achieve your compliance-mandated goals. The course is based on VMware® vShield™ 5.5, ESXi 5.5, and vCenter Server 5.5.

**VMware vRealize Operations Manager: Install, Configure, Manage [V6.0]:** VMware vRealize™ Operations Manager™: Install, Configure, Manage is designed for experienced VMware vSphere® users and teaches how to use VMware vRealize Operations Manager as a forensic and predictive tool. The course is based on VMware ESXi™ 5.x, VMware vCenter Server™ 5.x, and vRealize Operations Manager 6.0 and includes instruction on advanced capabilities including customization and management.

**VMware vCenter Configuration Manager: Install, Configure, Manage [V5.7]:** This hands-on training course focuses on installing, configuring, and managing VMware vCenter Configuration Manager™ 5.7. The course is built on VMware ESXi™ and VMware vCenter Server™. This course provides you with the knowledge and skills to install and configure vCenter Configuration Manager, navigate the user interface, manage compliance, and perform administrative and configuration tasks against your infrastructure.

**VMware vRealize Business: Costing and Implementation:** VMware vRealize™ Business™ (formerly VMware IT Business Management Suite™) provides transparency and control over the costs and quality of IT services, enabling the CIO to align IT with the business and accelerate IT transformation. This four-day training course discusses IT costing as well as configuring and managing vRealize Business. This course will give you an understanding of the concepts and functionality of IT finance management with vRealize Business.

**VMware vRealize Automation: Install, Configure, Manage [V6.2]:** This training course focuses on installing, configuring, and managing VMware vRealize™ Automation. This course covers the configuration and use of the vRealize Automation platform, including self-service provisioning and the creation of multivendor cloud services. This class also helps students understand and achieve the benefits of automation as a component of the software-defined data center.

PSC 49079-17/18

## **2015 Contract with Eaton and Associates**

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and  
Eaton and Associates**

This Agreement is made this 23rd day of December, 2015, in the City and County of San Francisco, State of California, by and between Eaton and Associates, 890 Cowan Road Suite C, Burlingame, CA 94010 ("Contractor") and City.

**Recitals**

WHEREAS, the Department of Technology ("Department") wishes to procure software licenses and related services through a VMware Technology Enterprise Agreement and,

WHEREAS, an Invitation to Bid ("ITB") was issued on November 24<sup>th</sup> 2015, and City selected Contractor as the lowest responsive bidder; and

WHEREAS, there is no Local Business Entity ("LBE") subcontracting participation requirement for this Agreement; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 46518 – 14/15 on August 17<sup>th</sup>, 2015;

Now, THEREFORE, the parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices which included the Enterprise License Agreement, the Software License Agreement and the Software Maintenance Agreement, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and Department of Technology."

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Contractor" or "Consultant" means Eaton and Associates, 890 Cowan Road Suite C, Burlingame, CA 94010.

1.5 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.9 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on the latter of: (i) December 23 2015; or (ii) the Effective Date and expire on December 22, 2018 unless earlier terminated as otherwise provided herein.

2.2 The City has three options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the

amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

**3.3 Compensation.**

**3.3.1 Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Executive Director of the Department of Technology, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed nine million nine hundred and ninety five thousand dollars (\$9,995,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments. The total amount is for VMware software licenses, and related services.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until Department of Technology approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment,

components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.3.3 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.5 Getting paid for goods and/or services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **Article 4 Services and Resources**

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. Contractor will not employ subcontractors.

4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor.



Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.4.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the

preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 **Deleted by Agreement of the Parties (Liquidated Damages).**

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Technology Errors and Omissions Liability coverage, with limits of \$2,000,000 each occurrence and each loss, and \$4,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(ii) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(iii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California,

and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.1 **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

5.2.2 **Copyright Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

#### **Article 6 Liability of the Parties**

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

#### **Article 7 Payment of Taxes**

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts:

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit,

prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

**8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|           |                          |       |   |
|-----------|--------------------------|-------|---|
| 3.5       | Submitting False Claims. | 10.4  | Nondisclosure of Private, Proprietary or Confidential Information |
| 4.5       | Assignment               | 10.10 | Alcohol and Drug-Free Workplace                                   |
| Article 5 | Insurance and Indemnity  | 10.13 | Working with Minors   |
| Article 7 | Payment of Taxes         | 11.10 | Compliance with Laws  |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.



(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|       |  |      |  |
|-------|--|------|--|
| 3.3.2 | Payment Limited to Satisfactory Services | 9.1  | Ownership of Results                     |
|       |  | 9.2  | Works for Hire                           |
| 3.4   | Audit and Inspection of Records          | 10.4 | Nondisclosure of Private, Proprietary or |

|           |  |       |                                     |
|-----------|--|-------|-------------------------------------|
|           |  |       | Confidential Information            |
| 3.5       | Submitting False Claims                            | 11.6  | Dispute Resolution Procedure        |
| Article 5 | Insurance and Indemnity                            | 11.7  | Agreement Made in California; Venue |
| 6.1       | Liability of City                                  | 11.8  | Construction                        |
| 6.3       | Liability for Incidental and Consequential Damages | 11.9  | Entire Agreement                    |
| Article 7 | Payment of Taxes                                   | 11.10 | Compliance with Laws                |
| 8.1.6     | Payment Obligation                                 | 11.11 | Severability                        |

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

#### **Article 9 Rights In Deliverables**

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

#### **Article 10 Additional Requirements Incorporated by Reference**

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Nondisclosure of Private, Proprietary or Confidential Information.**

10.4.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

10.4.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

10.5 **Nondiscrimination Requirements**

10.5.1 **Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and

will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on

which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure).**

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 **Reserved. (Sugar-Sweetened Beverage Prohibition).**

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved. (Preservative Treated Wood Products).**

## Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: City and County of San Francisco  
Contract Administration  
Department of Technology  
One South Van Ness Ave., 2nd Floor  
San Francisco, CA 94103  
(415)581-4001

To Contractor: Eaton and Associates  
890 Cowan Road Suite C  
Burlingame, CA 94010  
jfinley@eatonassoc.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Reserved. (Payment Card Industry ("PCI") Requirements).**

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

## **Article 12 MacBride And Signature**

12.1 **MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

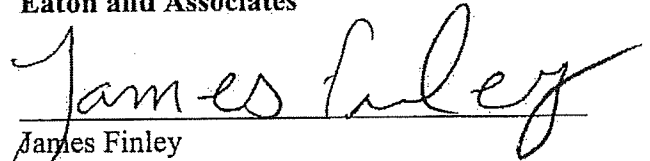
**CONTRACTOR**

Recommended by:

**Eaton and Associates**



Miguel A. Gamiño Jr., CPA  
Executive Director and City Chief Information  
Officer  
Department of Technology  
City and County of San Francisco

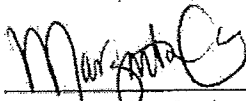


James Finley  
VP of Operations  
890 Cowan Road Suite C  
Burlingame, CA 94010  
City vendor number: 39875

Approved as to Form:

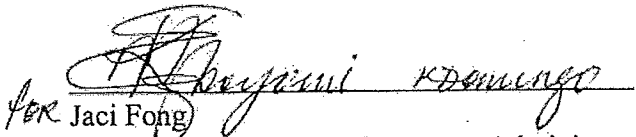
Dennis J. Herrera  
City Attorney

By:



Margarita Gutierrez  
Deputy City Attorney

Approved:



Jaci Fong  
Director of the Office of Contract Administration,  
and Purchaser

**Appendices**

- A: Enterprise License Agreement
- B: Calculation of Charges
- C: Software License Agreement P-540 with Software Maintenance Attachment P-545

**Appendix A  
Enterprise License Agreement**

**ENTERPRISE LICENSE AGREEMENT (ELA)**

This Enterprise License Agreement (ELA) sets forth the terms and conditions for purchasing the Offerings specified below. This ELA is for the Customer identified below and is made and entered into as of the Effective Date.

|   |  |
|---|--|
| <b>Customer Name:</b> City and County of San Francisco  | <b>Customer Address:</b> One South Van Ness, 2nd Floor, San Francisco, CA 94103, UNITED STATES |
| <b>Entitlement Account (EA)#:</b> 902678556   | Customer is issuing PO related to this ELA to a VMware channel partner                         |
| <b>Effective Date:</b><br>(if blank, then the Effective Date is the last indicated date of execution) | <b>ELA Period Commencement Date:</b> Effective Date  |
| <b>Territory:</b> United States   | <b>ELA Period Expiration Date:</b> 3 years following the Effective Date                        |

**ORDER INFORMATION**

This Enterprise License Agreement (ELA) is incorporated into the Reseller Agreement entered into between the City and County of San Francisco ("Customer") and Customer's reseller ("Reseller") as of the effective date identified in the Reseller Agreement.

Customer is ordering the VMware offerings listed on the ELA Schedule on Exhibit A (the "Offerings"). The Offerings may include VMware software, Enterprise Purchasing Program tokens, and various services. Customer's use of the Offerings is limited to the Territory listed on this ELA. The purchase of the VMware offerings will be executed through an agreement with the Reseller.

**Product order:** The Reseller will provide the Customer with the VMware Product pricing and order. Prices and billing terms for all products ordered will be determined by agreement between City and the Reseller.

1. **Software and Support Services Terms.** Customer's use of the Software is subject to the attached End User License Agreement. Customer's use of the Support Services is subject to the support services terms set forth in the attached Support and Subscription 'SnS' Terms and Conditions.

a) **Deployment Rights.** Customer may deploy the Software listed on Exhibit A during the ELA Period. A license to the Software shall be deemed "deployed" if the Software has been installed and Customer has entered a license key, if necessary, to run the Software prior to the expiration of the ELA Period. Upon expiration of the ELA Period, Customer may continue to use the Software Customer has already deployed, but Customer may not deploy additional copies of the Software. This section does not apply to Software licensed on a subscription basis. For subscription Software, Customer may

continue to use Customer's subscription license only if Customer continues to pay the applicable renewal fees.

**b) Software Delivery.** VMware shall deliver the Software to Customer by, at VMware's discretion, either: (a) making the Software available for download and emailing the corresponding license key(s); (b) making the Software available for download in a fashion that does not require a license key; or (c) shipping the Software on physical media and emailing the corresponding license key(s). All Software shall be deemed delivered and accepted upon VMware (i) making the Software available for download without the requirement of a license key or (ii) emailing the corresponding license key(s) to Customer. If the Software will be delivered on physical media, shipping and delivery terms are Ex Works VMware's regional fulfillment facility (INCOTERMS 2010).

**c) Reporting.** Within thirty (30) days following expiration of the ELA Period, Customer shall report to VMware the total number of Software licenses Customer deployed as of the ELA Period Expiration Date. Customer shall also provide VMware with any other information reasonably requested by VMware to confirm Customer's compliance with the terms of this ELA. Such report shall be provided via e-mail to [Licensecompliance@vmware.com](mailto:Licensecompliance@vmware.com), or as otherwise specified by VMware in writing. If Customer fails to meet the reporting requirements in this Section, VMware may audit Customer's compliance with the terms of this ELA, at Customer's expense.

**2. Training and Consulting Credits.** Customer's use of the training and consulting credits is subject the terms posted at <http://www.vmware.com/files/pdf/services/conserv-pso-credits-datasheet.pdf>.

**3. Customer and Customer Reorganization.** Customer shall not, and shall not allow or permit any third party to, deploy, use or provide access to the Offerings for the benefit of the operations of any other group, entity, department or agency which (a) is in a controlling, parallel, or subordinate position; or (b) becomes part of or takes over part of the operations of Customer as a result of a government or academic Reorganization. "Reorganization" means any consolidation, division, change of control, or other similar action involving Customer and any third party.

The following shall not be included in the definition of Customer: any federal, state, or local entities, public/private educational entities, healthcare groups, or any other affiliated cooperatives, agencies, alumni, or other entities outside of City and County of San Francisco except as otherwise specifically set forth herein.

Customer may allow the entities listed in the attached Exhibit B (Departments Exhibit) to use the Offerings as if any such Departments were the "Customer" under this ELA. For the avoidance of doubt, the use of the Offerings by Customer and the Departments may not exceed the total amount of each Offering purchased in this ELA. Customer's reporting requirements in this ELA shall apply to Departments' use of the Software. Customer shall ensure compliance with the terms of this ELA by each such Department, and any breach by a Department shall be deemed a breach by Customer. "Department" means each of the entities set forth on the Departments

Exhibit within the City and County of San Francisco, as each such entity exists on the Effective Date.

**4. Customer Reference.** Customer agrees that VMware may reference Customer as a customer of VMware, subject to trademark and logo usage guidelines provided by Customer.

**5. Third Party Beneficiary.** VMware is a direct and intended third party beneficiary of the provisions of this ELA and entitled to enforce the terms of this ELA directly against Customer.

**6. Assignment.** Customer may not assign, subcontract or transfer this ELA and any of Customer's rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of contract, law or otherwise, including by way of change of control, merger or consolidation without VMware's prior written consent, and any attempt by Customer to assign this ELA without such consent shall be null and void and of no force and effect.

**7. Order of Precedence.** The terms and conditions of this ELA shall prevail over any additional or conflicting terms in any purchase order Customer issues to VMware or any other terms for the Offerings. Unless otherwise modified in this ELA, any terms accompanying the Offerings shall remain in full force. Customer hereby agrees that any purchase orders Customer issues to VMware do not have to be signed to be valid and enforceable.

**8. Additional Purchases by Reseller Acknowledgement.** VMware acknowledges that it has provided Reseller the right to make additional Software license purchases for Customer during the ELA Period conditional upon the following terms:

"Reseller shall, during the ELA Period, have the option to purchase additional Software and corresponding Support Services purchased under the ELA, subject to availability from VMware's full line of product offerings, according to the then-current applicable price list for the initial term and direct from VMware only, at the pricing specified in section 10 of the ELA, only for resale to the Customer."

**9. Additional Purchases by Customer Acknowledgement.** VMware acknowledges that it has provided Customer the right to made additional Software license purchases for Customer during the ELA Period conditional upon the following terms:

"Customer shall, during the ELA Period, have the option to purchase additional Software and corresponding Support Services purchased under the ELA, subject to availability from VMware's full line of product offerings, according to the then-current applicable price list for the initial term and direct from VMware only, at the pricing specified in section 10 of the ELA."

**10. Additional Purchases Pricing.**

Software licenses: Forty percent (40%) discount off the then-current applicable list price;

Support Services (Production level only): Twenty percent (20%) of the net applicable license fee paid by Partner;

Training and Consulting Credits: Between zero (0%) and twenty (20%) off the then current applicable list price based on quantity of credits purchased in the table below:

| SKU      | Quantity         | Discount |
|----------|------------------|----------|
| SVC-CR-0 | PSO Credit 1-150 | 0%       |

|           |                     |     |
|-----------|---------------------|-----|
| SVC-CR-10 | PSO Credit 151-600  | 10% |
| SVC-CR-15 | PSO Credit 601-1200 | 15% |
| SVC-CR-20 | PSO Credit 1201+    | 20% |

SPP Credits: Between five percent (5%) and twenty percent (20%) off the then current applicable list price based on quantity of credits purchased in the table below:

| SKU          | Quantity  | Discount |
|--------------|-----------|----------|
| SPP-CREDIT-C | Up to 250 | 5%       |
| SPP-CREDIT-C | 251-599   | 10%      |
| SPP-CREDIT-C | 600-1000  | 15%      |
| SPP-CREDIT-C | 1001+     | 20%      |

**EXHIBIT A**  
**ELA Schedule**

**I. OFFERINGS**

**A. ON-PREMISE SOFTWARE (Perpetual Licenses)**

Customer is purchasing the following VMware software ("Software") as it exists as of the Effective Date.

Customer may deploy and use the Software in the following table throughout San Francisco County:

| DESCRIPTION OF SOFTWARE   | MAXIMUM AUTHORIZED DEPLOYMENT DURING THE ELA PERIOD |
|---|---|
| VMware vCenter Server Standard for vSphere (Per Instance)                 | Unlimited Licenses                                  |
| VMware vSphere with Operations Management Enterprise Plus for 1 processor | Unlimited Licenses                                  |
| VMware NSX vSphere  | 26 Licenses   |
| VMware Virtual SAN Standard for 1 processor                               | 6 Licenses  |
| VMware vCloud Suite Advanced  | 6 Licenses  |

The San Francisco Department of Technology is the only entity that may deploy and use the Software in the following table:

| DESCRIPTION OF SOFTWARE                                       | MAXIMUM AUTHORIZED DEPLOYMENT DURING THE ELA PERIOD |
|---|---|
| VMware NSX vSphere - vCloud Suite Add-on                      | 160 Licenses  |
| Upgrade: VMware vSphere Enterprise to vCloud Suite Enterprise | 76 Licenses   |
| VMware vCloud Suite Enterprise                                | Unlimited Licenses                                  |

The San Francisco Department of Public Health is the only entity that may deploy and use the Software in the table below:

| DESCRIPTION OF SOFTWARE                           | MAXIMUM AUTHORIZED DEPLOYMENT DURING THE ELA PERIOD |
|---|---|
| VMware Horizon Enterprise Edition: 100 Pack (CCU) | Unlimited Packs (100 pack)                          |

|   |                     |
|---|---------------------|
| Upgrade: VMware Horizon View Standard Edition (CCU) to Horizon Enterprise Edition: 100 Pack (CCU) | 22 Packs (100 pack) |
|---|---------------------|

**B. PURCHASING PROGRAMS.**

**B.1 SPP Credits.**

Customer is purchasing the following SPP Credits (“Maximum SPP Credits Allowance”) to obtain Redeemed Services during the SPP Period. Customer may redeem SPP Credits for subscription offerings on VMware's price list made eligible for SPP Credit redemption in the SPP Portal as of and after the Effective Date.

|  |
|--|
| <b>MAXIMUM SPP CREDITS<br/>ALLOWANCE</b> |
| 381                                      |

**C. SUPPORT AND SUBSCRIPTION SERVICES (“Support Services”)**

**C.1 On-Premise Software (perpetual licenses):** During the ELA Period, VMware shall provide Customer with Production Level Support Services for the Software licensed on a perpetual basis.

**C.2 Pre-ELA Installed Software:** During the ELA Period, VMware shall provide Customer with Production Level Support Services for the following list of software previously licensed by Customer (Pre-ELA Installed Software), which are coterminous with the ELA Period. The Pre-ELA Installed Software is not subject to any license fees in this ELA. After the initial one-year renewal, VMware may increase the annual fees for any of the renewal offerings for any renewal term, provided that the increase shall not exceed five percent (5%) of the previous year’s fee paid by Customer for the applicable renewal offering. If the Pre-ELA Installed Software includes any licenses granted to Customer’s affiliated entities, the purchase of Support Services for such Pre-ELA Installed Software under this ELA does not automatically transfer such software licenses to Customer.

| SKU         | Description of Pre-ELA Installed Software                 | Total | Notes |
|-------------|---|-------|-------|
| VR6-OSTD25  | VMware vRealize Operations Standard (25 VM Pack)          | 18    | -     |
| VS5-ESP-BUN | VMware vSphere Essentials Plus Kit                        | 2     | -     |
| VCS6-STD    | VMware vCenter Server Standard for vSphere (Per Instance) | 41    | -     |
| VI-AK       | VMware Infrastructure Acceleration Kit                    | 1     | -     |
| VCS5-VSA    | VMware vSphere Storage Appliance (per instance)           | 5     | -     |
| CA6-ADV25   | VMware vRealize Automation 6 Advanced (25 OSI             | 6     | -     |

|                 |   |     |                                   |
|-----------------|---|-----|-----------------------------------|
|                 | Pack)   |     |                                   |
| VU4-EN-STR      | VMware View Enterprise Starter Kit  | 2   | -                                 |
| VS4-STD-AK      | VMware vSphere Standard Acceleration Kit                                  | 1   | -                                 |
| VU5-PR-100      | VMware Horizon View Premier Bundle - 100 Pack                             | 30  | -                                 |
| VI-MID-AK       | VMware Infrastructure Acceleration Kit                                    | 5   | -                                 |
| VS4-ESSL-PL-BUN | VMware vSphere Essentials Plus Bundle Kit                                 | 3   | -                                 |
| VR6-VU100       | VMware vRealize Operations for Horizon: 100 Concurrent User Pack          | 2   | -                                 |
| VS6-STD         | VMware vSphere Standard for 1 processor                                   | 94  | -                                 |
| THIN4-STE       | VMware ThinApp Suite  | 1   | -                                 |
| VU4-EN-10       | VMware View Enterprise Bunde 10 Pack                                      | 5   | -                                 |
| VS6-EPL         | VMware vSphere Enterprise Plus for 1 processor                            | -   | See Unlimited Quantity Note below |
| THIN5-CL        | VMware ThinApp Client License   | 500 | -                                 |
| VR6-OADV25      | VMware vRealize Operations Advanced (25 OSI Pack)                         | 4   | -                                 |
| VU4-PR-U10      | VMware View Enterprise to VMware View Premier Upgrade 10 Pack             | 6   | -                                 |
| VCHB-VCMS       | VMware vCenter Server Heartbeat   | 2   | -                                 |
| VC-SRM6-ENT-VM  | VMware Site Recovery Manager Enterprise (1 VM)                            | 5   | -                                 |
| VS5-STD         | VMware vSphere Standard   | 4   | -                                 |
| VS6-HYP         | VMware vSphere Hypervisor (Internal only) - unlimited                     | 2   | -                                 |
| VC-CMI          | VMware vCenter Configuration Manager Instance                             | 1   | -                                 |
| CL6-ENT         | VMware vCloud Suite Enterprise  | 66  | -                                 |
| VCS6-FND        | VMware vCenter Server Foundation for vSphere up to 3 hosts (Per Instance) | 4   | -                                 |
| VC56-ADV25      | VMware vCenter Operations Management Suite Advanced                       | 6   | -                                 |
| VS5-ESSL        | VMware vSphere Essentials Kit   | 1   | -                                 |
| VC-SRM6-25E     | VMware Site Recovery Manager Enterprise (25 VM Pack)                      | 28  | -                                 |
| VS6-ENT         | VMware vSphere Enterprise for 1 processor                                 | 193 | -                                 |

**Unlimited Quantity Note:** The number of licenses will be the total number of licenses deployed as of the expiration of the ELA period set forth in the ELA under which Customer originally purchased this unlimited license.



**D. TECHNICAL AND CONSULTING SERVICES.** Customer is purchasing the following technical and consulting services:

**D.1 Technical Account Manager.**

| Technical Account Manager                                  | Quantity | Usage Period                    |
|--|----------|---------------------------------|
| Dedicated Strategic Technical Account Manager [TAM Tier 3] | 1        | 3 years from the Effective Date |

**D.2 Training & Consulting Credits.** Customer is purchasing the following training and consulting credits with no time limit on usage:

| Description   | Quantity |
|---|----------|
| Consulting & Learning Credits - Prepaid Services PSO Credit 1201+ | 20,078   |

**EXHIBIT B**  
**DEPARTMENTS EXHIBIT**

311 Call Center  
Academy of Science  
Administrative Services  
Adult Probation  
Airport Commission  
Animal Care & Control  
Art Commission  
Asian Arts Museum  
Assessor  
Board of Supervisors  
Building Inspection Commission  
Child Support Services  
Child, Youth & Family  
Children and Families Commission  
City Attorney  
City Planning (Planning Commission)  
Civil Service Commission  
Community Health Services (DPH)  
Community Health Service (DPHPHCH)  
Community Mental Health (DPHMH)  
Controller  
Convention Facilities Management  
County Clerk  
District Attorney  
Economic & Workforce Development  
Elections Commission  
Emergency Management  
Entertainment Commission  
Environment Commission  
Ethics Commission  
Fine Arts Museum  
Fire Department  
General Services Agency  
Health Service System  
Hetch Hetchy Water and Power System (PUC)  
Human Resources  
Human Rights Commission  
Human Services Agency  
Juvenile Probation  
Laguna Honda (DPHLH)  
Law Library  
Mayor's Office  
Mayor's Office-Criminal Justice (MYR13)  
Mayor's Office-Housing and Community Development  
Medical Examiner (GSA-ADM20)  
Municipal Transportation Agency (MTA)  
~Bicycle (MTA)  
~Parking & Traffic (MTA)  
~Parking Garages (MTA)  
~Pedestrian (MTA)

~Public Transportation (MTA)  
~Taxi Commission (MTA)  
Office of Contract Administration  
Permit Appeals (Appeals Board)  
Police Commission  
Port Commission  
Public Defender  
Public Health (DPHPH)  
Public Library  
Public Works (GSA-DPW)  
~Architecture Bureau (GSA-DPW)  
~Architecture Homeland Security (GSA-DPW)  
~Building Repair (GSA-DPW)  
~Construction Management Bureau (GSA-DPW)  
~Engineering Bureau (GSA-DPW)  
~General Admin. (GSA-DPW)  
~Public Works Homeland Security (GSA-DPW)  
~SE Community Center (PUC now) (GSA-DPW)  
~Street & Sewer Repair (GSA-DPW)  
~Street Environment Bureau (GSA-DPW)  
~Neighborhood Beautification (under DPWSE) (GSA-DPW)  
~Surveys & Maps Subdivision (GSA-DPW)  
~Urban Forestry (GSA-DPW)  
Public Utilities Commission (PUC-HHP/CWP/WTR)  
Real Estate (GSA-ADM24)  
Recreation and Park  
Rent Arbitration Board  
Retirement System  
San Francisco General Hospital (DPHGH)  
San Francisco Community College District  
San Francisco Unified School District  
San Francisco Sheriff's Department  
Status of Women Commission  
Technology  
Treasure Island Development Authority  
Treasurer/Tax Collector  
War Memorial  
Wastewater  
Water

**EULA EXHIBIT**  
**VMWARE END USER LICENSE AGREEMENT**

**PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.**

**IMPORTANT-READ CAREFULLY:** BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE, YOU (THE INDIVIDUAL OR LEGAL ENTITY) AGREE TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT (“EULA”). IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

**EVALUATION LICENSE.** If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided “AS-IS” without indemnification, support or warranty of any kind, expressed or implied.

**1. DEFINITIONS.**

**1.1 “Affiliate”** means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here “control” means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

**1.2 “Documentation”** means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

**1.3 “Guest Operating Systems”** means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.

**1.4 “Intellectual Property Rights”** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

**1.5 “License”** means a license granted under Section 2.1 (General License Grant).

**1.6 “License Key”** means a serial number that enables You to activate and use the Software.

**1.7 “License Term”** means the duration of a License as specified in the Order.

**1.8 “License Type”** means the type of License applicable to the Software, as more fully described in the Order.

**1.9 “Open Source Software” or “OSS”** means software components embedded in the Software and provided under separate license terms, which can be found either in the `open_source_licenses.txt` file (or similar file) provided within the Software or at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html).

**1.10 “Order”** means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4 (Order).

**1.11 “Product Guide”** means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at [www.vmware.com/download/eula](http://www.vmware.com/download/eula).

**1.12 “Support Services Terms”** means VMware’s then-current support policies, copies of which are posted at [www.vmware.com/support/policies](http://www.vmware.com/support/policies).

**1.13 “Software”** means the VMware Tools and the VMware computer programs listed on VMware’s commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

**1.14 “Territory”** means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

**1.15 “Third Party Agent”** means a third party delivering information technology services to You pursuant to a written contract with You.

**1.16 “Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.

**1.17 “VMware”** means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.

**1.18 “VMware Tools”** means the suite of utilities and drivers, Licensed by VMware under the “VMware Tools” name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

## **2. LICENSE GRANT.**

**2.1 General License Grant.** VMware grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

**2.2 Third Party Agents.** Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents’ compliance with terms and conditions of

this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.

**2.3 Copying Permitted.** You may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

**2.4 Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to [benchmark@vmware.com](mailto:benchmark@vmware.com) prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at [benchmark@vmware.com](mailto:benchmark@vmware.com) to request such review and approval) prior to such publication and distribution.

**2.5 VMware Tools.** You may distribute the VMware Tools to third parties solely when installed in a Guest Operating System within a Virtual Machine. You are liable for compliance by those third parties with the terms and conditions of this EULA.

**2.6 Open Source Software.** Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the `open_source_licenses.txt` file, the Documentation or as applicable, the corresponding source files for the Software available at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html). These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms. To the extent the license for any Open Source Software requires VMware to make available to You the corresponding source code and/or modifications (the 'Source Files'), You may obtain a copy of the applicable Source Files from VMware's website at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html) or by sending a written request, with Your name and address to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

### **3. RESTRICTIONS; OWNERSHIP.**

**3.1 License Restrictions.** Without VMware's prior written consent, You must not, and must not allow any third party to: (a) use Software in an application services provider, service bureau, or similar capacity for third parties, except that You may use the Software to deliver hosted services to Your Affiliates; (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of VMware's Software done by or on behalf of You, except as specified in Section 2.4 (Benchmarking); (c) make available Software in any form to anyone other than Your employees or contractors reasonably acceptable to VMware and require access to use Software on behalf of You in a matter permitted by this EULA, except as specified in Section 2.2 (Third Party Agents); (d) transfer or sublicense Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in Product Guide and/or VMware quote; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create

derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 3.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.

**3.2 Decompilation.** Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware (at [info@vmware.com](mailto:info@vmware.com)), provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.

**3.3 Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order. VMware reserves all rights not expressly granted to You. VMware does not transfer any ownership rights in any Software.

**3.4 Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

**4. ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.

**5. RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, VMware will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by VMware and will not unreasonably interfere with Your business activities. VMware may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with VMware and any third party auditor and will, without prejudice to other rights of VMware, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse VMware for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, or that You have materially failed to maintain accurate records of Software use.

**6. SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Support Services Terms.

**7. WARRANTIES.**

**7.1 Software Warranty, Duration and Remedy.** VMware warrants to You that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery (“Warranty Period”), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You the amount paid by You for that Software, in which case the License for that Software will terminate.

**7.2 Software Disclaimer of Warranty.** OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS EULA, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

**8. INTELLECTUAL PROPERTY INDEMNIFICATION.**

**8.1 Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People’s Republic of China, to the extent that such countries are part of the Territory for the License (“Infringement Claim”) and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

**8.2 Remedies.** If the alleged infringing Software become, or in VMware’s opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware’s option and expense, do one of the following: (a) procure the rights necessary for You to make continued



use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit VMware's obligation under Section 8.1 (Defense and Indemnification) to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

**8.3 Exclusions.** Notwithstanding the foregoing, VMware will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer VMware version would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

## **9. LIMITATION OF LIABILITY.**

**9.1 Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR \$1,000,000.00. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**9.2 Further Limitations.** VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software

shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

## **10. TERMINATION.**

**10.1 EULA Term.** The term of this EULA begins on the notice of availability for electronic download or delivery of the Software and continues until this EULA is terminated in accordance with this Section 10.

**10.2 Termination for Breach.** VMware may terminate this EULA effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; or (b) You breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of VMware's written notice thereof.

**10.3 Termination for Insolvency.** VMware may terminate this EULA effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

**10.4 Effect of Termination.** Upon VMware's termination of this EULA: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all Software and License Keys (including copies) to VMware, and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

## **11. CONFIDENTIAL INFORMATION.**

**11.1 Definition.** "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

**11.2 Protection.** Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as

Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care

**11.3 Exceptions.** Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**11.4 Data Privacy.** You agree that VMware may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to other companies in the VMware worldwide group of companies from time to time. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

## **12. GENERAL.**

**12.1 Transfers; Assignment.** Except to the extent transfer may not legally be restricted or as permitted by VMware's transfer and assignment policies, in all cases following the process set forth at <https://www.vmware.com/support/policies/licensingpolicies.html>, You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to You, provided that VMware remains responsible to You for the performance of the services.

**12.2 Notices.** Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

**12.3 Waiver.** Failure to enforce a provision of this EULA will not constitute a waiver.

**12.4 Severability.** If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

**12.5 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied

Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

**12.6 Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to".

**12.7 Governing Law.** This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in San Francisco, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**12.8 Third Party Rights.** Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

**12.9 Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.

**12.10 Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

**12.11 Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.

## VMware, Inc. Support and Subscription Services "SnS" Terms and Conditions

VMware, Inc., a Delaware corporation, or VMware International Limited, a company organized under the laws of Ireland, as applicable ("VMware"), shall provide Technical Support and Subscription Services (as defined herein) (collectively, the "Services") to the Customer, per the terms of this Agreement (the "Agreement") and as set forth at the VMware Support Services Website, at <http://www.vmware.com/support/services/>. The applicable VMware entity, **Effective Date**, **Software**, and **Services level** will be set forth on the applicable enterprise license agreement, SnS order form, Customer's purchase Order, or, if Customer has purchased support on a per-incident basis ("**Per Incident**"), in the registration form completed by Customer upon such purchase (collectively the "**Order**").

### 1. Definitions.

1.1 "**Error**" means a failure in the Software to materially conform to the specifications described in the applicable product documentation ("**Documentation**").

1.2 "**Modified Code**" means any modification, addition and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by VMware for production deployment or use. Modified Code excludes customizable Software options for which VMware offers Services on the applicable VMware price list.

1.3 "**Services Fees**" means the fees for Services specified in a corresponding VMware or reseller invoice.

1.4 "**Services Period**" means the period for which Customer has purchased the Services and any subsequent renewal periods and shall commence: (a) for Software Licenses for which Services are mandatory, on the date the applicable Software License Key(s) are made available for download, and (b) for Software Licenses for which Services are optional, on the date of purchase of the Services.

1.5 "**Severity**" is a measure of the relative impact an Error has on the use of the Software, as determined by VMware. The following Severity levels apply to all Software:

(a) "**Severity One**" means Customer's production server or other mission critical system(s) are down and no workaround is immediately available and (i) all or a substantial portion of Customer's mission critical data is at a significant risk of loss or corruption; (ii) Customer has had a substantial loss of service; or (iii) Customer's business operations have been severely disrupted.

(b) "**Severity Two**" means that major functionality is severely impaired such that (i) operations can continue in a restricted fashion, although long-term productivity might be adversely affected; (ii) a major milestone is at risk; ongoing and incremental installations are affected; or (iii) a temporary workaround is available.

(c) "**Severity Three**" means a partial, non-critical loss of functionality of the software such that: (i) the operation of some component(s) is impaired but allows the user to continue using the Software; or (ii) initial installation milestones are at minimal risk.

(d) **“Severity Four”** means (i) general usage questions and cosmetic issues, including errors in the documentation, and (ii) cases opened via email for Zimbra Software.

1.6 **“Software”** means software offered on the VMware price list, and all components shipped with the Software, including Open Source components.

1.7 **“Subscription Services”** means the provision of Maintenance Releases, Minor Releases and Major Releases (each defined below), if any, to the Software, as well as corresponding Documentation, to Customer.

(a) **“Maintenance Release”** or **“Update”** means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by VMware by means of a change in the digit to the right of the second decimal point (e.g. Software 5.0 >> Software 5.0.1), or for certain Software, by means of a change in the digit of the Update number (e.g. Software 5.0 Update 1).

(b) **“Minor Release”** means a generally available release of the Software that (i) introduces a limited amount of new features and functionality, and (ii) is designated by VMware by means of a change in the digit to the right of the decimal point (e.g., Software 5.0>>Software 5.1).

(c) **“Major Release,”** also known as an **“Upgrade,”** means a generally available release of the Software that (i) contains functional enhancements or extensions, and (ii) is designated by VMware by means of a change in the digit to the left of the first decimal point (e.g., Software 5.0 >> Software 6.0).

1.8 **“Technical Support”** means the provision of telephone or web-based technical assistance by VMware to Customer’s technical contact(s) with respect to installation and Errors, at the corresponding Services level purchased by Customer.

1.9 **“Third Party Products”** means any software or hardware that (i) is manufactured by a party other than VMware and (ii) has not been incorporated into the Software.

## 2. **Service Terms.**

2.1 **Provision of Services.** Subject to the terms of this Agreement, VMware shall, during the Services Period, provide Customer with Services at the applicable Services level purchased.

2.2 **End of Availability.** VMware may, at its discretion, decide to retire Software and/or Services from time to time (**“End of Availability”**). VMware shall post notice of End of Availability, including the last date of general commercial availability of the affected Software and the timeline for discontinuing Services, at <https://www.vmware.com/support/policies/lifecycle.html>. VMware shall have no obligation to provide Services for Software that is outside of the applicable Service life.

## 2.3 **Purchase Requirements.**

(a) Customer must purchase and/or renew Services at the same Services level for all of the Software in a given environment (e.g., Test, Development, QA, Production).

(b) Except as otherwise provided in the applicable price list, the minimum term for any Service offering is one (1) year.

(c) These Services Terms and conditions will automatically update to VMware's then-current Services terms and conditions set forth at [https://www.vmware.com/files/pdf/support/support terms conditions.pdf](https://www.vmware.com/files/pdf/support/support%20terms%20conditions.pdf) upon any renewal of Services.

#### 2.4 Exclusions.

(a) (Services do not cover problems caused by the following:

(i) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by VMware; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use;

(ii) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation;

(iii) Third Party Products, other than the interface of the Software with the Third Party Products;

(iv) Modified Code;

(v) issues relating to Software offered as a Service ("SaaS");

(vi) any customized deliverables created by VMware specifically for Customer as part of consulting services; or (viii); use of the Software with unsupported tools (i.e., Java Development Kit (JDK); Java Runtime Environment (JRE)), APIs, interfaces or data formats other than those included with the Software and supported as set forth in the Documentation; or

(vii) any issue not covered by Technical Support.

Customer may request assistance from VMware for such problems, for an additional fee.

(b) In the event that VMware suspects that a reported problem may be related to Modified Code, VMware, may, in its sole discretion, (i) request that the Modified Code be removed, and/or (ii) inform Customer that additional assistance may be obtained by Customer directly from various product discussion forums or by engaging VMware's consulting services group for an additional fee.

2.5 **Customer Responsibilities.** VMware's obligations regarding Services are subject to the following:

(a) Customer agrees to receive from VMware communications via e-mail, telephone, and other formats, regarding Services (such as communications concerning support coverage, Errors or other technical issues and the availability of new releases of the Software).

(b) Customer's technical contact shall cooperate to enable VMware to deliver the Services.

(c) Customer is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software.

(d) Customer shall promptly report to VMware all problems with the Software, and shall implement any corrective procedures provided by VMware reasonably promptly after receipt.

(e) Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up in accordance with any internal or regulatory requirements as applicable, before contacting VMware for Technical Support. VMware is not responsible for lost data or information in the event of errors or other malfunction of the Software or computers on which the Software is used.

(f) Customer will have dedicated resources available to work 24X7 on Severity One Errors.

### **3. Services Offerings and Fees.**

#### **3.1 Services Fee Terms.**

(a) Services Fees are payable on the Effective Date or, in the case of a renewal term, no later than the date of commencement of the applicable Services Period. Services Fees are specified in the applicable price list and are non-refundable.

(b) In the event that Customer renews or adds a Services offering that has a minimum term of one (1) year, Customer may elect to make Services for all or a portion of its Software Licenses coterminous with the renewed or added Services. In such case, VMware will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with such renewed or added Services.

(c) For Software that is licensed on a perpetual basis, if a Customer purchases Services after acquiring the Software Licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current Major Release of the Software and must pay: (i) the applicable Services Fees for the current Services Period; (ii) the amount of Services Fees that would have been paid for the period of time that Customer had not enrolled in the Services, and (iii) a twenty-percent (20%) reinstatement fee on the sum of the Services Fees in (i) and (ii).

(d) In cases where Customer purchases a License to migrate up from one edition of the Software to another (e.g., VMware vSphere Standard to VMware vSphere Enterprise Plus), any unused period of the Services Period on the original License will be converted and used to extend the Services Period for the newly purchased upgraded License. This paragraph (d) shall not apply to enterprise license agreements.

(e) If Customer originally purchased Services from a VMware Authorized Service Provider and is now renewing only Technical Support through such VMware Authorized Service Provider, Customer may purchase Subscription Services separately on a renewal basis from VMware. The renewal fee for such Subscription Services shall be as set forth in the applicable price list. "Authorized Service Provider" means a third party that is authorized under contract by VMware to provide first and/or second level Technical Support for the Software.

#### **3.2 Advanced and Complimentary Offerings.**

(a) Certain Services (e.g., Business Critical Support and Mission Critical Support) require that Customer also purchase a base level of support. See the applicable price list for details.

(b) VMware may offer complimentary Services, including VMware Complimentary Update Services for certain Software, as more fully described at the VMware Technical Support Services website. "VMware Complimentary Update Services" means the provision of Maintenance Releases and Minor Releases, if any, to Customer. This VMware Complimentary Update Service does not include the provision of any Major Releases.



(c) Services for Software made available under open source licenses may be subject to additional policies located at <https://www.vmware.com/support/policies/opensource.html>.

#### 4. Miscellaneous Terms

**4.1 Payment Terms.** Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse VMware for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement (other than taxes on the net income of VMware). All invoices issued hereunder by VMware are due and payable within thirty (30) days of the date of the invoice. If payment of any Services Fee is overdue, VMware may also suspend performance until such delinquency is corrected. All payments are subject to Controller certification of funds pursuant to Section 21.19 of the San Francisco Administrative Code.

**4.2 Limited Warranty.** VMware warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing VMware with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, VMware will re-perform the Services to achieve commercially reasonable conformance with the above warranty. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT MANDATED BY LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

**4.3 Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, VMWARE SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO CUSTOMER. VMWARE'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE GREATER OF THE SERVICES FEES PAID BY CUSTOMER TO VMWARE UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM OR \$1,000,000.00.

**4.4 Termination.** VMware may terminate the Agreement and all Services at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to Customer's Software license or (2) Customer is in material breach of this Agreement.

**4.5 Data Protection.** Customer acknowledges that correspondence and log files generated in conjunction with a request for Services may contain sensitive, confidential or personal information. Customer is solely responsible for taking the steps it considers necessary to protect

such data, including obfuscating the logs or otherwise guarding such information prior to sending it to VMware.

**4.6 Other.** Customer may not assign or delegate this Agreement to any third party without the prior written consent of VMware. This Agreement shall be governed by the laws of the State of California without regard to conflict of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. This Agreement constitutes the entire agreement of the parties with respect to the provision of the Services by VMware to Customer, and supersedes all prior written or oral communications, understandings and agreements. This Agreement may not be amended except in a written document signed by both parties. Any waiver of the provisions of this Agreement must be in writing to be effective. Except as expressly set forth herein, no terms of any purchase order or other business form that Customer may use will affect the obligations of the parties under this Agreement, and any such purchase order or other business form of Customer which contains additional or conflicting terms are hereby rejected by VMware. Customer agrees that purchase orders do not have to be signed to be valid and enforceable. If any provision of this Agreement is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law. The version of the Technical Support guide found at [https://www.vmware.com/files/pdf/support/tech\\_support\\_guide.pdf](https://www.vmware.com/files/pdf/support/tech_support_guide.pdf) and the policies located at <https://www.vmware.com/support/policies/index/> are the governing versions of such documents/policies; any translation into other languages is for convenience only. VMware may update the Technical Support guide and support policies periodically, without prior notice.

**Appendix B  
Calculation of Charges**

|                                   |                    |
|-----------------------------------|--------------------|
| VMware ELA Annual Payment Year 1: | \$1,869,866        |
| VMware ELA Annual Payment Year 2: | \$3,314,763        |
| VMware ELA Annual Payment Year 3: | \$3,314,763        |
| Estimated Additional Purchases:   | \$1,495,608        |
| <b>Total</b>                      | <b>\$9,995,000</b> |

**Additional Purchase Pricing:**

Software licenses: Forty percent (40%) discount off the then-current applicable list price;  
 Support Services (Production level only): Twenty percent (20%) of the net applicable license fee paid by Partner;  
 Training and Consulting Credits: Between zero (0%) and twenty (20%) off the then current applicable list price based on quantity of credits purchased in the table below:

| SKU       | Quantity            | Discount |
|-----------|---------------------|----------|
| SVC-CR-0  | PSO Credit 1-150    | 0%       |
| SVC-CR-10 | PSO Credit 151-600  | 10%      |
| SVC-CR-15 | PSO Credit 601-1200 | 15%      |
| SVC-CR-20 | PSO Credit 1201+    | 20%      |

SPP Credits: Between five percent (5%) and twenty percent (20%) off the then current applicable list price based on quantity of credits purchased in the table below:

| SKU          | Quantity  | Discount |
|--------------|-----------|----------|
| SPP-CREDIT-C | Up to 250 | 5%       |
| SPP-CREDIT-C | 251-599   | 10%      |
| SPP-CREDIT-C | 600-1000  | 15%      |
| SPP-CREDIT-C | 1001+     | 20%      |

PSC 49079-17/18

**Similar Service was Provided Under 46518-14/15**

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY -- TISDept. Code: TISType of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: VMware Professional ServicesFunding Source: Miscellaneous Department FundsPSC Amount: \$4,500,000PSC Est. Start Date: 09/01/2015PSC Est. End Date: 10/31/2018**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

VMware Technical Account Managers and Engineers will assist City Staff in implementing VMware Server Virtualization products and work with City Staff to maximize the efficiency and utilization of VMware Products. These services require technical expertise and knowledge of proprietary VMware products that City Staff do not have. Engineering services may be utilized on a project basis, Technical Account Managers are assigned to specific Departments to work with City Engineers. Department of Technology is submitting this Request for Citywide Services as part of the Enterprise License Agreement which is available for use by all City Departments.

**B. Explain why this service is necessary and the consequence of denial:**

These services are necessary to support various server virtualization projects throughout the City. If denied, these critical information technology infrastructure projects will be jeopardized.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

Service has been provided in the past by VMware staff

**D. Will the contract(s) be renewed?**

Yes, the City will continue to use VMware Products

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**

not applicable

**2. Reason(s) for the Request****A. Indicate all that apply (be specific and attach any relevant supporting documents):**

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

**B. Explain the qualifying circumstances:**

Engineering Services and Technical Account Manager services require proprietary technical knowledge that City Staff do not have. Also, engineering services will be utilized on an as-needed, project basis.

**3. Description of Required Skills/Expertise**

**A. Specify required skills and/or expertise:** Knowledge of proprietary VMware Products and Implementation. Experience managing VMware Server Virtualization Implementations and training Engineers on various

VMware products. Knowledge of server virtualization, programming VMware products, and business process analysis. Experience improving various business processes related to server management and virtualization.

B. Which, if any, civil service class(es) normally perform(s) this work? 1043, IS Engineer-Senior; 1044, IS Engineer-Principal;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

None, required proprietary technical knowledge

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Requires proprietary technical knowledge and access to VMware products that City Staff do not have

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, requires proprietary technical knowledge of VMware products and additional engineering support is required on a project basis.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Yes. See VMware Training Documentation

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes.

**7. Union Notification:** On 06/23/2015, the Department notified the following employee organizations of this PSC/RFP request:  
Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: 1 South Van Ness Ave, 2nd Floor San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 46518 - 14/15

DHR Analysis/Recommendation:

Commission Approval Required

08/17/2015 DHR Approved for 08/17/2015

action date: 08/17/2015

Approved by Civil Service Commission

Will train 1042, 1043, 1044s IS Engineering Classes

VMware Training includes the following courses scoped out for the initial Enterprise License Agreement, and will have as-needed training credit bundles purchased. These later as-needed courses will be determined by individual Departments according to their plans to implement new VMware products or upgrade existing products. Training credits are purchased in bulk to maximize discounts, then used to purchase Training Courses or other services. These training courses are essential for Department Network Engineers to use the VMware products to maintain virtual network infrastructure and stay up to date as new versions are released.

Approximate Training Hours Currently Scoped out: 200-300 (Depends on final selection of training courses by Departments.)

Courses currently expected to be selected as part of Enterprise License Agreement initial credit purchase:

**VMware NSX Install, Configure Manage:** This comprehensive, fast-paced training course focuses on installing, configuring, and managing VMware NSX™. This course covers NSX as a part of the software-defined data center platform, implementation use cases along with features of NSX, and functionality operating at Layer 2 through Layer 7 of the Open Systems Interconnection model. Lecture and hands-on lab activities support the student's understanding of NSX features, functionality, and on-going management and control.

**VMware vSphere: Install, Configure, Manage [V6]:** VMware vSphere: Install, Configure, Manage features intensive hands-on training that focuses on installing, configuring, and managing VMware vSphere® 6, which includes VMware ESXi™ 6 and VMware vCenter Server™ 6. This course prepares you to administer a vSphere infrastructure for an organization of any size and forms the foundation for most other VMware technologies in the software-defined data center.

**VMware vSphere: Design and Deploy Fast Track [V6]:** This extended-hours training course equips you with the knowledge, skills, and abilities to design and deploy a VMware vSphere® 6.0 virtual infrastructure. You follow a proven approach to design and deploy a virtualization solution that is available, scalable, manageable, and secure. This course discusses the benefits and risks of available design alternatives and provides information to support making sound design decisions.

**VMware vSphere: What's New [V5.5 to V6]:** VMware vSphere: What's New is a hands-on training course that explores the newest features and enhancements in VMware vCenter Server™ 6 and VMware ESXi™ 6. Real-world use case deployment scenarios, hands-on lab exercises, and lecture material teach the skills you need to effectively implement and configure VMware vSphere® 6. This class is recommended for customers who want to deploy vSphere 6 into their existing vSphere environment.



**VMware vCenter Site Recovery Manager: Install, Configure, Manage:** This two-day, hands-on training course equips experienced VMware vSphere® administrators with the knowledge to install, configure, and manage VMware vCenter™ Site Recovery Manager™ 5.8. This course also equips vSphere administrators with the knowledge to assist in writing and testing disaster recovery plans that use vCenter Site Recovery Manager.

**VMware vCloud Networking and Security for vSphere Professionals:** This intensive training course focuses on installing, configuring, and managing VMware vCloud® Networking and Security™ for VMware® vSphere® professional use. vCloud Networking and Security is a suite of security virtual appliances built for VMware® vCenter Server™ and VMware ESXi™ integration. vCloud Networking and Security is a critical security component for protecting virtualized data centers from attacks and helping you to achieve your compliance-mandated goals. The course is based on VMware® vShield™ 5.5, ESXi 5.5, and vCenter Server 5.5.

**VMware vRealize Operations Manager: Install, Configure, Manage [V6.0]:** VMware vRealize™ Operations Manager™: Install, Configure, Manage is designed for experienced VMware vSphere® users and teaches how to use VMware vRealize Operations Manager as a forensic and predictive tool. The course is based on VMware ESXi™ 5.x, VMware vCenter Server™ 5.x, and vRealize Operations Manager 6.0 and includes instruction on advanced capabilities including customization and management.

**VMware vCenter Configuration Manager: Install, Configure, Manage [V5.7]:** This hands-on training course focuses on installing, configuring, and managing VMware vCenter Configuration Manager™ 5.7. The course is built on VMware ESXi™ and VMware vCenter Server™. This course provides you with the knowledge and skills to install and configure vCenter Configuration Manager, navigate the user interface, manage compliance, and perform administrative and configuration tasks against your infrastructure.

**VMware vRealize Business: Costing and Implementation:** VMware vRealize™ Business™ (formerly VMware IT Business Management Suite™) provides transparency and control over the costs and quality of IT services, enabling the CIO to align IT with the business and accelerate IT transformation. This four-day training course discusses IT costing as well as configuring and managing vRealize Business. This course will give you an understanding of the concepts and functionality of IT finance management with vRealize Business.

**VMware vRealize Automation: Install, Configure, Manage [V6.2]:** This training course focuses on installing, configuring, and managing VMware vRealize™ Automation. This course covers the configuration and use of the vRealize Automation platform, including self-service provisioning and the creation of multivendor cloud services. This class also helps students understand and achieve the benefits of automation as a component of the software-defined data center.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Electric Automated Meter System

Funding Source: SFPUC Power Operating Funds

PSC Duration: 10 years 2 days

PSC Amount: \$9,993,604

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

The purpose of this Agreement is to purchase the proprietary Aclara One Advanced Metering Infrastructure System ("Aclara One AMI System") from Aclara Technologies LLC ("Aclara") for the primary purpose of billing the electric customers of the San Francisco Public Utilities Commission ("SFPUC") Power Enterprise. This procurement has been authorized by the office of Contract Administration pursuant to section 21.30 (d) of the San Francisco Administrative Code. The Aclara One AMI System consists primarily of hardware and software, but will also include an element of technical services related to its installation and maintenance. The system will cost \$9,993,604 over ten years and consists of:

Hardware: \$8,512,878

Software as a Service ("SaaS") Subscription: \$984,879

Installation Services: \$290,547

Hardware Maintenance: \$205,300

Although the cost of hardware is estimated to be \$8,512,878, the actual cost will depend on the rate of growth of SFPUC's Power customers which, in turn, will determine the number of meters actually purchased under this contract. The estimated cost of \$8,512,878 assumes an annual growth target of 37% per year over ten years. However, this is a very unlikely target rate and, as such, the total system hardware will likely be far below the estimated cost of \$8,512,878.

With regard to the implementation services, Aclara will install its system through 5 phases:

Phase 1: Project Kick-Off. Aclara will facilitate a kickoff meeting onsite to walkthrough the project schedule, introduce team members and roles, client responsibility, upcoming tasks. Additionally, during this meeting the project governance will be established. This includes communications plan, team meetings, status reporting, and issues management.

Phase 2: Requirements & Design. Aclara will conduct frequency scans to identify the frequencies required for the solution. Aclara network engineers select the frequencies and complete the application process.

Phase 3: Configuration & Network Deployment. Aclara and SFPUC will collaborate on the rollout of the Data Collector Units (DCUs). Deliverables will include:

- Commissioning of DCUs
- Two-Way Automatic Communication System (TWACS) Network deployment
- Installation and configuration of base Aclara One AMI System
- Data Validation workshop
- Start of System Integration Acceptance testing

Phase 4: Testing, Training & Acceptance. Aclara will provide training for the network system administrators, field personnel and customer service representatives. System testing results will be documented and, upon successful completion, a certificate of acceptance will be provided to the utility for signature.

Phase 5: Mass Deployment and Post Installation Hardware Maintenance. Aclara will provide a comprehensive system maintenance plan by which to repair and replace most system hardware that is no longer under warranty.

B. Explain why this service is necessary and the consequence of denial:

SFPUC's Water Enterprise currently uses an Aclara AMI system for its Water customers. The system was selected pursuant to a Request for Proposal ("RFP"), CS-936, issued in 2008, to which SFPUC Power Enterprise was also a party. In 2012, SFPUC Water Enterprise commenced its deployment of the Aclara AMI System for its Water customers. SFPUC Power Enterprise, however, was not able to do the same due to delays in the projects for which the system was intended. At this time, all issues have been resolved and SFPUC Power Enterprise is finally ready to commence its deployment of the Aclara AMI System. However, CS-936 has since expired and the AMI system Power intended to purchase under that agreement has since been replaced by a newer version. Therefore, SFPUC Power Enterprise must enter into a new contract with Aclara for the deployment of its Aclara AMI System. The purchase of the Aclara One AMI System will allow the SFPUC to have a single, cohesive AMI platform for both its Water and Power customers. A single combined system between SFPUC's Power and Water Enterprises is critical to SFPUC for several reasons. First, a cohesive system will ensure a standardized platform across SFPUC for both its Water and Power AMI systems. This, in turn, will allow SFPUC staff to work within one system, instead of two. Second, a cohesive system will allow SFPUC Power to leverage SFPUC Water's existing system components. This includes hardware, software, approved radio network locations, network propagation studies, IT interfaces, and business processes already developed for the Water Enterprise AMI System – all of which will be available at no additional cost to SFPUC Power. Finally, a cohesive system will ensure efficient use of time and resources with regard to the system's initial deployment. The environmental review process for the Aclara Star System took three years, beginning in 2009 and concluding in 2012. As part of this process, it was also evaluated and approved by the San Francisco Department of Public Health and the San Francisco Planning Department. By implementing a combined Water and Electric network, SFPUC can leverage this completed environmental review work, resulting in significant time and cost savings for SFPUC Power. Furthermore, utilizing existing DCU locations in San Francisco will eliminate the need for redundant site surveys and other work. For these reasons, SFPUC Power estimates a savings of at least \$3MM over the next ten years if it is permitted to share a single cohesive AMI system with SFPUC Water. If this contract is not approved, SFPUC will not be able to take advantage of the above benefits, all of which are only available by having a single AMI platform for SFPUC's Water and Power customers, instead of two.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The SFPUC does not currently have an Electric AMI system, therefore, this services has not been provided in the past.

D. Will the contract(s) be renewed?

Because this system will have a life expectancy of approximately 10-15 years, we cannot anticipate at this moment if a renewal will be warranted in ten years, when the contract is set to end.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The Aclara One AMI System that will be purchased pursuant to this agreement will have a life expectancy of at least 10 years. Therefore, it is reasonable to have a contract duration that reflects the expected system life.

## 2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Other (be specific and attach any relevant supporting documents):

### **REASON FOR CHECKING OTHER:**

Aclara is the sole source manufacturer of the Aclara One AMI System to be procured under this contract. The system consists of Meter Transmission Units (MTUs), Data Collector Units (DCUs), a Two-Way Automatic Communication System (TWACS) Network, Remote Communication Equipment (RCE) and Substation Communication Equipment (SCE). These equipment are all proprietary products of Aclara. Further, Aclara is the only provider of Aclara's proprietary Software, Hosted Software Services, Aclara Wireless Network (AWN) Backhaul and System Maintenance Services, including software support, system monitoring and DCU repairs. For these reasons, it is not possible for City personnel to undertake the installation (approximately the first 2 years of the contract) or system maintenance services procured under this contract (the remaining 8 years of the contract).

## 3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: -Expertise in the Aclara One AMI system and the tools and equipment used in its installation, replacement, and maintenance. -Proprietary access to the system hardware and software code that comprise the proprietary system.

B. Which, if any, civil service class(es) normally perform(s) this work? 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1070, IS Project Director; 1094, IT Operations Support Admin IV; 1095, IT Operations Support Admin V;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:  
No.

## 4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Aclara is the sole source manufacturer of the Aclara One AMI System to be procured under this contract. The system consists of Meter Transmission Units (MTUs), Data Collector Units (DCUs), a Two-Way Automatic Communication System (TWACS) Network, Remote Communication Equipment (RCE) and Substation Communication Equipment (SCE). These equipment are all proprietary products of Aclara. Further, Aclara is the only provider of Aclara's proprietary Software, Hosted Software Services, Aclara Wireless Network (AWN) Backhaul and System Maintenance Services, including software support, system monitoring and DCU repairs. For these reasons, it is not possible for City personnel to undertake the installation or system maintenance services procured under this contract.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

A. Explain why civil service classes are not applicable.

Aclara is the sole source manufacturer of the Aclara One AMI System to be procured under this contract. The system consists of Meter Transmission Units (MTUs), Data Collector Units (DCUs), a Two-Way Automatic Communication System (TWACS) Network, Remote Communication Equipment (RCE) and Substation Communication Equipment (SCE). These equipment are all proprietary products of Aclara. Further, Aclara is the only provider of Aclara's proprietary Software, Hosted Software Services, Aclara Wireless Network (AWN) Backhaul and System Maintenance Services, including software support, system monitoring and DCU repairs. For these reasons, it is not possible for City personnel to undertake the installation or system maintenance services procured under this contract.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Aclara is the sole source manufacturer of the Aclara One AMI System to be procured under this contract. The system consists of Meter Transmission Units (MTUs), Data Collector Units (DCUs), a Two-Way Automatic Communication System (TWACS) Network, Remote Communication Equipment (RCE) and Substation Communication Equipment (SCE). These equipment are all proprietary products of Aclara. Further, Aclara is the only provider of Aclara's proprietary Software, Hosted Software Services, Aclara Wireless Network (AWN) Backhaul and System Maintenance Services, including software support, system monitoring and DCU repairs. For these reasons, it is not possible for City personnel to undertake the installation or system maintenance services procured under this contract.

**6. Additional Information**

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

Yes. • Aclara will provide training for network system administrators, field personnel and customer service representatives. • Training Materials will be delivered to SFPUC by Aclara • Aclara will assist SFPUC with completing System Integration Acceptance Testing. • Aclara will document the System Integration Acceptance Testing results. Upon successful completion of System Integration Acceptance Testing, a certificate of acceptance will be provided to SFPUC for signature.

C. Are there legal mandates requiring the use of contractual services?  
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 05/03/2018, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Taraneh Moayed Phone: 415-551-4377 Email: tmoayed@sfgwater.org

Address: 525 Golden Gate Avenue, 5th Floor San Francisco, CA 94102

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 45582 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/20/2018

# **Receipt of Union Notification(s)**

**From:** dhr-psccordinator@sfgov.org  
**To:** Moayed, Taraneh; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; LZ1PSCReview@ifpte21.org; Moayed, Taraneh; DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 45582 - 17/18  
**Date:** Thursday, May 03, 2018 4:36:37 PM

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RECEIPT for Union Notification for PSC 45582 - 17/18 more than \$100k

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a request for a Personal Services Contract (PSC) 45582 - 17/18 for \$9,993,604 for Initial Request services for the period 09/01/2018 – 08/31/2028. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/11004> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions

you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended



# **Additional Attachment(s)**

## Draft System Implementation

**Appendix A**  
**AclaraONE™ System Implementation Services**

**Project Name:** City and County of San Francisco Public Utilities Commission (“Client”) Synergize® RF Electric Implementation (“Project”). This Statement of Work describes the Services to be provided to the Client in support of the Project. This SOW is governed by Attachment 1 to this SOW, Aclara Standard Terms and Conditions of Sale for Equipment and Certain Services. Additional terms contained on any purchase order are hereby rejected unless specifically agreed to in writing by the Client and Aclara.

**Scope of Work**

The scope of this project includes the implementation of Aclara’s Synergize® Electric RF solution for:

- Approximately 37,100 electric endpoints;
- 26 Data collectors, (Synergize RF® and/or TWACS® PLC);
- Hosted AclaraONE™ unified head end for the new electric AMI endpoints;
- Integration to Client’s MDM/MDMS; and
- Client Training.

Also included in this Scope of Work is the option to deploy Aclara’s TWAC PLC solution in addition to the RF network for remote endpoints.

The new solution will support various use of the components and applications defined in Attachment 1. More detailed requirements will be developed during the requirements task of the project, but will remain consistent with Attachment 1, unless mutually agreed by the Client and Aclara.

This Statement of Work addresses the implementation services required by the Project. It is mutually understood that business requirements, resources and dates may change subject to the applicable terms of this Statement of Work and that any such material change requested by the Client or, as a result of the Client’s inability to provide agreed upon resources and perform its other responsibilities set forth herein or the result of Client errors or omissions may result in a Change Order.

It is understood by Aclara and the Client that any material changes to scope, will be addressed through a formal change order process. Material changes are those which specifically will impact budget, scope, timeline and/or resources.

**1. Project Approach**

The Aclara Services Team (“Aclara Team”) assigned to this project will complete the Aclara tasks described herein and will perform work for the Client for the duration of the Project at Client’s facilities and from remote locations.

The scope of the services engagement for this Statement of Work is set forth in the attached Attachment 1, hereto. Attachment 1 also includes certain Responsibilities and Assumptions that are the responsibility of the Client. In addition to the tasks specified in Attachment 1 hereto, the Client will provide appropriate Project resources, including but not limited to data, information, and appropriate and cooperative personnel, to facilitate the performance of the Services. The Client shall designate a Project Manager to work with the Aclara Team to facilitate the provision of the Services. Once this Statement of Work is executed, Aclara and the Client will assign resources to the Project. The Aclara Team will work on the Project, and provide support as specified by the Statement of Work.

**2. Assumptions and Responsibilities**

Project Assumptions and Responsibilities are set forth in Attachment 1. Should the Client fail to fulfill those that are applicable to the Client, the estimated level of effort, timeline and scope may be subject to change.

**3. Scope Estimates**

Aclara will support the Client by providing a team to complete the scope of work defined in Attachment 1.

Aclara’s estimate of the level of effort is based on the following:

- Information provided by the Client to Aclara
- Aclara’s understanding of the project scope, based on Client information

Should the information provided by the Client be inaccurate or should Aclara gain additional information during the Project, the work required may be out of scope and the pricing and schedule may be impacted. If so, the additional work will be addressed as a change order to the Scope of Work.

**4. Software and Hardware Licenses**

The AclaraONE™ software and hardware components are licensed in accordance with the Aclara Software and Hardware License Agreements (“Licenses”) executed between Aclara and the Client. The Licenses cover the integration with the Client’s single production environment and within the Client’s current service territory.

**5. Changes**

Any change to this Statement of Work shall be subject to mutual written agreement of the parties. Aclara shall not commence work on any such change unless and until the change has been agreed to in writing by both parties. Additional charges may apply based on Aclara’s level of effort to complete the requested change.

**IN WITNESS WHEREOF**, the parties have so agreed as of the last date signed below.

Accepted By:

Accepted By:

**Aclara Technologies LLC**  
**(Aclara)**

**San Francisco PUC**  
**(Client)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

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

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

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

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

- Attachment 1: Project Definition**
- Attachment 2: Change Order Billings**
- Attachment 3: Change Order Procedure**

# Attachment 1 to the Scope of Work

## Project Definition

### 1. Synergize® RF Electric Project Scope

Included in the purchase of a Synergize® RF Electric Implementation are the Professional Services efforts required to design the AMI network, identify the optimal locations of the DCU sites, complete the commissioning of the DCUs, implement standard interface functionality, and coordinate with subcontractor for substation equipment as defined in Section 1.1. The purpose of this document is to outline the tasks and deliverables of the Aclara Team, and provide the Client an overview of the responsibilities and time commitment that will be required of their staff.

### 2. Project Scope

Aclara will assist the Client in an implementation of a Synergize® RF Electric for about 37,100 electric endpoints. Aclara will work with the Client in the field design, installation of needed hardware, software, training, and other related activities needed to complete the project successfully. The project scope includes:

- About 37,100 electric endpoints (Synergize RF® and/or TWACS® PLC and/or Metrum);
- Network hardware consisting of 26 Data collectors (Synergize RF®) and Substation equipment (TWACS® PLC);
- Hosted AclaraONE unified headend with integrations with Client's MDM/MDMS. The integration approach to be defined during the design phase ; and
- Client training.

Endpoint installations assumed to be completed by Client. This solution will be independent of the STAR Water RF solution currently in place, but in some places will utilize combined DCUs used both by Power and Water Enterprises. The schematic below details the components of the solution that are in scope for this project.

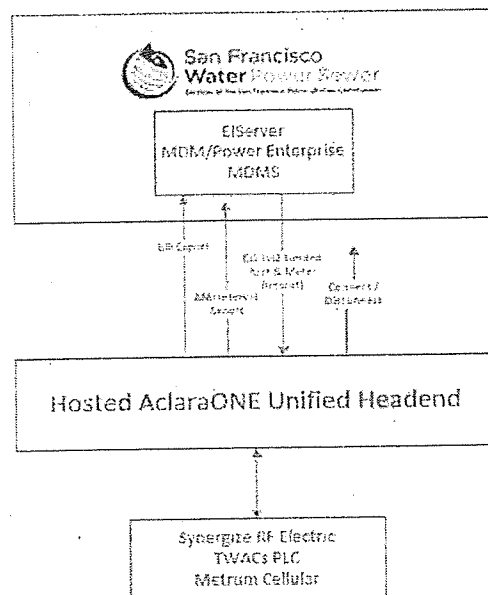


Figure 1: SFPUC Project Scope

### 3. Implementation Approach

The Aclara methodology is made up of the following phases:

- Phase 01 Project Kick-Off.
- Phase 02 Requirements & Design.
- Phase 03 Configuration & Network Deployment.
- Phase 04 Testing, Training & Acceptance.
- Phase 05 Mass Deployment.

Each of the phases of delivery has a specific set of defined deliverables, as well as entry and exit criteria for each phase.

### 4. Deliverables and Milestones by Phase

| Phase | Deliverables  | Milestones   |
|-------|---|--|
| 1     | <ul style="list-style-type: none"> <li>• Project Plan, Communication Plan, Project Kickoff Materials, Project Kickoff</li> </ul>  | <ul style="list-style-type: none"> <li>• Project Kickoff Complete. Aclara will facilitate a kickoff meeting onsite to walkthrough the project schedule, introduce team members and roles, client responsibility, upcoming tasks. Additionally, during this meeting the project governance will be established. This includes communications plan, team meetings, status reporting, and issues management.</li> </ul>   |
| 2     | <ul style="list-style-type: none"> <li>• Final requirements documents</li> <li>• Site Surveys</li> <li>• Network Design and Propagation Study – during this activity, evaluation of the best fit Aclara communications (TWACs and RF) endpoint will be evaluated</li> <li>• Network Deployment plan</li> <li>• Test Plan</li> </ul>   | <ul style="list-style-type: none"> <li>• FCC License Application Completed – Aclara will conduct frequency scans to identify the frequencies required for the solution. Aclara network engineers select the frequencies and complete the application process.</li> </ul>   |
| 3     | <ul style="list-style-type: none"> <li>• DCU Installation Support</li> <li>• Commissioning of DCUs</li> <li>• TWACs deployment</li> <li>• Installation and configuration of base AclaraONE™ and head end</li> <li>• Installation and configuration of integrations –MDM/MDMS</li> <li>• Data Validation workshop</li> <li>• Start of System Integration Acceptance testing</li> </ul> | <ul style="list-style-type: none"> <li>• Deploy and Commission DCUs – Aclara and the Client will collaborate on the DCU rollout activity. Depending on the location and mount, utility assistance may be required. Coordinate with Third party installation contractor to complete the deployment of TWACs substation equipment. Aclara will coordinate equipment rentals for DCU installations.</li> <li>• Head End configured – configuration of the headend will be completed and installed in the hosting environment.</li> <li>• Final test plan approved – Aclara will deliver a test plan for utility review. Success criteria and test plan/scripts will be defined in the test plan.</li> </ul> |

| Phase | Deliverables   | Milestones   |
|-------|--|--|
| 4     | <ul style="list-style-type: none"> <li>• Deliver Training and training materials</li> <li>• Document SAT results</li> <li>• Signed Certificate of Acceptance</li> <li>• Project Closure</li> </ul> | <ul style="list-style-type: none"> <li>• Product Training complete – Aclara will provide training for RF network system administrators, field personnel and customer service representatives.</li> <li>• System Acceptance Certificate Approved - SAT results will be documented and upon successful completion, a certificate of acceptance will be provided to the utility for signature.</li> </ul> |

## 5. Interface Scope

Aclara will provide file-based integration for the standardized Billing Output and Account Import interfaces. Aclara will provide sufficient assistance to the Client for integrating with the standard or agreed-upon interface file formats. It is the Client's responsibility to integrate these standards with their MDM/MDMS. The Client is responsible for extracting data as per the prescribed data format from the Client systems to integrate with Aclara interfaces.

Aclara will also provide the integration to AclaraONE™ as noted in the table below, however it is the responsibility of the Client to format the data for the described integration below in the standard Aclara integration format.

### Input Integration

| Integration Name               | Type      | Functions   |
|--------------------------------|-----------|---|
| Customer Import Interface      | Flat File | Populate AclaraONE™ with meter inventory and customer account/location details via CIS Level II import  |
| MultiSpeak Brokering Interface | Flat File | MultiSpeak brokering interface to Client's backend system and AclaraONE™ Connect/Disconnect. Target client system for this interface to be discussed during design sessions |

### Output Integration

| Integration Name         | Type                   | Functions  |
|--------------------------|------------------------|--|
| Billing Output Interface | TBD in design sessions | Export Billing Read values from AclaraONE™ to Client's MDM system using California Meter Exchange Protocol (CMEP) file format or other format to be defined in the design phase. |
| AMI Interval Exporter    | TBD in design sessions | Exports the AMI Interval data to Client's MDM (EIServer)   |

## 6. Draft Project Schedule

| Task Name                               | Duration |
|---|----------|
| ▲ Client SRFN & AclaraONE Project       | 105 days |
| Contract Executed                       | 0 days   |
| ▲ Phase 1 - AMI Deployment              | 105 days |
| ▷ Project Planning & Kickoff            | 16 days  |
| ▲ DCU Planning and Network Analysis     | 19 days  |
| ▷ Frequency activities                  | 19 days  |
| ▲ Network Design activities             | 19 days  |
| Review current prop study               | 2 days   |
| Identify Initial deployment area        | 4 days   |
| Create a list of initial DCUs locations | 3 days   |
| Complete Site Surveys                   | 6 days   |
| Update Propagation Analysis             | 4 days   |
| ▲ Requirements Analysis                 | 20 days  |
| ▲ AMI Requirements                      | 14 days  |
| ▷ DCUs                                  | 10 days  |
| ▷ Meters                                | 14 days  |
| ▷ Software requirements                 | 20 days  |
| ▲ AclaraONE Implementation              | 70 days  |
| Environment Setup                       | 6 wks    |
| Software Installed                      | 2 wks    |
| MDM Integration                         | 6 wks    |
| AMI integration                         | 3 wks    |
| Data Validation Workshop                | 6 wks    |
| AMI Head End Configured                 | 4 wks    |
| ▷ AclaraONE Training                    | 7 days   |
| ▷ System Acceptance                     | 51 days  |
| ▷ Phase 2 - Full Deployment             | 25 days  |

### Assumptions:

- Baselined project plan to be completed during the project planning stage. If the Client decides there is a need for a hybrid network (ie TWACS® PLC, Metrum Cellular), Aclara will update the project plan.
- During endpoint deployment, Aclara will provide oversight and endpoint troubleshooting support
- Client installs endpoints.

## 7. Modification

No modifications to the core software is planned for this project.

## 8. System Technical Support

Aclara will support the Client regarding the AclaraONE™ Solution and field hardware, which operates all main facets of the proposed solution.



**Attachment 2 to the Scope of Work  
Change Order Billings**

**1. Change Order Hourly Rates**

Expenses not included in the fixed cost of this Project will be billed as incurred. The following categories have been defined for the Aclara Professional Services Team in the event of a change order:

| <b>Resource</b>        | <b>Hourly Rate</b> | <b>Off-hours hourly rate</b> | <b>On-call hourly rate</b> |
|------------------------|--------------------|------------------------------|----------------------------|
| Sr. Technical Advisor  | \$250              | \$375                        | \$120                      |
| Product Manager        | \$200              | \$300                        | \$120                      |
| Project Manager        | \$195              | \$290                        | \$120                      |
| Systems Engineer       | \$165              | \$240                        | \$120                      |
| Systems Analyst        | \$165              | \$240                        | \$120                      |
| Database Administrator | \$185              | \$270                        | \$120                      |
| Field Supervisor       | \$165              | \$240                        | \$120                      |

**2. Services will be charged at the applicable rates as follows:**

- A. Standard Hourly Rates will apply to all service hours expended that do not exceed eight (8) consecutive hours during Aclara's normal business hours of 6:30 a.m. - 6:00 p.m. Central Time, Monday through Friday, excluding Aclara Holidays.
- B. Off-Hours Hourly Rates will apply to all service-hours expended beyond eight (8) consecutive hours during Aclara's normal business hours of 6:30 a.m. – 6:00 p.m. Central Time, Monday through Friday excluding Aclara Holidays.
- C. On-Call service is a pre-arranged service by which the Client places a request to have an Aclara staff member accessible for a specified time-period. During the period for which an Aclara staff member is accessible, On-Call Rates will be charged. If an Aclara staff member must perform services during the On-Call period, the services will be billed at the appropriate Hourly Rate or Off-Hours Hourly Rate, instead of the On-Call rate. This service will be provided remotely via a telecommunications link.

**3. On Site Services:** If Aclara is requested to travel to the Customer's site to provide Services, the costs and expenses associated with such travel will be borne by Customer and invoiced as set forth below.

- A. **Travel Expenses:** Unless otherwise mutually agreed, Aclara's travel expenses for On-Site Services shall include, but are not limited to transportation fares (air, bus, rail), lodging, meals, automobile rental, fuel, parking and local transportation, and will be charged to the Client on an actual basis. Actual receipts must be provided as documentation to Client. Travel reimbursement must follow CONUS guidelines.

- B. **Mileage:** To be billed based on then current IRS mileage rate.

**4. Aclara reserves the right to change the above rates upon 30 days' notice. Changed rates shall not apply retroactively.**

**Attachment 3 to the Scope of Work  
Change Order Procedure**

Any change to a Statement of Work must be agreed upon in writing by both parties. The following procedure (whether requested by the Client or Aclara) will be used to control all changes. All Requests for Change ("RFC") to the applicable Statement of Work must be made in writing and shall be submitted by the appropriate Project Manager.

Each request should contain the following information:

- The requested change;
- The impact, if any, on the existing work product;
- Estimated impact, if any, on Project schedule; and
- Estimated change, if any, in Services fees.

The Project Manager shall review and accept or reject the RFC. If rejected, the RFC shall be returned to the submitting party with written reasons for rejection and, as appropriate, any alternatives. All approved RFC's will be incorporated into the Change Order to this Statement of Work. Aclara will not perform any Services outside of the Statement of Work until the RFC has been signed by both parties.

1. Describe the requested change: \_\_\_\_\_  
\_\_\_\_\_

2. Define the impact, if any, on existing work product: \_\_\_\_\_  
\_\_\_\_\_

3. Define additional work product required as a result of the requested change, if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Define the impact, if any, to the existing Project schedule. Provide an updated Project schedule, if appropriate. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Provide an updated work product and payment schedule, if appropriate. \_\_\_\_\_  
\_\_\_\_\_

**Accepted By:**

**Aclara Technologies LLC**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

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

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

**Accepted By:**

**San Francisco Public Utilities Commission**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

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

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

## Draft SaaS Applciation and SLA

**Appendix B**  
**SaaS Application and Service Level Agreement**

- I. Description of the SaaS Application and Hosted Services**
- II. SaaS Data Centers**
- III. SaaS Maintenance Services.**
- IV. Subscriber Responsibilities**
- V. Technical Support & Training**
- VI. Disaster Recovery**
- V. Service Level Obligations**

**I. Description of the SaaS Application and Hosted Services:** “SaaS Application and Hosted Services” include the following services:

**A. Software:** Use of Service Provider Software operating on hosted equipment located at Service Provider’s facility and/or any Data Center as further outlined under Section II (SaaS Data Centers) of this Appendix. This includes:

1. A communication path operating at the SaaS Software for data acquisition of the meter reading and meter alarm data from Aclara Smart Infrastructure equipment and all other data collected by Subscriber’s AMI network.
2. A database or otherwise data repository required for the storage and access of meter reading and meter alarm data collected by Subscriber’s AMI network.
3. Access to data, folders, and other available services using Subscriber provided custom interfaces, third-party software, or Service Supplier provided software.
4. Access to and use of AclaraONE™ AMI webpages to include features and functionality that are made available to the Subscriber pursuant to the existing AclaraONE™ software agreements.
5. Access to a secure Web portal and sessions to the hosted Software, shared folders or other available services required for the Subscriber to operate the Synergize RF® AMI System
6. Inclusion of all existing interfaces (Account Import, Billing Extract -Complete ROUTES and SPID specific requests, Verified Reads, SPID Readings, ADR Extract, and Parallel Reads Reconciliation) to and from Software and the ability to develop interfaces to future systems or modify existing interfaces under a separate services agreement. Interfaces will be supported via a secure transport mechanism (i.e. SFTP).

**B. Third Party Software:**

1. Providing certain third party software required to operate the SaaS Software, including Microsoft SQL server, Microsoft Windows Server, and other bundled third-party software packages required to support the operation of the SaaS Software).
2. Inclusion of regular Software and Service Provider-supplied third party software updates, patches and fixes as scheduled by Service Provider.

**C. Remote Software:**

1. Service Provider shall provide access to and use of a remote software tool for Subscriber management of Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Services. Method will be published through Service Provider portal and be made available to Authorized Users with elevated privileges. .

**D. Back-Up of Subscriber Data:**

1. Service Provider shall provide up to thirty six (36) months of on-line hourly data retention for SaaS Software operation and functionality.
2. Service Provider shall provide incremental Subscriber Data backups at a minimum of every four (4) hours to an off-site location other than the primary hosting center.
3. Service Provider shall provide weekly, off-site backups not to exceed thirty six (36) months of Subscriber Data to a location other than the primary hosting center. Off-site backups to include previous eight (8) weeks.
4. Subscriber will be granted access to any backup stored in off-site location up to once per week exempt from any service or egress fees. More frequent requests will be available as-needed, but may be subject to reasonable services and egress fees that apply.

**E. SaaS Environments:** The SaaS Application and Hosted Services are hosted in a certified and secure Tier-3 data hosting center. The SaaS Application will be hosted within this data hosting center and provided with an AclaraONE™ System server breakdown as follows:

1. A single Production Environment to serve as the primary environment for the SaaS and Hosted Services

| <b>Production Environment</b> |       |
|-------------------------------|-------|
| Data Base Server              | Qty 1 |
| Communication Server          | Qty 2 |
| Web / Application Server      | Qty 1 |

2. A single Backup Environment available as needed to serve as the backup or “failover” environment for the SaaS and Hosted Services

| <b>Backup Environment</b> |       |
|---------------------------|-------|
| Data Base Server          | Qty 1 |
| Communication Server      | Qty 2 |
| Web / Application Server  | Qty 1 |

3. A single Test Environment available to the Subscriber and Service Provider for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. Test Environment shall perform at 50% or better of Production Environment.

| <b>Test Environment</b>                 |       |
|---|-------|
| Data Base Server                        | Qty 1 |
| Web / Application /Communication Server | Qty 1 |

**F. Reporting:**

1. Service Provider shall provide monthly reporting of host server performance monitoring of computing resources including CPU utilization, memory utilization, disk space allocation, disk I/O, network activity. In the event of the need for host server hardware resource tuning, Service Provider reserves the right to make appropriate modifications when commercially reasonable to the host server or hosting environment without notice to the Subscriber such they benefit the Subscriber or hosting environment.
2. Service Provider shall provide electronic notification within 2 hours of discovery and subsequent monthly reporting of any incidents or breaches that had occurred within the environment or to the hosted application. In the event of a breach, Service Provider shall follow the procedures set forth in Section 8(e) of the Agreement.
3. Service Provider shall provide AclaraONE™ Reports as identified and in the manner set forth in Appendix F.

**G. Availability of SaaS Services:** Service Provider (or its Hosting Service contractor) shall host the **SaaS Services** on computers owned or controlled by Service Provider (or its contractor) and shall provide the Subscriber with access to both a Production

Environment with SaaS Application and data and a Test Environment with SaaS Application via Internet-access to use according to the terms herein.

1. **Hosted System Uptime:** Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement and lack of internet availability as described below, Service Provider shall provide uptime to the SaaS Application and Hosted Service to achieve a 99% Service Level Availability.
2. **Scheduled SaaS Maintenance**
  - A. Scheduled SaaS Maintenance will be conducted during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time). With the same exclusions as noted above.
  - B. Scheduled SaaS Maintenance shall not exceed an average of 4 hours per month over a twelve (12) month period except for major upgrades.
3. **Unscheduled SaaS Maintenance**
  - A. Service Provider will use commercially reasonable efforts to prevent more than one (1) hour of continuous down time during Business Hours in any month for which Unscheduled SaaS Maintenance is required. In the event Service Provider fails to meet this obligation for a period of three successive calendar months, Subscriber shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month)
4. **Emergency Maintenance.** In the event that Force Majeure or emergencies arise or continue, Service Provider shall be entitled to take any actions that Service Provider, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by the Subscriber is made available. Service Provider shall endeavor to provide advance written notice of such emergency maintenance to the Subscriber as soon as is reasonably possible.
5. **Lack of Internet Availability.** A backup, fully diverse Internet service with enough capacity for the Subscriber Data (in addition to other data it may carry) will be available at the Primary Datacenter. Service Provider shall not be responsible for any deterioration, unavailability or performance degradation attributable to latencies in the telecommunications and public Internet network connections operated by any third party not under contract with Service Provider to provide these services. Although Service Provider will use commercially reasonable efforts

to take actions Service Provider may deem appropriate to mitigate the effects of any such events, Service Provider cannot guarantee that such events will not occur.

6. **Notice of Unavailability:** In the event there will be more than thirty (30) minutes down time of any SaaS or Hosted Service components for any reason, including but not limited to Scheduled SaaS Maintenance, emergency maintenance, and lack of internet availability, Service Provider will provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Service Provider will also provide e-mail notice to [SFPUCSTAR@sfwater.org](mailto:SFPUCSTAR@sfwater.org) which will include at least a brief description of the reason for the down time and an estimate of the time when the Subscriber can expect the site to be up and available.

**H. Changes in Functionality.** During the term of this Agreement, Service Provider shall not reduce or eliminate functionality in SaaS Services. Where Service Provider has reduced or eliminated functionality in SaaS Services, Subscriber, at Subscriber's sole election and in Subscriber's sole determination, shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Service Provider will immediately adjust the Services Fees accordingly on a prospective basis. Where Service Provider has introduced like functionality in other services, Where Service Provider increases functionality in the SaaS Services, such functionality shall be provided to Subscriber without any increase in the Services Fees.

**I. Exclusions to SaaS Application and Services:**

1. Excluding regular SaaS Maintenance Services as outline in Section III, Service Provider will not supply any customizations or otherwise alterations to the operation, appearance or logic of the SaaS Software as described here within unless specifically specified under a separate services agreement.
2. Service Provider will not perform any manual services such as normal periodic processing of accounts or readings for Subscriber's billing system for billing or other analysis purposes outside of normal existing automated Subscriber operations. Subscriber will retain access and ability to perform such operations as needed.
3. Service Provider will not perform any manual services that include any identification of individual field equipment failures, issues or potentials for improvement. Subscriber will retain access and ability to perform such operations as needed.
4. Service Provider will not supply any field labor to troubleshoot any MTU in the field
5. Service Provider will not supply any first response labor to troubleshoot DCU or other field network equipment.



6. Service Provider will not supply and parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.

**J. Change Control Procedure.** Subscriber may, upon written notice, request changes to the scope of the SaaS Services. If Subscriber requests an increase in the scope, Subscriber shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify Subscriber whether or not the change has an associated cost impact. In the event the Change Control has an associated cost impact, a written modification to this Agreement shall be executed in the same manner as this Agreement pursuant to Section 41 (Modification of Agreement) of this Agreement. If no cost impact is expected, and if Subscriber approves, Subscriber shall issue a change control, which will be executed by Service Provider. Subscriber shall have the right to decrease the scope and the associated fees accordingly.

## II. SaaS Data Centers

**A. Control:** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of Subscriber. The Services (including data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein.

**B. Location:** The location of the data center that will be used to host the SaaS Application is as follows:

**Primary Tier 3 data center:**

Tier Point Valley Forge Data Center – Pennsylvania  
1000 Adams Avenue  
Audubon, Pennsylvania USA 19403

**Back-up Tier 2 data center:**

IO  
Phoenix, AZ  
615 N 48th St, Phoenix, AZ 85008

**C. Replacement Hosted Provider:** In the event Service Provider changes the foregoing Hosted Provider, Service Provider shall provide Subscriber with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Service Provider's current Hosted Provider, and said replacement Hosted provider shall be located within the United States. The replacement Hosted Provider shall perform a SSAE 16, SOC 2 Audit Report at least annually and said audit shall be provided to Subscriber in accordance with this Agreement.

**D. Notice of Change:** In the event that the location of the data center used to host the SaaS Application is changed, Service Provider shall provide Subscriber with prior written

notice of said change and disclose the address of the new facility. Notification shall be provided to Subscriber by Service Provider within sixty (60) days of any such change taking place. Any such new primary facility shall be located within the United States. The data centers referenced above are subcontractors that are approved by Subscriber.

**E. Subcontractors.** Service Provider shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without Subscriber's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Service Provider's use of subcontractors shall not relieve Service Provider of any of its duties or obligations under this Agreement.

### **III. SaaS Maintenance Services.**

**A.** The SaaS Software maintained under this Agreement shall be the SaaS Software set forth in Appendix D to this Agreement.

**B.** The following SaaS Maintenance Services are included as part of this Agreement:

**1. Service Provider Software Version Upgrades, Software Revisions and Patches.**

Service Provider shall provide and implement ALL SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) the functionality of the SaaS Software and SaaS Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the SaaS Software and SaaS Services in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and SaaS Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) the Service Level Standards can be achieved; and, (d) the SaaS Software and SaaS Services work with the non-hosted browser version.

- i. Deployment of these revisions will be mutually agreed upon between Service Provider and Subscriber.
- ii. Release of software revisions as defined will be conducted on a schedule as determined by Service Provider. Service Provider shall provide no less than a thirty (30) calendar day prior written notice of when any such revision is scheduled to be released. Subscriber will be granted a fifteen (15) calendar day evaluation window to review release documentation regarding software modules being impacted and general revision changes.
- iii. After the evaluation period, Service Provider will conduct a deployment of the revision to the Subscriber Test Environment. The software deployment will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the upgrade activities within the Test Environment, Service Provider may provide nominal testing to ensure all systems are functional and the revision deployment was successful. Post deployment activities include an e-mail or portal post to serve as

written notification that this service has been completed. Subscriber will be allowed a forty-five (45) calendar day test window in which Subscriber has ability to test and raise issues with Service Provider. Issue resolution will be managed per the process as described here within. Test Environment deployment activities will be conducted during a mutual agreed to time window and may not necessarily align with the production maintenance windows as described within this document.

- iv. In the event a SaaS Severity Level 1 or Severity Level 2 Issue has been identified and appropriately triaged and classified by both Service Provider and Subscriber during the Test Environment deployment test window, Service Provider will be required to correct the SaaS Issue. If the SaaS Issue can be corrected and can be redeployed within the remainder of the deployment test window, Subscriber will have an additional five (5) testing days in which to evaluate and further test for the SaaS Issue resolution. If the SaaS Issue cannot be corrected within the remainder of the test window, Service Provider will deploy immediately upon availability with as much notice as practicable. Subscriber will be allowed an additional five (5) testing days to evaluate the correction post the test window if desired.
- v. If at any time during the testing window Subscriber identifies the presence of multiple SaaS Severity Level 1 or Severity Level 2 Issues that can be shown to materially impact Subscriber ability to continue testing, Subscriber may in writing elect to suspend testing until corrections for the SaaS Issues can be provided. Service Provider will deploy corrections immediately upon availability with as much notice as practicable. Upon release of corrections, Subscriber will have five (5) calendar days to commence the testing within the then available remaining testing window.
- vi. Unless exists outstanding circumstances as described here within, Service Provider will promote revision from Test Environment to Production and Back-up environments after the provided test window has elapsed. The software promotion will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the promotion activities within the Production and Back-up environment, Service Provider may provide nominal testing to ensure all systems are functional and the revision promotion was successful. Post promotion activities include an e-mail or portal post to serve as written notification that this service has been completed. At the point of e-mail or portal posting, the new revision will be considered "in production" and supported under the maintenance service terms described here within.
- vii. In support of such SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches, Service Provider shall provide updated user technical documentation reflecting the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches as

soon as reasonably practical after the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches have been released. Updated user technical documentation that corrects Errors or other minor discrepancies will be provided to Subscribers when available.

2. **Third Party Software Revisions.** At the option of Service Provider, periodic software revisions of Third Party Software included with the SaaS Software will be provided by Service Provider at its discretion without further charge provided the following conditions are met: (i) the Third Party Software revision corrects a malfunction or significant publicly disclosed security threat in the Third Party Software that affects the operation or ability to provide secure use of the SaaS Software; and (ii) the Third Party Software Revision has, in the opinion of Service Provider, corrected malfunctions or significant security threat identified in the Service Provider Technology System and has not created any additional malfunctions; and (iii) the Third Party Software revision is available to Service Provider. Subscriber is responsible for obtaining and installing or requesting install of the Third Party Software revision if the Third Party Software was not licensed to Subscriber by or through Service Provider. Third Party Software revisions provided by Service Provider are specifically limited to the Third Party Software identified and set forth in Appendix D to this Agreement.
- C. Response to SaaS Issues.** Service Provider will provide verbal or written responses to SaaS Issues identified by the Subscriber in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times as defined under Section VI.
- D. SaaS Software Maintenance Acceptance Period.** Unless as otherwise agreed to by Subscriber on a case-by-case basis, for non-emergency maintenance Subscriber shall have a twenty (20) business day period to test any maintenance changes prior to Service Provider introducing such maintenance changes into production. In the event that Subscriber rejects, for good cause, any maintenance changes during the SaaS Software Maintenance Acceptance Period, Service Provider shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if Subscriber has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by Subscriber and Service Provider shall be entitled to introduce the maintenance changes into production.
- E. SaaS Hardware:** Service Provider will use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the applications are deployed are attached to backup power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Service Provider at its deployment location and consistent with the Tier rating of the datacenter.
- F. SaaS Maintenance Services Limitations.** The SaaS Maintenance Services defined in this Agreement are applicable only to the Service Provider, excluding third party equipment not provided as part of the SaaS Services by Service Provider.. The following limitations apply to SaaS Maintenance Services under this Agreement:

1. SaaS Maintenance Services shall be limited to the latest SaaS Software Revision, currently maintained by Service Provider. All code changes, enhancements or fixes will be incorporated into the latest SaaS Software Revision or a future SaaS Software Revision. Service Provider has no obligation to make code changes, enhancements or fixes to previous SaaS Software Revisions.
2. SaaS Maintenance Services do not include costs incurred by Service Provider while investigating problems that are the result of Subscriber's negligence, misuse, or unauthorized application, alteration, or modification of the SaaS Software,
3. SaaS Maintenance Services do not include any problem arising from the use of components manufactured or authorized by anyone other than Service Provider as an interface or peripheral to the Software.
4. SaaS Maintenance Services do not include any problem resulting from the combination of the Software with such other programming or equipment unless such combination has been approved by Service Provider.
5. SaaS Maintenance Services do not include any problem caused by changes to other software (including releases and patches), interfaces or systems connected to the Software including but not limited to changes of operating systems database servers, web servers, and communications software.
6. SaaS Maintenance Services do not include changes in workflow, practices, procedures, or processes that differ from the SaaS Software approved specifications.
7. Subscriber specific testing and reimplementations of custom enhancements are not part of this Agreement unless specifically identified as such in Appendix A.

#### **IV. Subscriber Responsibilities**

- A. Service Provider provides technical support for SaaS Severity Level 1 and Severity Level 2 Issues, 24 hours per day; seven (7) days per week; 365 days per year.
- B. Subscriber shall provide Service Provider with timely notification of any SaaS Issues by either of these methods:
  1. **Contacting Service Provider Customer Support at 1-800-892-9008.**
  2. **By entering the problem on the Subscriber Portal.** Notifications can be submitted through the Subscriber Portal. This is the preferred method by which to contact Service Provider.
  3. If Subscriber cannot readily access the Service Provider Subscriber Portal, Subscriber may contact Service Provider at the "800" number listed above.
- C. **Technical Staff.** Subscriber shall be responsible for maintaining sufficient suitably trained technical staff to operate and maintain the Subscriber's AMI System on a day-

to-day basis. Service Provider training for designated contacts shall be made available to Subscriber.

- D. Support for Problem Investigation.** Subscriber shall support all reasonable requests by Service Provider as may be required in problem investigation and resolution.
- E. Designation of Point of Contact.** Subscriber shall assign an individual or individuals to serve as the designated contact(s) for all communication with Service Provider during SaaS Issue investigation and resolution.
- F. Discovery of Errors.** Upon discovery of an Error, Subscriber agrees, if requested by Service Provider, to submit to Service Provider a listing of output and any other data that Service Provider may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.

## V. Disaster Recovery

- A.** In the case of emergency work as described above or otherwise failure that Service Provider deems will disrupt and breach the Agreement set forth between Subscriber and Service Provider for Service Level Obligations, a Disaster Recovery plan will be exercised in order to restore and continue service. Disaster Recovery is considered an action plan applied in instances where Service Provider, in good faith, feels the emergency work or otherwise failure jeopardizes its ability to meet Service Level Obligations with the Subscriber for the Primary Environment. Service Provider shall use best efforts to restore operations at the same location or, at Service Provider's discretion, a backup location. Subscriber acknowledges and agrees that such an event may result in partial or degraded service when restored. The pre-disaster/loss level of service shall be restored as soon as commercially reasonable.
- B. Restoration Targets:** Restoration of services timeframes will be defined and measured as Recovery Point Objectives and Recovery Time Objectives.
- C. Recovery Point Objective:** The Recovery Point Objective (RPO) is defined to be the maximum acceptable amount of data loss for which the Subscriber may experience due to a temporary loss of Hosted Services and applications. Service Provider shall deliver a maximum RPO of four (4) hours based on incremental backups being made available between production and backup facilities and recovery, if any, of production data from DCUs.
- D. The Recovery Time Objective:** The maximum period of continuous time during which access to the Hosted Services and Software applications shall not be available to the Subscriber. Service Provider shall deliver a maximum RTO of twenty four (24) hours for the Hosted Services Production System and SaaS Applications.
- E. Data Synchronization:** Data Synchronization is defined to be the act of replicating or "mirroring" data from the Primary Environment SQL database server to an off-site "backup" location (the Back-up Tier 2 Data Center, Section II, SaaS Data Centers). Data Synchronization is to be used in the case of a Disaster Recovery event to restore

service. Data Synchronization occurs at a set interval of once per four (4) hours for incremental data set changes and weekly for a full backup.

- F. Recovery Testing:** Service Provider, jointly with Subscriber, shall test and exercise the Disaster Recovery Plan once (1) per contract year to ensure that the Tier 2 Back-up Data Center and Data Synchronization processes are functioning as expected. Subscriber shall allow for a maximum of a two (2) week runtime within the Back-Up Data Center before returning system operation to Primary Data Center.

**VI. Technical Support & Training**

- A. 24x7 Technical Support:** Authorized Users will make Technical Support requests by calling or emailing Service Provider’s Technical Support staff or by submitting a request via Service Provider’s customer service web portal. The Technical Support staff shall assign to the request the SaaS Severity Level (as defined herein) indicated by the requestor. SaaS Severity Level 1 and 2 items will be addressed 24/7. SaaS Severity Level 3 and 4 items will be addressed during the standard business hours of 6:00am-6:00pm US Pacific Time.

1. **Business Hours:** Technical Support is available between the business hours of 6:00am to 6:00 pm US Pacific Time by accessing the Service Provider Subscriber Portal (or Toll-free at 800-892-9008, or by emailing [support@aclara.com](mailto:support@aclara.com) if access to the Subscriber Portal is not readily available to Subscriber).
2. **After hours:** On-call technical support is available after 6pm and before 6:00am Pacific Time 24-hours a day/7 days a week/365 days a year, including Service Provider Holidays and weekends by accessing the Service Provider Subscriber Portal or calling Service Provider’s Toll –free number 800-892-9008.

| SaaS Severity Level  | <i>Target Response Time</i>   |
|--|---|
| <p><b>SaaS Severity Level 1:</b> <i>Requires immediate attention—Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.</i></p>                      | <p><i>Request Response Time: 30 minutes.</i><br/> <i>Request Resolution Time Target: &lt; 2 hours.</i><br/> <i>Maximum Permitted Request Resolution Time: &lt; 48 hours</i></p> |
| <p><b>SaaS Severity Level 2:</b> <i>Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.</i></p> | <p><i>Request Response Time: 1 hr.</i><br/> <i>Request Resolution Time Target: &lt; 4 hours</i><br/> <i>Maximum Permitted Request Resolution Time: &lt; 96 hours</i></p>        |
| <p><b>SaaS Severity Level 3:</b> <i>Requires attention—There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully</i></p>   | <p><i>Request Response Time: 1 hr.</i><br/> <i>Request Resolution Time Target: &lt; 6 hours</i></p>   |

| SaaS Severity Level  | <i>Target Response Time</i>  |
|--|--|
| <i>and users are able to continue business operations.</i>   | <i>Maximum Permitted Request Resolution Time: &lt; 7 days</i>  |
| <b>SaaS Severity Level 4:</b> <i>There is a problem or issue with no loss of service and no business impact.</i> | <i>Request Response Time: 1 hr.</i><br><i>Request Resolution Time Target: &lt; 24 hours</i><br><i>Maximum Permitted Request Resolution Time: &lt; 7 days</i> |

- A. **Access to Service Provider Subscriber Portal ([www.aclara.com](http://www.aclara.com)):** Subscriber will receive individual user names/passwords to the Service Provider Subscriber Portal, as well as have access to Issue Management Reports for each case generated by Subscriber.
- B. **Follow-up Service Provider Classroom Training.** Unlimited training is available at Service Provider’s facilities as listed on the Service Provider Subscriber Portal. The maximum number of Subscriber’s employees attending any Classroom Training session is three (3).
- C. **Service Provider Web based E-Learning classes.** At no cost to Subscriber, certain E-Learning classes are available as listed on the Service Provider Subscriber Portal to an unlimited number of Subscriber employees per course at the prices listed on the Service Provider Subscriber Portal.

**VII. Service Level Obligations.**

A. **Time is of the Essence.** For the term of this Agreement, Service Provider shall provide SaaS Services, force majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Levels as described herein, time being of the essence.

**B. Service Levels.**

1. **“Availability” Service Level:**

i. **Definitions:**

- a. **“Actual Uptime”:** The total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.
- b. **“Scheduled Downtime”:** The total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.
- c. **“Scheduled Uptime”:** The total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.



ii. **Service Level Standard.** Services will be available to Authorized Users for normal use 100% of the Scheduled Uptime.

a. **Calculation:**  $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 =$   
Percentage Uptime (as calculated by rounding to the second decimal point)

b. **Performance Credit.**

1) **Where Percentage Uptime is greater than 99%:** No Performance Credit will be due to Subscriber.

2) **Where Percentage Uptime is equal to or less than 99%:** Subscriber shall be due a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

## 2. "Response Time" Service Level.

i. **Definition(s).**

a. **"Response Time":** The interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.

b. **"Total Transactions":** The total of Transactions occurring in the reporting month.

c. **"Transaction" or "Transactions":** Services web page loads, Services web page displays, and Authorized User Services requests.

ii. **Service Level Standard.** Transactions will have a Response Time of two (2) seconds or less 95% of the time each reporting month during the periods for which the Services are available.

a. **Calculation.**  $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 =$  Percentage Response Time (as calculated by rounding to the second decimal point).

b. **Performance Credit.**

1) **Where Percentage Response Time is greater than 95.00%:** No Performance Credit will be due to Subscriber.

- 2) **Where Percentage Response Time is equal to or less than 95.00%:** Subscriber shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.

3. **“Technical Support Problem Response” Service Level.**

i. **Definition.**

- a. **“Total Problems”:** The total number of problems occurring in the reporting month.

- ii. **Service Level Standard.** Problems shall be confirmed as received by Service Provider 100% of the time each reporting month, in accordance with the Request Response Time associated with the SaaS Severity Level.

- a. **Calculation.**  $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$  (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

b. **Performance Credit.**

1) **SaaS Severity Level 1 – 2.**

- i) **Where Percentage Problem Response is greater than 99.00%:** No Performance Credit will be due to Subscriber.
- ii) **Where Percentage Problem Response is equal to or less than 99.00%:** Subscriber shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

2) **SaaS Severity Level 3 – 4.**

- i) **Where Percentage Problem Response is greater than 90.00%:** No Performance Credit will be due to Subscriber.
- ii) **Where Percentage Problem Response is equal to or less than 90.00%:** Subscriber shall be due a Performance Credit in the amount of .5% of the Services Fees (as calculated on a monthly basis for the

reporting month) for each full 1% reduction in Percentage Problem Response.

- C. Service Level Reporting.** On a monthly basis, in arrears and no later than the fifteenth (15<sup>th</sup>) calendar day of the subsequent month following the reporting month, Service Provider shall provide reports to Subscriber describing the performance of the SaaS Services and of Service Provider as compared to the service level standards described herein. The reports shall be in a form agreed-to by Subscriber, and, in no case, contain no less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the service level standards described herein; (c) the specific remedial actions Service Provider has undertaken or will undertake to ensure that the service level standards described herein will be subsequently achieved; and, (d) any Performance Credit due to Subscriber. Service Provider and Subscriber will meet as often as shall be reasonably requested by Subscriber, but no less than monthly, to review the performance of Service Provider as it relates to the service level standards described herein. Where Service Provider fails to provide a report for a service level standard described herein in the applicable timeframe, the service level standard shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Service Provider shall, without charge, make Subscriber's historical service level standard reports to Subscriber upon request.
- D. Failure to Meet Service Level Standards.** In the event Service Provider does not meet a service level standard described herein, Service Provider shall: (a) owe to Subscriber any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet service level standard described herein is subsequently met. Notwithstanding the foregoing, Service Provider will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall Subscriber be required to notify Service Provider that a Performance Credit is due as a condition of payment of the same.
- E. Termination for Material and Repeated Failures.** Subscriber shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees where Service Provider fails to meet any service level standards described herein: (a) to such an extent that the Subscriber's ability, as solely determined by Subscriber, to use the SaaS Services is materially disrupted, force majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.
- F. Audit of Service Levels.** No more than quarterly, Subscriber shall have the right to audit Service Provider's books, records, and measurement and auditing tools to verify service level obligations achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to Subscriber but not paid, Service Provider shall immediately owe to Subscriber the applicable Performance Credit.

## Draft Calculation of Charges



## SYSTEM IMPLEMENTATION SERVICES

| MAX QTY OVER 10 YRS  | UNIT PRICE (YRS 1-5)  | UNIT PRICE YR 6 | UNIT PRICE YR 7 | UNIT PRICE YR 8 | UNIT PRICE YR 9 | UNIT PRICE YR 10 | NTE Sub Total | Estimated Tax  | NTE Total      | NOTES |
|--|---|-----------------|-----------------|-----------------|-----------------|------------------|---------------|----------------|----------------|-------|
|  |   |                 |                 |                 |                 |                  |               |                |                |       |
| 1  | DCU Installation  | 1,000           | 1,000           | 1,000           | 1,000           | 1,000            | 20,000        | 0              | 20,000         |       |
| 2  | (Fixed Fee) Services for Aclara RF Network Optimization & Validation              | 72,035          | NA              | NA              | NA              | NA               | 72,035        | 0              | 72,035         |       |
| 3  | (Fixed Fee) Hosted AclaraONE Unified Headend Software Implementation Fee          | 45,850          | NA              | NA              | NA              | NA               | 45,850        | 0              | 45,850         |       |
| 4  | (Fixed Fee) Project Implementation Fee  | 42,700          | NA              | NA              | NA              | NA               | 42,700        | 0              | 42,700         |       |
| 5  | (Fixed Fee) Trailing - New Customer Install & Operation (5 Days on Customer Site) | 6,966           | 7,534           | 7,534           | 7,534           | 7,534            | 14,500        | 0              | 14,500         |       |
| 6  | (Fixed Fee) Hosted Utiliwise Implementation Fee                                   | 5,200           | 5,624           | 5,849           | 6,083           | 6,327            | 6,327         | 0              | 6,327          |       |
| 7  | (Fixed Fee) Optional hosted report data export tool                               | 2,500           | 2,500           | 2,500           | 2,500           | 2,500            | 2,500         | 0              | 2,500          |       |
| 8  | (Fixed Fee) (Optional future MDM) CMEP Interval Exporter Hosting Set Up           | 5,063           | 5,063           | 5,063           | 5,063           | 5,063            | 5,063         | 0              | 5,063          | (10)  |
| 9  | Travel Expenses   |                 | 50,000          | 50,000          | 50,000          | 50,000           | 50,000        | 0              | 50,000         |       |
| <b>UPCOUNTRY OPTION 1 - MOCCASIN SYNERGIZE RF ONLY</b>                                   |   |                 |                 |                 |                 |                  |               |                |                |       |
| 10   | DCU Installation  | 1,000           | 1,000           | 1,000           | 1,000           | 1,000            | 2,000         | 0              | 2,000          |       |
| <b>UPCOUNTRY OPTION 2 - ACLARA SYNERGIZE RF ALL LOCATIONS</b>                            |   |                 |                 |                 |                 |                  |               |                |                |       |
| 11   | DCU Installation  | 1,000           | 1,000           | 1,000           | 1,000           | 1,000            | 6,000         | 0              | 6,000          |       |
| <b>UPCOUNTRY OPTION 3 - PLC INSTALLED AT HOLM &amp; KIRKWOOD / SYNERGIZE RF MOCCASIN</b> |   |                 |                 |                 |                 |                  |               |                |                |       |
| 12   | DCU Installation  | 1,000           | 1,000           | 1,000           | 1,000           | 1,000            | 2,000         | 0              | 2,000          |       |
| 13   | PLC Installation Services   | 5,750           | 5,980           | 6,219           | 6,468           | 6,727            | 13,992        | 0              | 13,992         |       |
| 14   | PLC Feeder Installation Services  | 1,450           | 1,508           | 1,566           | 1,631           | 1,696            | 7,057         | 0              | 7,057          |       |
| <b>UPCOUNTRY OPTION 4 - POWERLINE COMMUNICATIONS IN ALL THREE SUBSTATIONS</b>            |   |                 |                 |                 |                 |                  |               |                |                |       |
| 15   | PLC Installation Services   | 5,750           | 6,219           | 6,468           | 6,727           | 6,996            | 20,987        | 0              | 20,987         |       |
| 16   | PLC Feeder Installation Services  | 1,450           | 1,508           | 1,568           | 1,631           | 1,696            | 10,585        | 0              | 10,585         |       |
| <b>TOTAL SERVICES NOT TO EXCEED AMOUNT</b>   |   |                 |                 |                 |                 |                  |               | <b>290,547</b> | <b>290,547</b> |       |

Note 10. CMEP protocol for MDM integration, does not include event data integration.

Italicized grey values were not included in the NTE amount because they are alternative, not additional options.

# SAAS APPLICATION

| ITEM | DESCRIPTION                               | OVER 10 YRS | UNIT PRICE (YRS 1-5) |         |         | UNIT PRICE YR 6 |         |         | UNIT PRICE YR 7 |         |         | UNIT PRICE YR 8 |         |         | UNIT PRICE YR 9 |         |         | UNIT PRICE YR 10 |         |         | NTE Sub-Total | Estimated Tax | NTE Total | NOTES |
|------|---|-------------|----------------------|---------|---------|-----------------|---------|---------|-----------------|---------|---------|-----------------|---------|---------|-----------------|---------|---------|------------------|---------|---------|---------------|---------------|-----------|-------|
|      |   |             | YR 1                 | YR 2    | YR 3    | YR 4            | YR 5    | YR 6    | YR 7            | YR 8    | YR 9    | YR 10           | YR 11   | YR 12   | YR 13           | YR 14   | YR 15   | YR 16            | YR 17   | YR 18   |               |               |           |       |
| 1    | Adira ONE Hosted Report Data Export Tool  | 10          | 1,250                | 1,300   | 1,352   | 1,406           | 1,462   | 1,521   | 1,581           | 1,642   | 1,704   | 1,768           | 1,834   | 1,901   | 1,969           | 2,038   | 2,108   | 2,179            | 2,251   | 13,291  |               | 13,291        |           |       |
| 2    | Adira ONE Hosted Report Data Export Tool  | 10          | 8,609                | 8,953   | 9,311   | 9,684           | 10,071  | 10,474  | 10,892          | 11,324  | 11,771  | 12,233          | 12,710  | 13,203  | 13,712          | 14,237  | 14,778  | 15,335           | 15,908  | 16,497  | 91,539        |               | 91,539    |       |
| 3    | Hosted Utilize Fee (1 - 99 Metrum Meters) | 10          | 30,087               | 31,290  | 32,542  | 33,844          | 35,198  | 36,605  | 38,067          | 39,584  | 41,158  | 42,791          | 44,474  | 46,208  | 47,994          | 49,833  | 51,726  | 53,674           | 55,677  | 57,735  | 319,814       |               | 319,814   |       |
| 4    | 0 to 999 Endpoints                        | 10          | 36,536               | 37,577  | 38,670  | 39,816          | 41,016  | 42,270  | 43,579          | 44,944  | 46,366  | 47,846          | 49,384  | 50,981  | 52,638          | 54,356  | 56,135  | 57,976           | 59,879  | 61,845  | 324,689       |               | 324,689   |       |
| 5    | 1000 to 1999 Endpoints                    | 10          | 35,927               | 37,000  | 38,125  | 39,303          | 40,536  | 41,824  | 43,168          | 44,568  | 46,025  | 47,539          | 49,110  | 50,739  | 52,427          | 54,175  | 55,984  | 57,854           | 59,786  | 61,780  | 375,631       |               | 375,631   |       |
| 6    | 2000 to 2999 Endpoints                    | 10          | 35,927               | 37,000  | 38,125  | 39,303          | 40,536  | 41,824  | 43,168          | 44,568  | 46,025  | 47,539          | 49,110  | 50,739  | 52,427          | 54,175  | 55,984  | 57,854           | 59,786  | 61,780  | 380,416       |               | 380,416   |       |
| 7    | 3000 to 3999 Endpoints                    | 10          | 35,927               | 37,000  | 38,125  | 39,303          | 40,536  | 41,824  | 43,168          | 44,568  | 46,025  | 47,539          | 49,110  | 50,739  | 52,427          | 54,175  | 55,984  | 57,854           | 59,786  | 61,780  | 395,200       |               | 395,200   |       |
| 8    | 4000 to 4999 Endpoints                    | 10          | 36,227               | 37,376  | 38,584  | 39,852          | 41,180  | 42,568  | 44,017          | 45,527  | 47,099  | 48,734          | 50,433  | 52,198  | 54,030          | 55,930  | 57,898  | 59,935           | 62,041  | 64,216  | 395,200       |               | 395,200   |       |
| 9    | 5000 to 5999 Endpoints                    | 10          | 49,012               | 50,972  | 53,011  | 55,132          | 57,335  | 59,621  | 62,000          | 64,472  | 67,038  | 69,701          | 72,461  | 75,319  | 78,276          | 81,333  | 84,491  | 87,751           | 91,113  | 94,578  | 520,463       |               | 520,463   |       |
| 10   | 6000 to 6999 Endpoints                    | 10          | 48,912               | 50,864  | 52,899  | 55,018          | 57,222  | 59,512  | 61,888          | 64,360  | 66,928  | 69,592          | 72,352  | 75,209  | 78,165          | 81,222  | 84,380  | 87,639           | 91,000  | 94,464  | 530,713       |               | 530,713   |       |
| 11   | 7000 to 7999 Endpoints                    | 10          | 48,912               | 50,864  | 52,899  | 55,018          | 57,222  | 59,512  | 61,888          | 64,360  | 66,928  | 69,592          | 72,352  | 75,209  | 78,165          | 81,222  | 84,380  | 87,639           | 91,000  | 94,464  | 535,498       |               | 535,498   |       |
| 12   | 8000 to 8999 Endpoints                    | 10          | 50,362               | 52,444  | 54,669  | 57,038          | 59,553  | 62,214  | 64,927          | 67,693  | 70,513  | 73,387          | 76,316  | 79,300  | 82,339          | 85,434  | 88,586  | 91,796           | 95,064  | 98,391  | 540,283       |               | 540,283   |       |
| 13   | 9000 to 9999 Endpoints                    | 10          | 50,362               | 52,444  | 54,669  | 57,038          | 59,553  | 62,214  | 64,927          | 67,693  | 70,513  | 73,387          | 76,316  | 79,300  | 82,339          | 85,434  | 88,586  | 91,796           | 95,064  | 98,391  | 540,283       |               | 540,283   |       |
| 14   | 10000 to 10999 Endpoints                  | 10          | 74,243               | 77,123  | 80,301  | 83,778          | 87,454  | 91,330  | 95,406          | 99,683  | 104,161 | 108,840         | 113,720 | 118,802 | 124,087         | 129,576 | 135,270 | 141,169          | 147,274 | 153,585 | 794,219       |               | 794,219   |       |
| 15   | 11000 to 11999 Endpoints                  | 10          | 74,243               | 77,123  | 80,301  | 83,778          | 87,454  | 91,330  | 95,406          | 99,683  | 104,161 | 108,840         | 113,720 | 118,802 | 124,087         | 129,576 | 135,270 | 141,169          | 147,274 | 153,585 | 799,004       |               | 799,004   |       |
| 16   | 12000 to 12999 Endpoints                  | 10          | 75,164               | 78,150  | 81,276  | 84,547          | 88,064  | 91,827  | 95,832          | 100,080 | 104,573 | 109,311         | 114,290 | 119,511 | 124,974         | 130,680 | 136,629 | 142,822          | 149,260 | 155,943 | 803,789       |               | 803,789   |       |
| 17   | 13000 to 13999 Endpoints                  | 10          | 75,584               | 78,618  | 81,762  | 85,033          | 88,549  | 92,310  | 96,321          | 100,582 | 105,094 | 109,857         | 114,872 | 120,140 | 125,662         | 131,441 | 137,478 | 143,782          | 150,352 | 157,195 | 808,574       |               | 808,574   |       |
| 18   | 14000 to 14999 Endpoints                  | 10          | 76,494               | 79,594  | 82,796  | 86,100          | 89,608  | 93,321  | 97,239          | 101,362 | 105,690 | 110,223         | 114,961 | 119,904 | 125,052         | 130,405 | 135,964 | 141,734          | 147,715 | 153,908 | 813,359       |               | 813,359   |       |
| 19   | 15000 to 15999 Endpoints                  | 10          | 76,494               | 79,594  | 82,796  | 86,100          | 89,608  | 93,321  | 97,239          | 101,362 | 105,690 | 110,223         | 114,961 | 119,904 | 125,052         | 130,405 | 135,964 | 141,734          | 147,715 | 153,908 | 818,144       |               | 818,144   |       |
| 20   | 16000 to 16999 Endpoints                  | 10          | 77,304               | 80,400  | 83,709  | 87,228          | 90,960  | 94,904  | 99,060          | 103,428 | 108,009 | 112,806         | 117,819 | 123,048 | 128,494         | 134,158 | 140,048 | 146,165          | 152,509 | 159,080 | 822,939       |               | 822,939   |       |
| 21   | 17000 to 17999 Endpoints                  | 10          | 77,868               | 80,958  | 84,267  | 87,796          | 91,544  | 95,511  | 99,697          | 104,102 | 108,727 | 113,572         | 118,637 | 123,922 | 129,427         | 135,152 | 141,097 | 147,262          | 153,647 | 160,252 | 827,715       |               | 827,715   |       |
| 22   | 18000 to 18999 Endpoints                  | 10          | 78,289               | 81,425  | 84,687  | 88,168          | 91,877  | 95,814  | 100,000         | 104,463 | 109,195 | 114,186         | 119,436 | 124,945 | 130,714         | 136,742 | 142,930 | 149,278          | 155,786 | 162,454 | 832,488       |               | 832,488   |       |
| 23   | 19000 to 19999 Endpoints                  | 10          | 78,744               | 81,894  | 85,166  | 88,660          | 92,387  | 96,350  | 100,550         | 104,977 | 109,620 | 114,478         | 119,551 | 124,839 | 130,342         | 136,064 | 141,994 | 148,132          | 154,479 | 161,034 | 837,263       |               | 837,263   |       |
| 24   | 20000 to 20999 Endpoints                  | 10          | 79,194               | 82,362  | 85,655  | 89,172          | 92,919  | 96,896  | 101,104         | 105,542 | 110,201 | 115,070         | 120,149 | 125,438 | 130,937         | 136,646 | 142,565 | 148,694          | 155,033 | 161,582 | 842,066       |               | 842,066   |       |
| 25   | 21000 to 21999 Endpoints                  | 10          | 79,644               | 82,830  | 86,143  | 89,681          | 93,440  | 97,419  | 101,618         | 106,037 | 110,676 | 115,535         | 120,614 | 125,913 | 131,432         | 137,171 | 143,130 | 149,309          | 155,708 | 162,327 | 846,853       |               | 846,853   |       |
| 26   | 22000 to 22999 Endpoints                  | 10          | 80,094               | 83,298  | 86,630  | 90,189          | 93,962  | 97,949  | 102,152         | 106,571 | 111,206 | 116,055         | 121,118 | 126,395 | 131,888         | 137,597 | 143,522 | 149,663          | 156,020 | 162,593 | 851,638       |               | 851,638   |       |
| 27   | 23000 to 23999 Endpoints                  | 10          | 80,544               | 83,766  | 87,116  | 90,695          | 94,492  | 98,508  | 102,844         | 107,401 | 112,178 | 117,175         | 122,392 | 127,829 | 133,486         | 139,364 | 145,463 | 151,783          | 158,324 | 165,087 | 856,422       |               | 856,422   |       |
| 28   | 24000 to 24999 Endpoints                  | 10          | 102,318              | 106,411 | 110,667 | 115,084         | 119,662 | 124,401 | 129,300         | 134,359 | 139,568 | 144,927         | 150,436 | 156,095 | 161,904         | 167,863 | 173,972 | 180,231          | 186,640 | 193,200 | 1,067,945     |               | 1,067,945 |       |
| 29   | 25000 to 25999 Endpoints                  | 10          | 103,218              | 107,347 | 111,641 | 116,106         | 120,744 | 125,545 | 130,509         | 135,636 | 140,925 | 146,376         | 151,989 | 157,764 | 163,692         | 169,773 | 175,906 | 182,192          | 188,631 | 195,222 | 1,097,514     |               | 1,097,514 |       |
| 30   | 26000 to 26999 Endpoints                  | 10          | 104,118              | 108,283 | 112,614 | 117,111         | 121,774 | 126,592 | 131,565         | 136,694 | 141,973 | 147,402         | 152,981 | 158,710 | 164,589         | 170,618 | 176,797 | 183,126          | 189,605 | 196,234 | 1,107,084     |               | 1,107,084 |       |
| 31   | 27000 to 27999 Endpoints                  | 10          | 105,018              | 109,219 | 113,597 | 118,151         | 122,870 | 127,744 | 132,763         | 137,927 | 143,236 | 148,690         | 154,189 | 159,833 | 165,622         | 171,556 | 177,635 | 183,859          | 190,228 | 196,742 | 1,116,654     |               | 1,116,654 |       |
| 32   | 28000 to 28999 Endpoints                  | 10          | 106,818              | 111,091 | 115,534 | 120,142         | 124,925 | 129,883 | 134,916         | 140,124 | 145,507 | 151,065         | 156,798 | 162,606 | 168,589         | 174,747 | 181,080 | 187,588          | 194,271 | 201,129 | 1,126,223     |               | 1,126,223 |       |
| 33   | 29000 to 29999 Endpoints                  | 10          | 107,718              | 112,027 | 116,481 | 121,080         | 125,823 | 130,700 | 135,712         | 140,859 | 146,136 | 151,543         | 157,080 | 162,747 | 168,544         | 174,471 | 180,528 | 186,715          | 193,032 | 199,479 | 1,135,793     |               | 1,135,793 |       |
| 34   | 30000 to 30999 Endpoints                  | 10          | 109,518              | 113,889 | 118,312 | 122,887         | 127,614 | 132,483 | 137,494         | 142,637 | 147,914 | 153,325         | 158,870 | 164,549 | 170,362         | 176,309 | 182,382 | 188,581          | 194,906 | 201,357 | 1,145,363     |               | 1,145,363 |       |
| 35   | 31000 to 31999 Endpoints                  | 10          | 111,318              | 115,771 | 120,276 | 124,933         | 129,743 | 134,706 | 139,822         | 145,093 | 150,519 | 156,091         | 161,809 | 167,663 | 173,653         | 179,778 | 186,027 | 192,401          | 198,900 | 205,524 | 1,154,933     |               | 1,154,933 |       |
| 36   | 32000 to 32999 Endpoints                  | 10          | 112,218              | 116,701 | 121,226 | 125,903         | 130,733 | 135,715 | 140,849         | 146,136 | 151,576 | 157,171         | 162,921 | 168,821 | 174,870         | 181,068 | 187,415 | 193,912          | 200,559 | 207,347 | 1,164,502     |               | 1,164,502 |       |
| 37   | 33000 to 33999 Endpoints                  | 10          | 113,118              | 117,631 | 122,185 | 126,880         | 131,727 | 136,726 | 141,877         | 147,182 | 152,641 | 158,254         | 164,021 | 169,942 | 176,017         | 182,246 | 188,629 | 195,166          | 201,863 | 208,720 | 1,174,072     |               | 1,174,072 |       |
| 38   | 34000 to 34999 Endpoints                  | 10          | 114,018              | 118,561 | 123,145 | 127,869         | 132,743 | 137,767 | 142,941         | 148,265 | 153,739 | 159,363         | 165,137 | 171,061 | 177,135         | 183,359 | 189,733 | 196,257          | 202,931 | 209,755 | 1,183,642     |               | 1,183,642 |       |
| 39   | 35000 to 35999 Endpoints                  | 10          | 114,918              | 119,481 | 124,085 | 128,829         | 133,723 | 138,767 | 143,961         | 149,305 | 154,799 | 160,443         | 166,237 | 172,181 | 178,275         | 184,519 | 190,913 | 197,457          | 204,151 | 210,995 | 1,193,211     |               | 1,193,211 |       |
| 40   | 36000 to 36999 Endpoints                  | 10          | 11                   |         |         |                 |         |         |                 |         |         |                 |         |         |                 |         |         |                  |         |         |               |               |           |       |

| ITEM QTY   | OVER 10 YRS | UNIT PRICE (YRS 1-5) | UNIT PRICE YR 6 | UNIT PRICE YR 7 | UNIT PRICE YR 8 | UNIT PRICE YR 9 | UNIT PRICE YR 10 | NTE Total     | Estimated Tax | Total NTE      | NOTES |
|--|-------------|----------------------|-----------------|-----------------|-----------------|-----------------|------------------|---------------|---------------|----------------|-------|
|  |             |                      |                 |                 |                 |                 |                  |               |               |                |       |
| 1  |             | \$ 5,000             | \$ 5,000        | \$ 5,000        | \$ 5,000        | \$ 5,000        | \$ 5,000         | \$ 45,000.00  | \$ -          | \$ 45,000      |       |
| 2  |             | \$ 11,700            | \$ 11,700       | \$ 11,700       | \$ 11,700       | \$ 11,700       | \$ 11,700        | \$ 105,300.00 | \$ -          | \$ 105,300     |       |
| 3  |             | \$ 2,000             | \$ 2,000        | \$ 2,000        | \$ 2,000        | \$ 2,000        | \$ 2,000         | \$ 20,000.00  | \$ -          | \$ 20,000      |       |
| 4  |             | \$ 4,000             | \$ 4,000        | \$ 4,000        | \$ 4,000        | \$ 4,000        | \$ 4,000         | \$ 40,000.00  | \$ -          | \$ 40,000      |       |
| 5  |             | \$ 6,000             | \$ 6,000        | \$ 6,000        | \$ 6,000        | \$ 6,000        | \$ 6,000         | \$ 60,000.00  | \$ -          | \$ 60,000      |       |
| 6  |             | \$ 8,000             | \$ 8,000        | \$ 8,000        | \$ 8,000        | \$ 8,000        | \$ 8,000         | \$ 80,000.00  | \$ -          | \$ 80,000      |       |
| 7  |             |                      | \$ 20,000       |                 |                 |                 |                  | \$ 20,000     | \$ -          | \$ 20,000      |       |
| <b>UPCOUNTRY OPTION 3 - PLC INSTALLED AT HOLM &amp; KIRKWOOD / SYNERGIZE RF MOCCASIN</b> |             |                      |                 |                 |                 |                 |                  |               |               |                |       |
| 8  |             | \$ 2,000             | \$ 2,080        | \$ 2,163        | \$ 2,250        | \$ 2,340        | \$ 2,433         | \$ 24,333     | \$ -          | \$ 24,333      |       |
| <b>UPCOUNTRY OPTION 4 - POWERLINE COMMUNICATIONS IN ALL THREE SUBSTATIONS</b>            |             |                      |                 |                 |                 |                 |                  |               |               |                |       |
| 9  |             | \$ 2,000             | \$ 2,000        | \$ 2,000        | \$ 2,000        | \$ 2,000        | \$ 2,000         | \$ 20,000     | \$ -          | \$ 20,000      |       |
| <b>TOTAL SYSTEM SUPPORT NOT TO EXCEED AMOUNT</b>   |             |                      |                 |                 |                 |                 |                  |               |               | <b>205,300</b> |       |

Italicized grey values were not included in the NTE amount because they are alternative, not additional options.

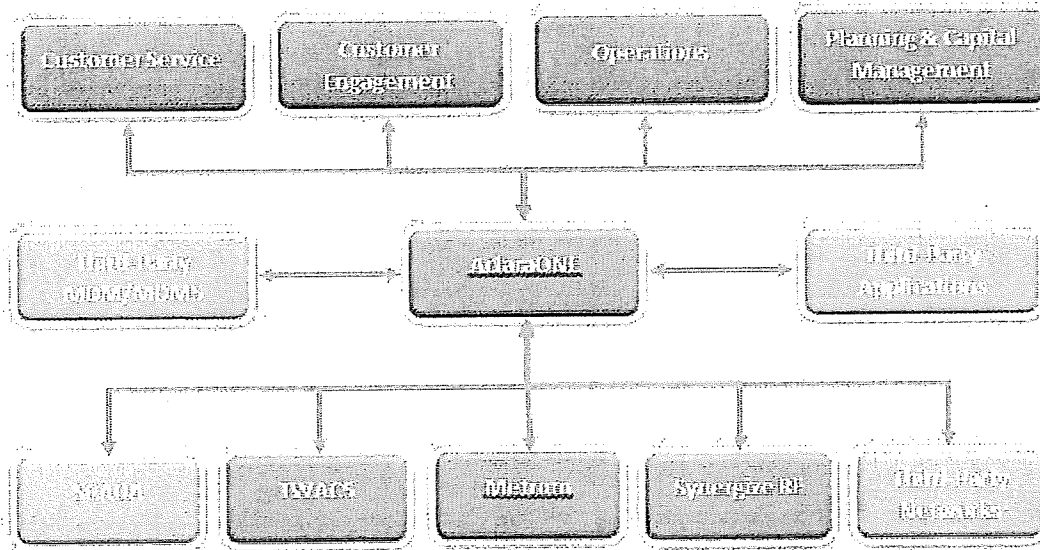


## Draft System Hardware Descriptions

## Appendix D System Software & Hardware Descriptions

### I. System Software Included with SaaS Services

**Aclara AclaraONE™ Application.** Aclara's head-end and meter data management system are functions provided in the AclaraONE software platform, designed so that all networks and 3rd party applications can be accessed with a single sign-on experience. Your choice of TWACS or Synergize RF Network technology is handled by the AclaraONE MDMS and various Head ends. The single user experience boosts productivity of customer service reps and utility operators and improves security capabilities while simplifying multi-factor authentication. Error! Reference source not found.shows the potential integration of multiple utility offices, functions, purposes and networks with a single sign-on interface.



### II. AclaraONE Base Model Functions

#### A. Messaging – Alerts

This section allows administration and/or individual AclaraONE users to subscribe to alerts delivered to phone or email, and schedule reports delivered to email. Alerts and reports can be added by professional services, as software integrations enrich the events known to AclaraONE. This section helps users avoid errors and omissions and support a dynamic, mobile workforce.

#### B. Import & Export

This section helps users manage the scheduling and tracking of the import and export files that form the basis of AclaraONE bulk data exchange with the AMI and with adjacent back office applications such as CIS and third-party analytics. Schedules are managed using a simple readable visual editor. The scheduler is supported by reports,

alerts, and dashboard widgets so operators can monitor jobs and be notified when exceptions occur.

**C. Advanced Charting**

Operators may create by hand or automatically by a rule, lists of meters that may usefully be analyzed as a group. This could include all commercial meters of a rate class or billing cycle, or all meters on a feeder being studied. The rolled-up virtual meter data can be reported on and graphed like a single meter, and then compared to the component meters using a rich library of charting options.

**D. CSR Web Portal**

In the CSR portal, service agents and managers can search for meter data by account, name, street, and meter number using AclaraONE Smart Search. Accounts with multiple meters are retrieved together, service type clearly indicated. Users see account information, meter history and status, and more at a glance. Reports, charts, and actions such as on-demand read and disconnect are a click away. This section greatly improves one call resolution rate for CSRs and eliminates menu traversals.

**E. Dashboard**

AclaraONE comes with a standard operations dashboard that shows network health, local weather, and system exceptions. Additionally, a user-friendly dashboard editor allows individual operators to create custom dashboards from a rich library of widgets. This ensures that the status information needed for their job is available at a glance at all times, improving accuracy and efficiency of work.

**F. VEE**

AclaraONE Validation, Estimation, and Editing tools are simple to set up and use. The value of VEE increases as AclaraONE is more fully integrated into the utility ecosystem. Utilities who have not used VEE before can keep existing processes while using the VEE tools to understand the impact of implementing VEE. Good round-trip integration among AclaraONE, MDM/MDMS, and OMS will yield best results in terms of accurate and fair billing revenue assurance.

**III. System Architecture**

**A. Optimal architectural design of the AMI**

- Database in use
- AclaraONE uses Windows Server 2012 for the operating system and uses SQL Server 2012 for its database engine.

**B. Operating system**

- AclaraONE uses Windows Server 2012 for the operating system.

**C. Program language**

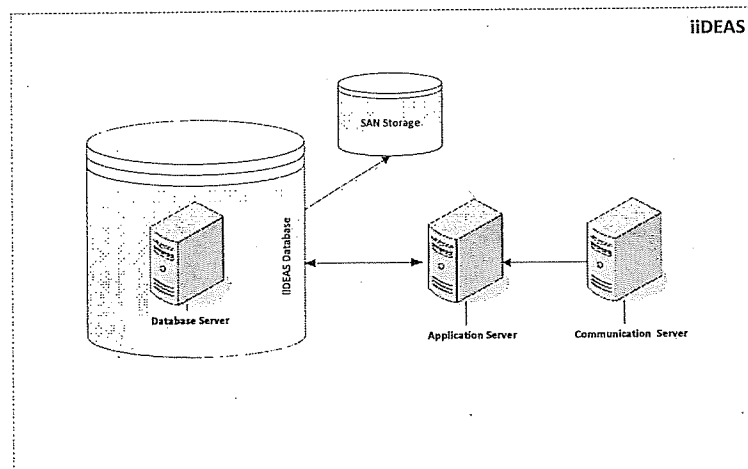
- AclaraONE Platform: SQL Server 2012 R2
- Microsoft ASP.NET ASP, C# Microsoft APT.NET MVC, C#

- Microsoft ASP.Net Web API
- Window Services (Applications), C#
- Web Services, ASMX, WCF
- JQuery
- HighCharts.com (JavaScript charting library)

#### D. Third party licenses provided in hosted version

- **Microsoft Windows Server.**<sup>1</sup> The operating system required for all servers or environments that will run any component of the Aclara Star NCC Application in use as part of the SaaS Services. The version of Microsoft Windows Server used will be at least Microsoft Windows Server 2012 R2, released by Microsoft in October 2013 with mainstream support until January 9, 2018 and extended support until January 10, 2023. Updates to future enhancements or otherwise newer versions of the Microsoft Windows Server used to deliver the SaaS Services will be made per the terms of this agreement.
- **Microsoft SQL Server.**<sup>2</sup> The relational database management system required for the servers or environments that will run the STAR Database component of the Aclara Star NCC Application in use as part of the SaaS Services. The version of Microsoft SQL Server used will be at least Microsoft SQL Server 2012 SP1, released by Microsoft in November 2012 with mainstream support until July 11, 2017 and extended support until July 12, 2022. Updates to future enhancements or otherwise newer versions of the Microsoft SQL Server used to deliver the SaaS Services will be made per the terms of this agreement.

#### IV. AclaraONE's Physical Architecture



<sup>1</sup> Must be a supported version of product and not end of life.

<sup>2</sup> Must be a supported version of product and not end of life.

## V. System Hardware

- Synergize® RF Combination Data Collection Unit (DCU) Network
- Lithium Battery Parts
- 42ah Battery Parts
- Antenna (Combo) Parts
- Transceiver Board Parts
- Verizon LTE Card Parts
- DCU Mounting Hardware Network
- Aclara i210+ 2s, CL200 meter Meter
- Aclara i210+ 3s/4s CL20 meter Meter
- Aclara i210+c 2s, CL200 w/RD Meter
- Aclara i210+c 3s/4s CL20 w/o RD Meter
- Aclara KV2c (Forms 9s, 12s, 14s, 16s & 45s) CL20/200
  - Synergize RF and UMT (TWACS) Meter
- Aclara KV2c (Forms 9s, 12s, 14s, 16s & 45s) CL20/200
  - Metrum Meter
- Portable RCF Test Unit Network
- Serial Interface Adaptor (USB and two cables) Meters
- Miscellaneous Parts Parts
- CRUZ Unit Network
- Outdoor Enclosure & Mounting Shelf Bundle for CRUZ Network
- OMU, Standard Temperature w/ TSC kit Network
- IPU 5 amp Network
- Modulation Transformer Unit (MTU) Network

## Draft Hardware Maintenance

## Appendix E Hardware Maintenance

### A. Synergize® RF Combination Data Collection Units (DCUs)

The Aclara Synergize RF DCUs have a one year warranty (one (1) year from installation OR eighteen (18) months from purchase) that covers all items in the device.

Post warranty, Aclara Technologies LLC (“Aclara”) will offer the San Francisco Public Utilities Commission (“Customer”) an annual maintenance option that covers Aclara’s Synergize™ RF Network DCU Maintenance Service (“Annual DCU Maintenance Service”). Annual DCU Maintenance Service is designed to provide on-site repair of any DCU that fails under normal operation after expiration of the standard DCU Warranty. Annual DCU Maintenance Service covers all electronics, the Aclara provided WAN module and solar cell, but excludes the mounting frame, mounting hardware and batteries.

Annual DCU Maintenance Service does not include:

1. Maintenance or repairs attributable to the unauthorized attempt by Customer or any unauthorized person other than an authorized Aclara representative to repair or maintain a DCU;
2. Maintenance or repairs resulting from casualty, catastrophe, extreme weather conditions or natural disaster (including lightning damage), accident, vandalism, civil unrest, war, misuse, neglect or negligence of Customer, or causes external to the DCU such as, but not limited to, failed or faulty electrical power, communication failure resulting from cell or other WAN network service interruption or any causes other than ordinary use;
3. Maintenance or repairs to attachments or to any other devices not originally a part of the DCU and added without the prior written approval of Aclara; and
4. Repairs resulting from unauthorized changes, modifications or alterations of or to the DCU are not covered under this Agreement.

Upon notification from Customer of DCU failure, Aclara will diagnose the DCU. If a failure occurs to a DCU covered under the Agreement, the unit will be repaired or replaced, at Aclara’s option, at no additional cost to Customer.

If Customer chooses System Monitoring from Aclara, Aclara will normally identify the problem as part of its System Monitoring and will take the necessary actions to correct the problem. The Customer is responsible for arranging access to DCU sites before Aclara can take action.

Customer’s electing the Synergize™ RF Network DCU Maintenance Service must purchase the service for all DCUs purchased by Customer; Synergize™ RF Network DCU Maintenance Service or specific DCUs mutually identified by Aclara and customer as part of the service.

## **B. Aclara i210+, i210+c, KV2C, KV2C Electric Meters**

Aclara warrants that all Aclara i210+, i210+c, KV2C, KV2C Electric Meters (“Meters”) shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

The warranty for Meters shall expire one (1) year from first use or eighteen (18) months from delivery, whichever occurs first, except that software is warranted for ninety (90) days from delivery.

If Meters do not meet the above warranties, Customer shall promptly notify Aclara in writing prior to expiration of the warranty period. Aclara shall repair or replace defective Meters. If, despite Aclara’s reasonable efforts, a non-conforming Meter cannot be repaired or replaced, Aclara shall refund or credit monies paid by Customer for such non-conforming Meters. Warranty repair, replacement or re-performance by Aclara shall not extend or renew the applicable warranty period. Customer shall obtain Aclara’s agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Meters, (b) Customer keeping accurate and complete records of operation and maintenance during the warranty period and providing Aclara access to those records, and (c) modification or repair of Meters or Services only as authorized by Aclara in writing. Failure to meet any such conditions renders the warranty null and void. Aclara is not responsible for normal wear and tear.

This section provides the exclusive remedies for all claims based on failure of or defect in Meters, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Section are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory.

## **C. TWACS Equipment Warranty**

Aclara warrants that the TWACS® equipment sold hereunder will (a) be free from defects in material and workmanship; and (b) meet Aclara’s published specifications.

The warranty period for all TWACS® equipment is eighteen (18) months in duration and shall be calculated as follows: (a) for new, non-integrated products the warranty period is 18 months from the date of shipment to the Customer; (b) for new modules that are integrated into new meters by an Aclara approved meter manufacturer, the warranty period is 18 months from the date the module is integrated into the meter; (c) for new modules that are integrated into new meters by an Aclara approved distributor, the warranty period is 18 months from the date of shipment of the integrated module/meter to the Customer.

In the event a breach of a warranty set forth above occurs on or before the 18<sup>th</sup> month for the scenario described above (the “Warranty Period”), upon prompt written notice of such breach and confirmation that the equipment has been stored, integrated, installed, operated and maintained in accordance with recommendations of Aclara and standard industry practice, and in the case of a



transponder, if it has suffered a failure, Aclara agrees to correct the nonconformity by repairing any defective part or replacing same. The liability of Aclara to Customer for any breach of the above warranties shall not in any event exceed the lesser of Aclara's cost to replace the equipment or Aclara's cost of correcting defects in the equipment as herein provided. Upon the expiration of the Warranty Period, all such liability shall terminate. The above warranty shall not include any liability or responsibility for the expense of labor, transportation, installation, removal from the line of service or any other expenses that may be incurred by Customer.

The cost of packing and transporting to Aclara any of the material and equipment provided by Aclara hereunder that fail to conform to the above warranty shall be borne by Customer. Customer agrees to comply with the Warranty Procedures and Return Material Authorization Process set forth below. The Customer shall package and ship any and all non-conforming equipment in accordance with Aclara's packaging requirements. Any failure to do so may void the warranty. Aclara shall package and ship, at Aclara's expense and at no cost to Customer, the repaired or replaced items of material and equipment to Customer.

Aclara makes no warranties with respect to any equipment sold under the terms of this Agreement that was not manufactured by Aclara or its contract manufacturers. Aclara shall pass on to Customer any warranty of the manufacturer or supplier of such equipment.

## **1. Warranty Procedures**

**Aclara RCE and SCE.** Aclara will repair or replace equipment under warranty in accordance with Aclara's hardware warranty provisions. The customer is responsible for returning failed equipment to Aclara. Before the suspect failed equipment can be returned, the Customer must request and obtain a Return Material Authorization (RMA) tracking number from Aclara in accordance with the RMA Process noted below.

**RCE Equipment.** When received by Aclara, the suspect RCE equipment returned will be tested to determine its condition. If the RCE equipment as tested is found to be in normal working condition (i.e. it meets its specification), then the RCE equipment will be returned to the Customer "as is" and identified as "No Fault Found" (NFF). If the RCE equipment as tested is found to be not functioning in accordance with its specification, a replacement product (new or refurbished) will be sent to the Customer.

**SCE and Test Support Equipment.** When received by Aclara, the suspect SCE equipment returned will be tested to determine its condition. If the suspect SCE equipment is found to be not functioning in accordance within the product warranty due to a condition for which Aclara is responsible, a replacement product (new or refurbished) will be sent to the Customer by Aclara. It is recommended that the Customer have sufficient sets of SCE equipment spares in place to maintain the SCE equipment in order to minimize system downtime in the event of an occurrence of a field failure.

**Repaired / Replaced Product Warranty.** Warranty on repaired or replacement products will be for the balance of the Warranty period of the original product that failed and is being repaired or replaced. For example: A product, which had an 18 month Warranty that failed in the 12th month, will then have a remaining warranty coverage of 6 months upon delivery of repaired/replaced product to the Customer.

## 2. Return Material Authorization Process.

Prior to shipment of the RCE or SCE to a location designated by Aclara, Customer shall obtain a RMA number from Aclara using the process described below.

As part of the process of securing the RMA number, the Customer shall provide Aclara with a complete description of the reported problem including the serial number of the suspect equipment. Aclara will provide instructions to Customer describing the RMA process. The cost of labor, transportation, installation, removal from the line or service, and packing and transporting or any other expense that may be incurred to return the equipment to shall be borne by Customer. Aclara shall bear the packing and transportation costs to return a replacement product to the Customer.

The Customer agrees to request an RMA (at a minimum of once monthly when applicable) for all RCE and SCE failures under warranty and to ship them promptly to Aclara upon receipt of an RMA tracking number.

It will be the responsibility of the Customer to provide serial number and meter/module marriage file tracking for all RCE RMA transactions. This data shall be provided to Aclara's IT and Service and Repair departments so it can be incorporated into Aclara's enterprise system's database.

Third Party Equipment. Aclara does not provide warranty repair or replacement services for equipment not manufactured by Aclara ("Third Party Equipment") such as:

- Modulation Transformer Units (MTU)
- Meters
- Master Station Hardware platforms
- Modems or other Wide Area Network attachments Other Third Party Equipment that Aclara may agree to furnish

The Customer shall process such Third Party Equipment directly with the original manufacturer of such equipment. When possible, Aclara will provide Customer with reasonable assistance to accomplish the return of such equipment to the appropriate Third Party Equipment Manufacturer.

**Aclara Out-of-Warranty RCE.** Aclara does not provide any repair services for any of its RCE equipment that is beyond its warranty coverage period.

**Aclara Out-of-Warranty SCE.** Aclara will provide to Customer repair service for out-of-warranty SCE Hardware in accordance with this section. Prior to shipment of the Hardware to a location designated by Aclara, Customer shall obtain a RMA number from Aclara as described above in the Return Material Authorization (RMA) Process set forth above.

As part of the process of securing the RMA number, the Customer shall provide Aclara with a complete description of the reported problem. Aclara will provide instructions to

Customer describing the RMA process. The cost of labor, transportation, installation, removal from the line or service, and packing and transporting to Aclara any of the hardware provided by Aclara hereunder shall be borne by Customer.

An Estimate of Repair (EOR) and delivery schedule will be prepared and submitted to the Customer by Aclara for each SCE out-of-warranty hardware item returned for repair or replacement. Aclara reserves the right to decline repair of products that are not economical to repair or not currently being manufactured. Aclara will provide an option for the Customer to consider as an alternative replacement. Customer shall respond within thirty (30) days of the date of the EOR to either repair the item or return it to the Customer's facility. Hardware items not approved for repair shall be subject to a diagnostic charge. If no response to the EOR is received within sixty (60) days of the quotation date, the item will be returned to the Customer un-repaired.

Aclara will repair SCE out-of-warranty hardware items at the price provided in the EOR approved by Customer. Unless otherwise specified in EOR, Aclara will arrange for and pay freight and insurance charges and invoice Customer for such charges. Risk of loss of the hardware shall pass to Customer upon delivery by Aclara to the Carrier.

Repairs will be warranted for a period of ninety (90) days following the date of return shipment of the repaired item to Customer.

SUBJECT TO THE TERMS OF THE AGREEMENT BETWEEN ACLARA AND CUSTOMER TO WHICH THIS DOCUMENT IS AN APPENDIX, THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LIABILITY OF ACLARA TECHNOLOGIES LLC SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IN NO EVENT SHALL ACLARA TECHNOLOGIES LLC BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, RESULTING FROM PRODUCT INSTALLATION, USE, REMOVAL OR REINSTALLATION. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND IN NO EVENT SHALL THE LIABILITY OF ACLARA TECHNOLOGIES LLC EXCEED THE PRICE OF THE PRODUCT ON WHICH SUCH LIABILITY IS BASED. THE LIMITATION OF REMEDIES SET FORTH HEREIN IS IN RECOGNITION OF THE DIFFICULTIES OF PROOF OF LOSS AND THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE MEASURING DAMAGES AND OBTAINING AN ADEQUATE REMEDY.

THE WARRANTIES CONTAINED HEREIN MAY NOT BE ALTERED, AMENDED, OR MODIFIED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACLARA TECHNOLOGIES LLC.

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUCDept. Code: PUCType of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: Security Consulting and Design Services (PRO.0072)Funding Source: Project Funded: WSIP, R&R, CIP, SSIPPSC Duration: 5 years 1 dayPSC Amount: \$4,000,000**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Provide complete technical security systems design, integration and construction management services for the San Francisco Public Utilities Commissions(SFPUC's) Department of Homeland Security and for the Capital Improvement and Repair and Readiness Programs in accordance with the American Water Works Association's Security Guidelines for Water Utilities and Risk Assessment Methodology-Water Certification.

**B. Explain why this service is necessary and the consequence of denial:**

The PUC requires a highly specialized firm to handle confidential knowledge of the SFPUC's security vulnerabilities and overall program. It is critical to the SFPUC Homeland Security's strategy to confine this critical knowledge of our systems, systems designs, and vulnerabilities to a single source. A contractual relationship with a technical security consultant will safeguard the institutional history and the confidential information of the SFPUC's security vulnerabilities and that of the overall security program. The SFPUC is in the process of implementing an expanded enterprise-wide security program. A consultant is needed to develop the SFPUC's Enterprise-wide security design criteria and elements, Regional and Master Security Server hardware and software requirements, communications and network strategy, and security policies and procedures. A consultant would coordinate this work with other City and SFPUC Departments including ITS, Operations, Project Management Bureau (PMB), Public Works(PW), Bureau of Architects(BOA), Department of Technology Information Systems (DTIS), Homeland Security, and Engineering Management Bureau (EMB). The roll-out of the security program across the five regional Water System Improvement Program areas, Waste Water Enterprise, and Power Enterprise, and the on-going interaction with other City Departments requires, that one consultant manage the project implementation process and disclosure of sensitive information. Failure to secure a consultant at this stage may result in very significant delays and may jeopardize our efforts to implement security at SFPUC's critical sites.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

This service is currently being provided via PSC No. 36698-17/18 (CS-324.A). We are currently issuing a new Request for Proposal for similar services.

**D. Will the contract(s) be renewed?**

No.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**

We are requesting five(5) years because part of the scope of services is to provide design support during construction support.

## 2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

- Short-term or capital projects requiring diverse skills, expertise and/or knowledge.
- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

This is very specialized work. These services are short-term and associated with specific capital projects underway. The skills and expertise needed are diverse and not adequately represented within City resources for the work required. The services are discrete and as-needed, and not steady or long-term in nature. The services require resources that the City lacks – not only the specialized expertise as noted above, but also specific security design, architectural, and/or other software and tools that the City lacks. Future funding is uncertain for this work, and, as described above, establishment of new civil service positions, classes, or programs would not be appropriate for this as-needed/intermittent and highly specialized type of work.

## 3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Experience implementing an enterprise-wide security program and integrating numerous security systems and security software applications, Certified Protection Professional (CPP) certification, expertise at designing a full range of electronic security monitoring systems, expertise at developing security program policy and procedures, and thorough knowledge of startup and testing procedures.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:  
No.

## 4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

There are no known civil service classifications which normally perform this work. Electrical engineers have only typically designed site-specific electronic security systems including card reader access and camera surveillance monitored on-site, and remote monitoring of alarm contacts using a Remote Terminal Unit (RTU) output to Supervisory Control and Data Acquisition (SCADA), and do not possess the skills and expertise needed for these services.

## 5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.  
Security design and enterprise-wide implementation is a specialty professional service requiring many years of experience, a thorough knowledge of security principals and technologies, which are constantly evolving. Electrical Engineers do not have CPP certification nor the expertise to evaluate facilities for security requirements and alternate security monitoring devices and technologies. They do not have the expertise to coordinate and manage the implementation of an enterprise-wide security program.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class. This is a specialty with a short-term of service.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
No. Training will not be provided, as electrical engineers do not have CPP certification nor the expertise to evaluate facilities for security requirements and alternate security monitoring devices and technologies. They do not have the expertise to coordinate and manage the implementation of an enterprise-wide security program.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 07/23/2018, the Department notified the following employee organizations of this PSC/RFP request:  
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shamica Jackson Phone: 415-554-0727 Email: SJackson@sflower.org

Address: 525 Golden Gate Avenue, 8th Floor San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 47235 - 18/19

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/20/2018

# **Receipt of Union Notification(s)**

**From:** dhr-psccordinator@sfgov.org  
**To:** Jackson, Shamica; Wanless, Annie (HRD); kcartermartinez@cirseiu.org; ecassidy@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Basconillo, Kathy; Sandeep.lal@seiu1021.me; pcamarillo\_seiu@sbcglobal.net; MRainsford@Local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; hodlocal@pachell.net; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA); smcgarry@nccrc.org; rmitchell@twusf.org; grojo@Local39.org; jduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfsmsa@gmail.com; mshelley@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; L21PSCReview@ifpte21.org; LiUNA.local261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; camaguey@sfmea.com; ecdemvoter@aol.com; thomas.vitale@seiu1021.org; Jackson, Shamica; DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Notice for new PCS over \$100K PSC # 47235 - 18/19  
**Date:** Monday, July 23, 2018 3:47:40 PM

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RECEIPT for Union Notification for PSC 47235 - 18/19 more than \$100k

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a request for a Personal Services Contract (PSC) 47235 - 18/19 for \$4,000,000 for Initial Request services for the period 12/01/2018 – 12/01/2023. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/11752> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended



# **Additional Attachment(s)**

PSC 47235-18/19

**Similar Service was Provided Under 36698-17/18 (CS-324.A)**

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSIONDept. Code: PUCType of Request:  Initial  Modification of an existing PSC (PSC # 36698 - 17/18)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: Security Consulting and Design Services (CS-324)Funding Source: WSIP, R&R, and CIP ProgramsPSC Original Approved Amount: \$0 PSC Original Approved Duration: 08/01/17 - 07/31/18  
(52 weeks)PSC Mod#1 Amount: no amount added PSC Mod#1 Duration: 08/01/18-01/29/19 (26 weeks 1  
hour)PSC Cumulative Amount Proposed: \$0 PSC Cumulative Duration Proposed: 1 year 25 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Provide complete technical security systems design, integration and construction management services for the San Francisco Public Utilities Commission's (SFPUC's) Department of Homeland Security and for the Capital Improvement and Repair and Readiness Programs in accordance with the American Water Works Association's Security Guidelines for Water Utilities and Risk Assessment Methodology-Water Certification.

**B. Explain why this service is necessary and the consequence of denial:**

It is critical to the SFPUC Homeland Security's strategy to confine this critical knowledge of our systems, systems designs, and vulnerabilities to a single source. A contractual relationship with a technical security consultant will safeguard the institutional history and the confidential information of the SFPUC's security vulnerabilities. The SFPUC is in the process of implementing an expanded enterprise-wide security program. Failure to secure a consultant at this stage will result in very significant delays and will jeopardize our efforts to implement security at critical sites.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

This service is currently being provided via PSC No. 36698-17/18.

**D. Will the contract(s) be renewed?**

No.

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:****2. Reason(s) for the Request**

A. Display all that apply

- Short-term or capital projects requiring diverse skills, expertise and/or knowledge.
- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

This is very specialized work. •These services are short-term and associated with specific capital projects underway. The skills and expertise needed are diverse and not adequately represented within City resources for the work required. •The services are discrete and as-needed, and not steady or long-term in nature. •The services require resources that the City lacks – not only the specialized expertise as noted above, but also specific security design, architectural, and/or other software and tools that the City lacks. •Future funding is uncertain for this work, and, as described above, establishment of new civil service positions, classes, or programs would not be appropriate for this as-needed/intermittent and highly specialized type of work.

B. Reason for the request for modification:

To align the PSC duration with the contract duration.

### 3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Experience implementing an enterprise-wide security program and integrating numerous security systems and security software applications, RAM-W Certification (Risk Assessment Methodology –Water, Sandia National Laboratories), Certified Protection Professional (CPP) certification, expertise at designing a full range of electronic security monitoring systems, expertise at developing security program policy and procedures, and thorough knowledge of startup and testing procedures.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

### 4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

### 5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Security design and enterprise-wide implementation is a specialty professional service requiring many years of experience, a thorough knowledge of security principals and technologies, which are constantly evolving. Electrical Engineers do not have the RAM-W and CPP certifications nor the expertise to evaluate facilities for security requirements and alternate security monitoring devices and technologies. They do not have the expertise to coordinate and manage the implementation of an enterprise-wide security program.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would not be practical to adopt a new civil service class. This is a specialty short-term service.

### 6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

This is very specialized work that does not lend itself to in-house implementation and long-term ownership and, therefore, training by the contractor. However, through the contractor's interaction with other City departments/personnel such as architects and electrical engineers, the City staff is gaining further understanding of security systems.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

with CH2M Engineers, Inc.

7. **Union Notification:** On 06/13/18, the Department notified the following employee organizations of this PSC/RFP request:

all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shamica Jackson Phone: 415-554-0727 Email: SJackson@sfgwater.org

Address: 525 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 36698 - 17/18

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 06/27/2018

**Modification**  
**Personal Services Contracts**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY

Dept. Code: TIS

Type of Request:  Initial  Modification of an existing PSC (PSC # 37663 - 17/18)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Professional Technical and Training Services

Funding Source: General Funds and Enterprise Funds

PSC Original Approved Amount: \$100,000 PSC Original Approved Duration: 07/01/18 - 06/30/21 (3 years)

PSC Mod#1 Amount: \$650,000 PSC Mod#1 Duration: no duration added

PSC Cumulative Amount Proposed: \$750,000 PSC Cumulative Duration Proposed: 3 years

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Training users on the citywide Enterprise Licensed Environmental Systems Research Institute Geographic Information System (GIS) software products, and Geographic Information System Project consulting, on an as-needed basis.

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to provide training and project consulting for Citywide use of Environmental Systems Research Institute's Geographic Information System Software products on an as-needed basis. These services require special technical knowledge of Environmental Systems Research Institute products. These products are critical to the functions of twenty-eight City Departments and if denied will adversely affect their operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, through PSC# 43213-14/15, which terminated when the prior Enterprise Agreement expired.

D. Will the contract(s) be renewed?

Yes.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

**2. Reason(s) for the Request**

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

Services required on an intermittent basis and require proprietary technical knowledge of Environmental Systems Research Institute Geographic Information System Products that are not available to City staff and cannot access due to the proprietary nature of the Geographic Information System Software.

B. Reason for the request for modification:

This modification request is to increase the original approved PSC amount from \$100,000 to \$750,000. Following submission of the initial PSC request, the Department of Technology completed its negotiations with Environmental Systems Research Institute for a new three-year Enterprise Agreement. Part of the negotiations included the option for City departments to purchase the Environmental Systems Research Institute Enterprise Advantage Program which consists of 100 technical advisory hours and up to 100 learning and services credits. This option is available to departments at a set cost per year. Based on Department of Technology projections, if 10% of the City departments currently using Environmental Systems Research Institute Geographic Information System Software were to exercise said option, then the cumulative amount would exceed the original PSC amount of \$100,000. Thus, this modification request is being submitted to increase the PSC amount that would provide for such services on an as-needed basis.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Specify required skills and/or expertise: Specialized proprietary technical knowledge of Environmental Systems Research Institute Desktop and Server-side Geographic Information System Software products, Geographic Information System Technical Requirement and Solution Development, Geographic Information System Project Management and Implementation, Geographic Information System Software Training.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1033, IS Trainer-Senior; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1053, IS Business Analyst-Senior; 1063, IS Programmer Analyst-Senior;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Training and Project Consulting Services require extensive technical knowledge and expertise with proprietary Environmental Systems Research Institute Geographic Information System Software. Additionally, Project Consulting Services may require access to Environmental Systems Research Institute source codes that are proprietary to Environmental Systems Research Institute and not available to City employees.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, because the services require technical knowledge and expertise with proprietary Environmental Systems Research



Institute Geographic Information System Software, and access to Environmental Systems Research Institute source codes.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.  
Training, if any, will be for City Departments utilizing Environmental Systems Research Institute Geographic Information System Software on an as-needed basis. The approximate number of hours and the scope of any training will be determined when a Department identifies a Geographic Information System project they need assistance with. In all likelihood, Department projects will include planners, engineers, program analysts and/or business analysts that will receive training.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes, Environmental Systems Research Institute

**7. Union Notification:** On 07/05/18, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: One South Van Ness, 2nd Floor, San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 37663 - 17/18

DHR Analysis/Recommendation:  
Commission Approval Required

Civil Service Commission Action:

DHR Approved for 08/20/2018

# **Receipt of Union Notification(s)**

**From:** dhr-psccordinator@sfgov.org  
**To:** Gines, Jolie (TIS); Wanless, Annie (HRD); ecassidy@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; Dere, Wilfred (TIS); DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Modification Request to PSC # 37663 - 17/18 - MODIFICATIONS  
**Date:** Thursday, July 5, 2018 12:58:55 PM

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PSC RECEIPT of Modification notification sent to Unions and DHR

The GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS has submitted a modification request for a Personal Services Contract (PSC) for \$650,000 for services for the period July 3, 2018 – June 30, 2021. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/11671>

Email sent to the following addresses: L21PSCReview@ifpte21.org  
pkim@ifpte21.org  
eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org  
tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com  
ecassidy@ifpte21.org annie.wanless@sfgov.org

# **Additional Attachment(s)**

Attachment 1 – Modification to PSC

**Question:** Has a board or commission determined that contracting is the most effective way to provide this service? If yes, Please explain:

Yes. PSC# 43213 – 14/15 was approved by the Commission on January 5, 2015, in the amount of \$750,000. The duration of PSC# 43213 – 14/15 began January 9, 2015, and ends on September 30, 2018. This PSC was requested to cover the City's three-year Enterprise Agreement with Environmental Systems Research Institute, which expired June 30, 2018. Thus, a new request was submitted to cover the City's new Enterprise Agreement with Environmental Systems Research Institute, for the period of July 1, 2018 through June 30, 2021. The scope of the services described in the PSC from 2015 is identical to the services described herein.

37663-1718

## **Software License and Maintenance Agreement**

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**SOFTWARE LICENSE AND MAINTENANCE AGREEMENT  
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND  
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (328530)**

This agreement (the "Agreement" or "ELA") is made as of July 1, 2018, in the City and County of San Francisco, State of California, by and between Environmental Systems Research Institute, Inc., hereinafter referred to as "Contractor" or "Esri," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

This Agreement covers Contractor's Enterprise License Agreement ("ELA") program which provides for the licensing and deployment of Enterprise License Software, delivery of ELA Maintenance, and provision of Esri International User Conference registrations. The Enterprise License Software procured through this Agreement in unlimited quantity are listed in Appendix A-Table A-1 and the limited quantity products are listed in Appendix A-Table A-2.

This Agreement is comprised of this document (including its appendices) and the following documents which are attached and incorporated by reference:

1. Esri's License Agreement comprised of the Esri Master Agreement number 329366,
2. Esri Maintenance and Support Program J10044

Upon full payment of the ELA Fee and expiration of this ELA, the License Agreement will survive, and Licensee may continue to use the Deployed Enterprise License Software and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. Licensee may order standard maintenance upon expiration of ELA Term for Rolled-In Software without paying a maintenance reinstatement fee for lapsed maintenance. Licensee shall notify Esri of the quantity and type of licenses for which Licensee elects to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or Enterprise License Software upon expiration of the ELA, it lapses. If, at a later date, Licensee decides to reinstate maintenance, Licensee must pay reinstatement fees from the date of ELA expiration (e.g., back maintenance fees). City will not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

The parties acknowledge that they have read and understand this Agreement and agree to be bound by the terms and conditions contained herein.



## Recitals

WHEREAS, the Department of Technology wishes to license certain software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement.

WHEREAS, approval for services, in any, to be provided by Contractor pursuant to its Esri Enterprise Advantage Program and/or Esri Training Pass, as hereinafter defined in this Agreement, was obtained when the Civil Service Commission approved personal service contract number 37663-17/18 on June 22, 2018;

Now, THEREFORE, the parties agree as follows:

**1. Definitions.** Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth. All definitions in other parts of the ELA shall have the same meaning in this Agreement. In addition, the following definitions apply to the ELA:

|  |  |
|--|--|
| <b>Agreement</b>                                 | This document and any attached appendices and exhibits, including any future written and executed amendments. Appendix A, Software and Deployment Schedule; Appendix B, Enterprise License Fee Schedule; Appendix C, City Annual Deployment Report; Appendix D, ELA Points of Contact; Appendix E, Tier 1 Help Desk Authorized Individuals; Master Agreement #329366; and Esri Maintenance and Support Program |
| <b>Authorization;<br/>Authorization document</b> | This Agreement, a Blanket Purchase Order, Contract Order, or Purchase Order of the City, properly executed by Department of Technology and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof.   |
| <b>Deploy, Deployment or<br/>Deployed</b>        | To redistribute, or the redistribution of, the Enterprise License Software (and its related keycodes/registration files), or its having been redistributed, by City, during the term of this ELA for installation and use on Licensee's hardware.  |
| <b>Documentation</b>                             | The technical publications delivered with Software relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.   |

|                                    |  |
|------------------------------------|--|
| <b>EEAP</b>                        | Esri Enterprise Advantage Program is provided subject to the terms and conditions contained in the Master Agreement.   |
| <b>ELA Fee</b>                     | The fee set forth in Appendix B-ELA Fee Schedule.  |
| <b>ELA Maintenance</b>             | Tier 2 Support, updates, and patches provided by Contractor for Enterprise License Software and Rolled-In Software   |
| <b>Enterprise License Software</b> | <p>Software (including Data, Online Services and Documentation provided with the particular item) identified in Table A-1 and Table A-2 of Appendix A-Software and Deployment Schedule. Enterprise License Software does not include Unit-Priced Item(s) or Contractor technology that may be embedded in third-party products purchased by Licensee.</p> <p>The Authorization Document may identify more than one software product or more than one copy of any product.</p>  |
| <b>Incident</b>                    | A failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance. An Incident is the record of a customer request for technical assistance made by phone, web form, or chat. It contains technical notes and documentation of all interactions between the customer and support representative related to the request. Depending on how the request was initiated, an Incident or tracking number is provided by a support representative verbally, by e-mail or chat, confirming the creation of the Incident. The Incident number is used for referencing the request. |
| <b>License Agreement</b>           | Each reference to License Agreement in this ELA shall mean the Esri Master Agreement comprised of E204 version October 25, 2017 which covers the license terms and conditions for Esri's commercial-off-the-shelf software products and the terms for Esri's services, such as the Esri Enterprise Advantage Program ("EEAP").   |
| <b>Licensee</b>                    | City and County of San Francisco. For avoidance of doubt, the definition of Licensee shall not include consultants or contractors including those referenced in Section 7 of this Agreement, Consultant Access. Consultants and contractors are permitted to use and access Enterprise License Software subject to Section 7 of this Agreement.  |
| <b>Material Breach</b>             | A substantial failure in the performance of a party's obligations under this Agreement.  |

|                                      |   |
|--------------------------------------|---|
| <b>Rolled-In Software</b>            | Software of the same type as Enterprise License Software that Licensee acquired for use prior to the Effective Date that is current on paid maintenance (as shown in Esri's customer service records) and that will receive ELA Maintenance during the term of this ELA.                                |
| <b>Software or Licensed Software</b> | All or any portion of Contractor's proprietary software technology accessed or downloaded from Contractor's authorized Web site or delivered on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.                                      |
| <b>Source code</b>                   | The human readable compliant form of the Licensed Software to be provided by Contractor.  |
| <b>Specifications</b>                | The functional and operational characteristics of the Licensed Software as described in Contractor's current Documentation.   |
| <b>Technical Support</b>             | A process to attempt to resolve reported Incidents through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Software, Data, or Documentation corrections or modifications specified in the most current applicable Esri Maintenance and Support Program. |
| <b>Tier 1 Help Desk</b>              | City point of contact from which all Tier 1 Support will be given to Licensees.   |
| <b>Tier 1 Support</b>                | "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensees in its attempted resolution of reported Incidents.  |
| <b>Tier 2 Support</b>                | "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.  |

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Department of Technology [DT and/or Department]. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Department, unless otherwise indicated by the context.

**2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate

without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3. Term of the Agreement.** Subject to Section 2, the term of the Agreement shall be from July 1, 2018 to June 30, 2021, unless sooner terminated in accordance with the provisions of this Agreement.

**4. Effective Date of the Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**5. License**

**Grant of License.** Licensee's use of the Enterprise License Software is subject to the License Agreement and any additional terms set forth herein. City shall remain primarily responsible to Esri for compliance by Licensees (including their users) with the terms and conditions of this ELA. Rolled-In Software shall be licensed in accordance with the License Agreement.

- a. **Restrictions on Use.** City is granted the right to use the Enterprise License Software subject to the License Agreement.
- b. **Proprietary Markings.** In addition to the requirements in the License Agreement City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Enterprise License Software or any related materials or Documentation.
- c. **Authorized Modification.** The City may own any APIs, macros or other interfaces that are developed by the City as permitted under the License Agreement that do not include any Esri or its licensors' intellectual property.

**6. Beta License.** Beta licenses are not available under this ELA.

**7. Consultant Access.** Section 1.2, Consultant or Contractor Access, in the License Agreement is modified to add the restriction that access to and use of any Enterprise License Software is restricted to use by consultants and contractors for the sole benefit of Licensee while (i) working on-site at Licensee's facilities; (ii) remotely accessing or using Enterprise License Software from Licensee's on-site computers or machines; or (iii) remotely using/accessing Enterprise License Software from a third party's computers or machines under contract to Licensee. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise License Software upon completion of work for Licensee.

**8. Scope of Use.** There are Additional Permitted Uses, and Additional Uses Not Permitted for City incorporated into this ELA. The Uses Permitted and Uses Not Permitted sections of the General License Terms and Conditions portion of the License Agreement are modified as follows:

**8.1 Additional Uses Permitted.** The following additional Permitted Uses are hereby granted for the Enterprise License Software:

For the term of the ELA, the City may copy and Deploy the Enterprise License Software to Licensees up to the quantities of licenses granted in Appendix A. No other Licensee has a right to copy (except as permitted in the License Agreement) or Deploy the Enterprise License Software.

**8.2 Additional Uses Not Permitted.** In addition to the restrictions set forth in the License Agreement, the following Uses Not Permitted apply to the Enterprise License Software:

- a. City shall not use, transfer, redistribute, or Deploy the Enterprise License Software outside of the United States territories and outlying areas without the prior written permission of Esri and agreement on additional fees, if any. Any such export shall be subject to U.S. Export Control Regulation requirements of the License Agreement.
- b. Transfer, redistribution or assignment of Enterprise License Software to any third party without Esri written permission is prohibited.

**9. Delivery and Acceptance.** ELA Software will be available via electronic download. The software would be downloaded by City. As soon as the access codes/token allowing City to download the software are provided, the software will be considered "delivered".

City shall have a period of ten (10) days from the date of delivery (the "Acceptance Period") to confirm the ELA Software performs as warranted in Section 13. If City has not previously provided written notice to Esri of its rejection, the ELA Software shall be deemed accepted as of the expiration of the Acceptance Period. Provided that Licensee has not rejected the ELA Software, this Acceptance Period does not extend any payment period set forth in this Agreement.

**10. Source Code.** Provided Licensee is current on maintenance, Esri agrees to provide Licensee with a current copy of the Esri source code for Esri Software (Support Source Code), in the event that (a) Esri is liquidated or dissolved, provided such liquidation or dissolution is not in connection with the sale of all or substantially all of the related software assets or stock of Esri to a successor entity in a merger or acquisition, or (b) Esri generally discontinues support for a particular Esri Software currently supported and licensed to Licensee under this License Agreement, and Licensee is paid current on applicable maintenance fees, provided such support is not continued by another entity or a replacement product which substantially performs the same function is not available from Esri.

In the event Esri provides Licensee with Support Source Code as described in this Section, Licensee shall be deemed to have a Limited Term, personal, nonexclusive, nontransferable, fully paid license to use Support Source Code only for providing technical support for the internal use of the Software. Licensee agrees that Esri is under no obligation to provide Support Source

Code owned by Esri's third party licensors, or license the use of the Support Source Code owned by Esri's third party licensors.

The license granted for the Support Source Code shall commence upon Licensee's receipt of the Support Source Code and shall continue until (1) thirty-six (36) months from the date the Support Source Code is released to Licensee, (2) Licensee elects to discontinue use of the Support Source Code and so notifies Esri in writing, (3) thirty (30) calendar days after Esri or its designee provides notice of termination due to Licensee's material breach of the terms and conditions of this License Agreement, provided such breach has not been cured within such thirty day period, or immediately, for such breach that by its nature is impossible to cure, or (4) upon the insolvency of Licensee (the placing in receivership, filing of a petition in bankruptcy, or assignment for the benefit of creditors, whether known or designated by some other name or term), whichever first occurs. Upon the expiration or earlier termination of this License Agreement, Licensee shall return to Esri the Support Source Code, and any whole or partial copies, codes, modifications, derivatives, and merged portions in any form, fully sealed and marked "Confidential" and addressed "Attention: Contracts Manager."

Licensee acknowledges that the Support Source Code contains trade secret technology and other information proprietary to Esri or third party licensor(s). Licensee agrees to protect the Support Source Code in the same manner and with the same degree of care that it uses to protect its own trade secrets or proprietary information being not less than a reasonable standard of care. Disclosure of the Support Source Code is restricted to those employees of Licensee having a need to know who are directly providing internal support for the Software, each of whom agrees, in writing, to be bound by the nondisclosure provisions of this Section, provided that in no event may the Licensee disclose Support Source Code to Esri competitors. Licensee shall not disclose any Support Source Code to any other person or entity and shall not reproduce or use the Support Source Code in any manner except as specifically authorized in this Section. Licensee agrees to immediately notify Esri in writing of any misuse, misappropriation, or unauthorized disclosure that may come to its attention.

**NO WARRANTY: THE SUPPORT SOURCE CODE IS PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.**

Additional Uses NOT Permitted for the Licensee are as follows:

- (1) Other than as a replacement product in executable code format that is substantially equivalent in functionality and configuration to the Software ("Replacement Product"), Licensee may not create any commercial application that is derived from, is based upon, uses or incorporates all or any portion of the Support Source Code or compiled from it.
- (2) Licensee may not remove or obscure any patent, copyright or trademark notices contained in or affixed to the Support Source Code or the media containing the Support Source Code.

(3) Licensee may not sell, license, distribute, or in any way market all or any portion of the Support Source Code or any derivative thereof, unless such derivative is a Replacement Product and Licensee is otherwise authorized in writing by Esri to sell, sublicense, distribute, or market the Software under this License Agreement.

**11. Infringement Indemnity** 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 demand by a third party alleging that the Enterprise License Software 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.

The infringement indemnity obligations found in this Section 11 do not apply to third-party digital data sets provided on a no-fee basis and accessed via Esri's community based web site.

If Esri believes that the Enterprise License Software is or will become the subject of an infringement claim, or in the event that use of the Enterprise License Software is enjoined, Esri, at its own expense, may either (i) obtain the right for Licensee to continue using the Enterprise License Software or (ii) modify the Enterprise License Software to make it non-infringing 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 on a twenty percent (20%) per year straight line depreciation basis over a five (5) year period from the initial date of delivery.

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 non-infringing items, however acquired, with any items not supplied by Esri; (ii) infringement to the extent arising from material alteration of the Enterprise License Software 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 Enterprise License Software other than a process patent that is necessarily infringed by the internal processes executed within the Enterprise License Software itself when the Enterprise License Software 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 Enterprise License Software 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.

## 12. Maintenance and Support.

ELA Maintenance is included in the ELA Fee. Rolled-In Software and Enterprise License Software will receive ELA Maintenance, provided that standard maintenance is available for each item. ELA Maintenance includes benefits specified in the most current applicable Esri Maintenance and Support document (found at [www.esri.com/legal](http://www.esri.com/legal)) as modified by this Section 11. ELA Maintenance does not include Technical Support for Web Services.

### a. Tier 1 Support Provided by City

- (1) Tier 1 Help Desk shall provide Tier 1 Support to all Licensees.
- (2) The Tier 1 Help Desk shall use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support shall include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts shall be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the Licensee. This may include obtaining any customizations, code samples, or data involved, if applicable, to the Incident. The analyst may also use any other information and databases they may develop to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact Esri for Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensees.
- (6) City may assign up to the quantity of named Tier 1 Help Desk individuals listed in Appendix B. These individuals shall be identified in Appendix E and are the only individuals (callers) authorized to contact Esri directly for Tier 2 Support.

### b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from the Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri 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) Esri shall use commercially reasonable efforts to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals and not the Licensees.
- (5) When the Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee.



(6) Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Esri's Web site or deliver them via media.

**13. Warranties: Right to Grant License.** Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City. The City's sole remedy for breach of this warranty is limited to the remedy provided in Article 11 Infringement Indemnity.

**14. Limited Warranties and Disclaimers**

**14.1 Limited Warranty.** Esri warrants for a period of ninety (90) days from the date of receipt of Authorization Codes that (i) the unmodified Software and Online Services will substantially conform to the published Documentation and (ii) media on which the Software, Data, and Documentation are provided will be free from defects in materials and workmanship under normal use and service.

**14.2 Special Disclaimer.** SAMPLES, HOT FIXES, PATCHES, EVALUATION SOFTWARE, BETA, CONTENT, DATA, AND ONLINE SERVICES PROVIDED ON A NO-FEE BASIS ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND.

**14.3 Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services. Third-Party Websites; Third-Party Content. Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Products or Esri websites, including [www.esri.com](http://www.esri.com) and [www.arcgis.com](http://www.arcgis.com). Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

**14.4 General Disclaimer.** EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT SOFTWARE, DATA, ONLINE SERVICES, OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE, DATA, ONLINE SERVICES, AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

**14.5 Exclusive Remedy.** Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Section 14 shall be limited, at Esri's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software or Online Services subject to the Esri Maintenance and Support Program found at [www.esri.com/legal](http://www.esri.com/legal); or (iii) return of the license fees paid by Licensee for Software or Online Services that does not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using Online Services; and executes and delivers evidence of such actions to Esri.

**15. Payment.** Compensation shall be due and payable within 45 days of the date of invoice. In no event shall the amount of this Agreement exceed the amount identified in Appendix B. The breakdown of payments associated with this Agreement is provided for in Appendix A. For the initial payment no charges shall be incurred under this Agreement nor shall any payments become due to Contractor until the Enterprise License Software, required under this Agreement

are made available by Contractor for download by City in accordance with this Agreement. Thereafter annual payments shall be made in accordance with the payment schedule. In no event shall the City be liable for interest or late charges for any late payments.

**16. Purchase Orders, Delivery, and Deployment.**

a. Esri does not require City to issue purchase orders and will invoice City upon the Effective Date of this ELA and annually thereafter in accordance with the fee schedule set forth in this ELA. City may submit purchase orders in accordance with its own process requirements. If City issues purchase orders, then City will submit its initial purchase order upon execution of this ELA and any subsequent purchase order at least thirty (30) days before the anniversary date. Invoices will be due and payable within forty-five (45) days of invoice

b. Upon receipt of the initial purchase order from City, Esri shall deliver codes necessary to allow download electronically of the Enterprise License Software listed in Appendix B by City for City's Deployment to Licensees.

c. Esri shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise License Software to operate.

d. City will process all orders and deliveries pertaining to this ELA through City's centralized point of contact. City shall Deploy, install, configure, and track the Deployment status of Enterprise License Software.

**17. Purchase Order Requirements**

a. Any purchase orders issued by City shall reference, incorporate and be subject to the terms and conditions of this ELA. No additional, conflicting or different terms contained in a purchase order or ordering document shall be binding. All orders and deliveries pertaining to this ELA shall be processed through City's centralized point of contact.

b. The following information shall be included in each purchase order:

- (1) City name, Esri customer number, and the ship-to address as identified in Appendix D.
- (2) Purchase order number.
- (3) Applicable annual payment due.

**18. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification and shall not at any time exceed the amount Two Million Dollars (\$2,000,000) which includes the fees/costs for the ELA Fee in the amount of \$1,575,000.00, optional EEAP annual subscriptions and optional Training Pass annual subscription(s), each of which are described and priced in Appendix B. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract

unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**19. Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

**20. Annual Report of Deployments.** At each anniversary date and ninety (90) days prior to the expiration date of this ELA, City shall provide a written report, as set forth in Appendix C, to Esri detailing all Deployments made. The report shall be subject to audit by an authorized representative of Esri

**21. Esri International User Conference Registration.** City shall receive Esri International User Conference registrations annually during the term of this ELA in the quantities set forth in Appendix B. City is responsible for distributing the registrations to its users. Third parties may not represent or attend on behalf of City at any Esri User Conferences.

**22. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**23. Taxes.** Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. If such taxes, including sales or use tax become due

under this Agreement then Contractor will add applicable taxes to the invoice for payment buy City.

#### **24. Independent Contractor; Payment of Taxes and Other Expenses**

**a. Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**b. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

#### **25. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Infringement Indemnity" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Technology Errors & Omissions including Network Security and Privacy with limits not less than \$2,000,000 each claim and aggregate to include (A) Professional liability insurance, applicable to Contractor's profession, with respect to negligent acts, errors or omissions in connection with the Services, (B) Technology Errors and Omissions Liability coverage. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks: (i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and (ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon, and (C) Cyber and Privacy Insurance for liability arising from theft, dissemination, and/or use of confidential information.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. Esri will provide prompt advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

j. Policies to which this section refers have a blanket endorsement honoring Esri's contractual requirement to add City as an additional insured, to include a waiver of subrogation in favor of City, or to identify the coverage as primary. In these cases the certificate of insurance will be annotated to confirm that the City is covered under the blanket endorsement in place of separate endorsements.

## **26. Liability of Each Party.**

### **a. Liability of City.**

(i) IN NO EVENT SHALL CITY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT EXCEPT FOR CITY'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ESRI'S OR ESRI'S LICENSORS' INTELLECTUAL PROPERTY RIGHTS, CITY'S VIOLATION OF SECTION 27 NONDISCLOSURE, CITY'S VIOLATION OF SECTION 29 ESRI CONFIDENTIAL INFORMATION OR VIOLATION OF ANY APPLICABLE FEDERAL, STATE AND/OR LOCAL LAWS.

(ii) EXCEPT FOR DAMAGES FOR CITY'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ESRI'S OR ITS LICENSOR'S INTELLECTUAL PROPERTY RIGHTS, OR EXPORT CONTROL REGULATIONS, IN NO EVENT WILL CITY'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND EXCEED TWO TIMES THE AMOUNT OF COMPENSATION PROVIDED FOR IN SECTION 18 OF THIS AGREEMENT.

### **b. Liability of Contractor.**

(i) CONTRACTOR SHALL NOT BE LIABLE TO CITY FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL

DAMAGES (collectively known as "LOSS") EXCEPT FOR A THIRD PARTY CLAIMANTS LOSS AS PROVIDED IN SECTION 11-INFRINGEMENT INDEMNITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF PRODUCTS, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT CONTRACTOR OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

(ii) EXCEPT AS PROVIDED IN SECTION 11—INFRINGEMENT INDEMNITY, THE TOTAL CUMULATIVE LIABILITY OF CONTRACTOR 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, SHALL NOT EXCEED TWO TIMES THE AMOUNT OF COMPENSATION PROVIDED FOR IN SECTION 18 OF THIS AGREEMENT. CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) LIMIT CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (2) STATUTORY DAMAGES, INCLUDING THOSE SPECIFIED IN THIS AGREEMENT, AND (3) FINES, EXPENSES, DAMAGES CAUSED BY CONTRACTOR'S VIOLATION OF FEDERAL, STATE AND/OR LOCAL LAWS REGARDING PRIVACY AND/OR HEALTH INFORMATION EXCEPT THAT CONTRACTOR'S LIABILITY FOR VIOLATION OF FEDERAL, STATE AND/OR LOCAL LAWS REGARDING PRIVACY AND/OR HEALTH INFORMATION SHALL NOT EXCEED US\$2,000,000.

c. Notwithstanding anything contained in Section 28 Proprietary or Confidential Information of City and 30 Protection of Private Information any unauthorized access or disclosure of City proprietary or confidential information to a third party due to a security related breach of Contractor's computer systems, where Contractor is found to have exercised reasonable care shall not be deemed to be a breach of Contractor's proprietary or confidentiality obligations under this Agreement. Contractor agrees to comply with all applicable laws.

d. The parties shall not exchange, deliver or grant access to protected health information (i.e., any information that would be termed "protected health information" under the provisions of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations) ("PHI").

#### **27. Nondisclosure.**

City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

- a. is now or hereafter becomes publicly known;
- b. is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- c. is known to the City prior to its receipt of the Licensed Software;
- d. is subsequently developed by the City independently of any disclosures made hereunder by Contractor;

- e. is disclosed with Contractor's prior written consent;
- f. is disclosed by Contractor to a third party without similar restrictions.

**28. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data. Personally identifiable information (other than contact information of the parties) will be aggregated and anonymized prior to disclosure. City will not provide personally identifiable information to Contractor under the Agreement.

**29. Esri Confidential Information.** Certain terms and conditions of this ELA are confidential and proprietary information of Esri. City shall not publish or disclose to third parties, in hard copy or electronically, Appendix A and Appendix B, including the ELA Fee, without Esri's prior written consent. Except in response to an open/public records request, disclosure may be made only to those City employees who have a need to know to perform their duties and have an obligation of confidentiality. To the extent any such disclosures may be required by law, City shall inform Esri of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requestor, in sufficient time for Esri to assert any objection Esri may have to such disclosure with the appropriate administrative or judicial body.

**30. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**31. Termination**

- a. **Basis for Termination by Contractor.** Contractor shall have the right to terminate this Agreement for Material Breach if (i) City is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by Contractor of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date or, (ii) to terminate this Agreement if City commits any other breach of this Agreement and fails to remedy such breach within thirty days after receipt of written notice by Contractor of such breach. Upon termination of this ELA by Contractor for a Material Breach, unless otherwise agreed by Esri, all licenses Deployed shall also terminate, and the amount of unpaid ELA Fees prorated to the date of termination will be



due and payable by City within thirty (30) days from the date of termination. City shall uninstall, remove, and destroy all Enterprise License Software, training materials, and any whole or partial copies, modifications, or merged portions in any form. City shall deliver evidence of such destruction to Contractor, which evidence shall be in a form acceptable to Contractor. Except for a material breach of the License Agreement, Licensee may continue to use Rolled-In Software, provided Licensee complies with the terms and conditions of the License Agreement. Further, Contractor agrees that Licensee is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Licensee orders maintenance at time of ELA termination. Other non-refundable items that may be included in this ELA such as EEAP, Virtual Campus credits for the Annual User License and its access codes, as well as the User Conference Registrations shall also terminate if this ELA is terminated.

b. **Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor (except as specified in Sections 27 Proprietary or Confidential Information of City and 28 Esri Confidential Information) hereof, (i) to immediately terminate this Agreement or the applicable Authorization Document if Contractor commits any Material Breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Article 8 of the License Agreement; or (ii) to terminate this Agreement or the applicable Authorization Document upon ninety (90) days prior written notice for any reason if the license granted hereunder is for any term other than perpetual. In the event the license granted is perpetual, termination of this Agreement or the applicable Authorization Document by City shall be effective upon receipt by Contractor of written notice of said termination. No refund will be provided to Licensee for payments made.

In the event that the ELA is terminated by City, Licensee must uninstall, remove, and destroy all Deployed Software, Data, or Documentation and any whole or partial copies identified in Appendix A, Table A-2, however Licensee(s) may continue to use Rolled-In Software, subject to its compliance with the License Agreement; Licensee may continue to use Deployed Enterprise License Software, Data, or Documentation identified in Appendix A, Table A-I, provided:

(x) Licensee shall report the quantity and types of Deployed Enterprise License Software identified in Appendix A, Table A-I, and Esri shall determine the quantity and type of Software, Data, or Documentation that Licensee may continue to use under the License Agreement terms. This determination will be based on multiplying the commercial list price of the Deployed Enterprise License Software identified in Table A-I by the reported quantity and types and subtracting that amount from a portion of the ELA Fee amounts paid (portion of ELA Fee applicable to Enterprise License Software licenses identified in Table A-I hereinafter referred to as "Offset Amount"). Licensee shall uninstall, remove, and destroy Deployed Enterprise License Software valued in excess of the Offset Amount to reach an authorized quantity and type level. The remaining authorized quantities and types of software ("Remaining Software") will be licensed in accordance with the License Agreement; and

(y) Rolled-In Software licenses of the type identified in Table A-I will not terminate and may be used at the version level they have been upgraded to at the time of

termination. Use and licensing of Rolled-In Software licenses will be in accordance with the License Agreement.

**c. Wind-Up Following Termination.**

- i. Under no circumstances may City deploy additional copies of the Software, Data, or Documentation upon any termination of the Agreement.
- ii. Licensee is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Licensee orders maintenance at time of ELA termination. Within thirty (30) days of termination of the ELA for Lack of Funds, City will document in writing to Esri the total quantity and type (e.g., Product) of Remaining Software and Rolled-In Software for which City desires to obtain maintenance, if any. Payment of maintenance fees for such Remaining Software and Rolled-In Software for which City wishes to have maintenance, if any, will be effective from the date of the ELA termination, provided that City allocates appropriate funds. Maintenance reinstatement fees will not be required for maintenance on Rolled-In Software that lapsed during the term of the ELA. Other non-refundable items that may be included in this ELA such as EEAP, Virtual Campus credits for the Annual User License and its access codes, as well as the User Conference Registrations will also terminate if this ELA is terminated for Lack of Funds.
- iii. Other non-refundable items that may be included in this ELA such as EEAP, Virtual Campus credits for the Annual User License and its access codes, as well as the User Conference Registrations shall also terminate if this ELA is terminated.

**d. Use Upon Expiration of ELA Term.** Upon expiration of this ELA, the License Agreement shall survive and Licensee may continue to use the Deployed Enterprise License Software and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. Licensee may order maintenance upon expiration for Rolled-In Software for the next year without paying a maintenance reinstatement fee for lapsed maintenance. Licensee shall notify Esri of the quantity and type of licenses for which Licensee elects to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or Enterprise License Software upon expiration of the ELA, it lapses. If at a later date, Licensee decides to reinstate maintenance, Licensee must pay maintenance reinstatement fees (e.g. back maintenance fees) from the date of ELA expiration. City shall not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

**32. Survival.** This section and the following sections of this Agreement shall survive termination or expiration of this Agreement:

- |   |  |
|---|--|
| 11. Infringement Indemnification.                               | 30. Protection of Private Information.                 |
| 22. Submitting False Claims; Monetary Penalties.                | 42. Non-Waiver of Rights.                              |
| 23. Taxes   | 43. Modification of Agreement                          |
| 24. Independent Contractor; Payment of Taxes and Other Expenses | 44. Administrative Remedy for Agreement Interpretation |
| 25. Insurance   | 45. Agreement Made in California; Venue.               |
|   | 46. Construction                                       |
| 26. Liability of each Party.                                    | 47. Entire Agreement                                   |

27. Nondisclosure.

52. General Provisions

28. Proprietary or Confidential Information  
of City

**33. Notice to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: City and County of San Francisco  
Department of Technology  
Attn: Jeff Johnson  
One South Van Ness Ave., 2<sup>nd</sup> Floor  
San Francisco, CA 94103

City and County of San Francisco  
Department of Technology  
Contract Administration  
One South Van Ness Ave., 2<sup>nd</sup> Floor  
San Francisco, CA 94103

To Contractor: Environmental Systems Research Institute, Inc.  
Attn: Legal Department  
380 New York Street  
Redlands, CA 92373-8100  
Phone 909-793-2853

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

**34. Points of Contact.** Each party shall identify points of contact for administrative and technical issues in Appendix D.

**35. Bankruptcy.** In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

**36. Subcontracting.** Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**37. Assignment.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by

the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

**38. Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**39. Sunshine Ordinance.** In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**40. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**41. Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**42. Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right

to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**43. Modification of Agreement.** Except as provided herein, this Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**44. Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

**45. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**46. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**47. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

**48. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

**49. Graffiti Removal.** Reserved.

**50. Food Service Waste Reduction Requirements.** Reserved.

**51. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**52. General Provisions.** The General Provisions and Limitations of Liability of the License Agreement shall apply to the entire ELA. If there is a conflict among any of the other terms and conditions in the various documents, the order of descending precedence shall be as follows: (1) City's P-545/P-540 (8-14) (2) License Agreement (3) ESRI Maintenance and Support Program. Except as otherwise expressly provided herein, any amendment or Addendum to this ELA must be in writing and signed by an authorized representative of each party.

**53. Annual Report of Deployments.** At each anniversary date and ninety (90) days prior to the expiration date of this ELA, City shall provide a written report, as set forth in Appendix C, to Esri detailing all Deployments made. The report shall be subject to audit by an authorized representative of Esri.

**54. Esri International User Conference Registration.** City shall receive Esri International User Conference registrations annually during the term of this ELA in the quantities set forth in Appendix B. City is responsible for distributing the registrations to its users. Third parties may not represent or attend on behalf of City at any Esri User Conferences.

**55. Case Studies.** At the City's sole discretion, the City agrees to collaborate with Esri's publication or presentation of case studies as appropriate, and if City staff and resources are available.

**56. OEM Licenses.** If Licensee obtains Software, Data, Online Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of Esri, Licensee shall not be entitled to or seek any discount from the OEM business partner or Esri, directly or indirectly, as a result of or based upon the availability of such Software, Data, or Online Services, as Enterprise License Software under this ELA. In addition, such Software, Data, Online Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

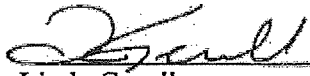
**57. Conversion of Enterprise License Software—Limited Quantity or Unit-Priced Item.** Newer or updated Enterprise License Software may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site or enterprise license. Esri reserves the right to exclude such newer or updated versions of the Enterprise License Software from the tables in Appendix A. Such items can be made available to City on a limited quantity basis or as Unit-Priced Item(s). In such event, Licensee may continue to use the older (previous) version Deployed and Esri will provide Technical Support in accordance with the Esri Product Life Cycle Support Policy.

**58. Product Obsolescence.** During the term of this Agreement, some of the products listed in Appendix A may become obsolete or will no longer be commercially offered or may no longer be available for Deployment. Licensee may continue to use a product that has been Deployed, but support and upgrades for older products may not be available. ELA Maintenance and maintenance and availability of Enterprise License Software identified in Appendix A shall be subject to each item's Product Life Cycle Support Status, which can be found at <http://support.esri.com/en/content/productlifecycles> by selecting the product type and then clicking the Product Life Cycle link for specific product plans. Esri's Product Life Cycle Support Policy, available at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf>, defines the support phases and overall support plans.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

Recommended by:

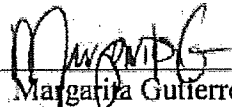


Linda Gerull  
City Chief Information Officer  
Executive Director, Department of  
Technology

Approved as to Form:

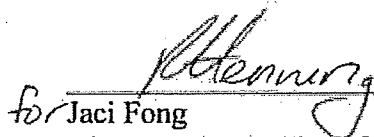
Dennis J. Herrera  
City Attorney

By:



Margarita Gutierrez  
Deputy City Attorney

Approved:



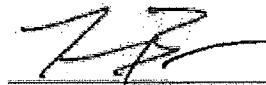
Jaci Fong  
Director of the Office of Contract  
Administration, and  
Purchaser

**CONTRACTOR**

**Environmental Systems Research Institute,  
Inc.**

By signing this Agreement, I certify that I  
comply with the requirements of the  
Minimum Compensation Ordinance, which  
entitle Covered Employees to certain  
minimum hourly wages and compensated and  
uncompensated time off.

I have read and understood paragraph 35, the  
City's statement urging companies doing  
business in Northern Ireland to move towards  
resolving employment inequities,  
encouraging compliance with the MacBride  
Principles, and urging  
San Francisco companies to do business with  
corporations that abide by the MacBride  
Principles.



Tim Brazeal  
Manager, Commercial and Government  
Contracts

Date: JUNE 22, 2018

City vendor number: 38346

**Appendices**

- A: Software and Deployment Schedule
- B: Enterprise License Fee Schedule
- C: City Annual Deployment Report
- D: ELA Points of Contact
- E: Tier 1 Help Desk Authorized Individuals

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**APPENDIX A  
SOFTWARE AND DEPLOYMENT SCHEDULE**

City may Deploy the Enterprise License Software up to the total quantity of licenses indicated below to Licensees.

**Table A-1  
Enterprise License Software—Uncapped Quantities**

| Product  | Total Qty./Seats to Be Deployed |
|--|---------------------------------|
| <b>ArcGIS Desktop: Advanced, Standard, Basic</b>   | Uncapped                        |
| <b>ArcGIS Desktop extensions: ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Publisher, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager</b> | Uncapped                        |
| <b>ArcGIS Enterprise: Enterprise and Workgroup (Advanced and Standard)</b>   | Uncapped                        |
| <b>ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager</b>                                      | Uncapped                        |
| <b>ArcGIS Enterprise Servers: Image Server, GeoEvent Server</b>  | Uncapped                        |
| <b>ArcGIS GIS Server: Basic, Standard</b>  | Uncapped                        |
| <b>Mapping and Charting solutions: Esri Production Mapping for Desktop, ArcGIS for Aviation: Airports</b>  | Uncapped                        |
| <b>ArcGIS Engine</b>   | Uncapped                        |
| <b>ArcGIS Engine extensions: ArcGIS 3D Analyst, ArcGIS Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics, and ArcGIS Spatial Analyst</b>   | Uncapped                        |
| <b>ArcGIS Runtime: Lite, Basic, Standard, Advanced</b>   | Uncapped                        |
| <b>ArcGIS Runtime Analysis Extension</b>   | Uncapped                        |

**Table A-2  
Enterprise License Software—Capped Quantities**

| Product  | Rolled-In Qty. (if applicable) | Qty./Seats to Be Deployed | Total |
|--|--------------------------------|---------------------------|-------|
| <b>ArcGIS Developer Subscription (ADS): Professional</b> | 0                              | 2                         | 2     |
| <b>Esri City Engine Advanced (single use)</b>            | 0                              | 1                         | 1     |
| <b>Esri City Engine Basic (single use)</b>               | 0                              | 4                         | 4     |



**Table A-2 Continued**  
**Enterprise License Software—Capped Quantities**

| <b>Product</b>                                     | <b>Number of Subscriptions</b> | <b>Named Users per Subscription</b> | <b>Annual Credits per Subscription</b> |
|--|--------------------------------|-------------------------------------|--|
| <b>ArcGIS Online Named Users</b>                   | 1                              | 100 Level 1<br>600 Level 2          | 300,000                                |
| <b>ArcGIS Enterprise Named Users</b>               | N/A                            | 100 Level 2                         | N/A                                    |
| <b>Community Analyst</b>                           | N/A                            | 40                                  | N/A                                    |
| <b>Insights for ArcGIS Enterprise Term License</b> | N/A                            | 5                                   | N/A                                    |
| <b>GeoPlanner for ArcGIS Online</b>                | N/A                            | 5                                   | N/A                                    |
| <b>Drone2Map for ArcGIS Online</b>                 | N/A                            | 5                                   | N/A                                    |

**APPENDIX B  
ELA FEE SCHEDULE**

The ELA Fee is \$1,575,000. The ELA Fee is in consideration of the Enterprise License Software, ELA Maintenance, and Esri International User Conference registrations. The ELA Fee does not include software development services. Optional EEAP and/or Training Passes as described in this Appendix B, may be purchased under this Agreement. The total Contract Value (not to exceed) including the initial ELA Fee and fees for optional services is \$2,000,000.

|                 | <b>Year 1<br/>July 1, 2018 to<br/>June 30, 2019</b> | <b>Year 2<br/>July 1, 2019 to<br/>June 30, 2020</b> | <b>Year 3<br/>July 1, 2020 to<br/>June 30, 2021</b> | <b>ELA Fee</b>     |
|-----------------|---|---|---|--------------------|
| <b>Payments</b> | <b>\$525,000</b>                                    | <b>\$525,000</b>                                    | <b>\$525,000</b>                                    | <b>\$1,575,000</b> |
| <b>Due Date</b> | <b>July 1, 2018</b>                                 | <b>July 1, 2019</b>                                 | <b>July 1, 2020</b>                                 |                    |

|  |  |
|--|--|
| <b>Number of Esri International User Conference Registrations per year</b> | <b>25</b>  |
| <b>Number of Tier 1 Help Desk Individuals</b>                              | <b>15</b>  |
| <b>Term of ELA pursuant to Section 3</b>                                   | <b>Three years from July 1, 2018 to June 30, 2021.</b> |

Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. City acknowledges that Esri has a right to invoice, and City agrees to pay any such sales or use tax associated with receipt of tangible media.

**Additional ArcGIS Online Level 2 Named User Costs:**

- Year 1 (2018): \$200 each
- Year 2 (2019): \$275 each
- Year 3 (2020): \$350 each

**Options:**

**Optional Esri Enterprise Advantage Program (EEAP) subscription with 100 technical advisory hours and up to 100 learning and services credits:**

- Year 1 (2018) fee: \$86,000.00
- Year 2 (2019) fee: Price in effect at time of purchase
- Year 3 (2020) fee: Price in effect at time of purchase

**Optional Esri Training Pass:**

The Esri Training Pass will include 50 training days per year. Training days that are not used will roll over to the next year of the ELA.

-Year 1 (2018) fee: \$27,000.00

-Year 2 (2019) fee: \$27,000.00

-Year 3 (2020) fee: \$27,000.00

City may exercise the above options by referencing Training Pass or EEAP and the applicable fee in its annual ELA purchase order as set forth in section 16 Purchase Orders, Delivery, and Deployment of this Agreement.



**APPENDIX D  
ELA POINTS OF CONTACT**

Either party may change its point of contact by written notice to the other party.

1. Esri point of contact for order processing issues:

Name: Customer Service  
Esri Redlands  
380 New York Street  
Redlands, CA 92373-8100  
E-mail: [service@esri.com](mailto:service@esri.com)  
Phone: 888-377-4575  
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

E-mail: [support@esri.com](mailto:support@esri.com)  
Phone: 909-793-3774 (domestic US only)  
Fax: 909-792-0960  
Web: [support@esri.com](mailto:support@esri.com)

3. City centralized point of contact for order release and administrative issues:

Name: Wilfred Dere, Department of Technology  
E-mail: [Wilfred.Dere@sfgov.org](mailto:Wilfred.Dere@sfgov.org)  
Phone: 415-581-3957  
Fax:

4. All deliverables to City will be shipped to the address listed below:

County Office: Department of Technology  
Name: Attn: SFGIS Program  
Address: One South Van Ness Avenue, 2<sup>nd</sup> Floor  
San Francisco, CA 94103

5. All notices to City will be mailed to the address listed below:

County Office: Department of Technology  
Name: Attn: DT Finance  
Address: One South Van Ness Avenue, 2<sup>nd</sup> Floor  
San Francisco, CA 94103

**APPENDIX E  
TIER 1 HELP DESK AUTHORIZED INDIVIDUALS**

Below are named Tier 1 Help Desk individuals authorized to seek Tier 2 Support from Esri. Substitutes/Changes to Tier 1 Help Desk authorized individuals may be made by written notice to Esri.

- |  |   |
|--|---|
| <p>1. Name: Brian Quinn<br/>Address: GSA - Technology</p> <p>Phone:<br/>Fax:<br/>E-mail: brian.quinn@sfgov.org</p>   | <p>7. Name: Michael Webster<br/>Address: City Planning</p> <p>Phone:<br/>Fax:<br/>E-mail: Michael.webster@sfgov.org</p> |
| <p>2. Name: Guy Michael<br/>Address: SFO</p> <p>Phone:<br/>Fax:<br/>E-mail: guy.michael@flysfo.com</p>               | <p>8. Name: Sean Stasio<br/>Address:</p> <p>Phone:<br/>Fax:<br/>E-mail: sean.stasio@sfgov.org</p>                       |
| <p>3. Name: Jeff Johnson<br/>Address: GSA - Technology</p> <p>Phone:<br/>Fax:<br/>E-mail: jeff.johnson@sfgov.org</p> | <p>9. Name: Shreepad Ranadive<br/>Address: PUC</p> <p>Phone:<br/>Fax:<br/>E-mail: sranadive@sfwater.org</p>             |
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**Esri Master Agreement No 329366  
(E204 version October 25, 2017)**

This Master Agreement ("MA") is between the City and County of San Francisco ("Customer") and Environmental Systems Research Institute, Inc. ("Esri"), and adds additional terms to Software License and Maintenance Agreement, Esri contract #328530. The MA comprises the terms and conditions that begin below and all referenced attachments. Additional or conflicting terms in any Ordering Documents exchanged during the ordering process, other than the terms of this Agreement, Product or Service descriptions, quantities, pricing, and delivery instructions are void and of no effect. Any modification(s) or amendment(s) to this MA must be in writing and signed by both parties.

Attachment A contains definitions of capitalized terms used throughout this MA. Each section of this MA may include additional definitions that are used exclusively within that section.

## 1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

**1.1 Grant of Rights.** In consideration of Customer's payment of all applicable fees and in accordance with this MA, Esri

- a. Provides Services as set forth in this MA;
- b. grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use the Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Deliverables or Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [Customer will insert the actual copyright date(s) from the source materials.] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this MA including Attachment B.

**1.2 Consultant or Contractor Access.** Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this MA and will ensure that each consultant or contractor discontinues use of the Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

**1.3 Reservation of Rights.** All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this MA are reserved.

**1.4 Trial, Evaluation, and Beta Licenses.** Products acquired under a trial or evaluation license or subscription or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the evaluation term, Customer may lose any Customer Content and customizations made during the evaluation term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the end of Customer's evaluation period.



## 2.0 SOFTWARE

**2.1 License Types.** Esri licenses Software under the following license types; the Documentation and Ordering Documents identify which license type(s) applies to the ordered Software:

- a. **Concurrent Use License:** Customer may install and use the Software on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- b. **Deployment License:** Customer may incorporate ArcGIS Runtime components in Value-Added Applications and distribute the Value-Added Applications to Customer's end users.
- c. **Deployment Server License:** Customer may use the Software under a Server License for all uses permitted in the MA and as described in the Documentation.
- d. **Development Server License:** Customer may use the Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
- e. **Development Use:** Customer may install and use the Software to build and test Value-Added Applications as described in the Documentation.
- f. **Dual Use License:** Customer may install the Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.
- g. **Failover License:** Customer may install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- h. **Redistribution License:** Customer may reproduce and distribute the Software provided that
  1. Customer reproduces and distributes the Software in its entirety;
  2. A license agreement that protects the Software to the same extent as this MA accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
  3. Customer reproduces all copyright and trademark attributions and notices; and
  4. Customer does not charge others a fee for the use of the Software.
- i. **Server License:** Customer may install and use the Software on a server computer. Server licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use, each Server License includes a Failover License.
- j. **Single Use License:** Customer may permit a single authorized end user to install and use the Software on a single computer. Customer may permit the single authorized end user to install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- k. **Staging Server License:** Customer may use the Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Servers.

### 2.2 Permitted Uses

- a. Customer may
  1. Install, access, or store Software and Data on electronic storage device(s);
  2. Make archival copies and routine computer backups;

3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software provided under a Development License.
  4. Move the Software in the licensed configuration to a replacement computer;
  5. Distribute to third parties Software and any associated Authorization Codes required for use of a Deployment License; and
  6. Use server Software for Commercial ASP Use if Customer has procured a Commercial ASP Use license or is a governmental or not-for-profit organization that operates a website or offers an Internet service on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in Documentation.
  - c. Customer may use all fonts provided with the Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
  - d. Esri publishes Product-specific Software terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/e300.pdf>.

### 3.0 ONLINE SERVICES

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

- a. "Anonymous Users" means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Value-Added Applications. Customer may enable Anonymous Users to access Customer Content or Value-Added Applications by publishing them through the use of the Sharing Tools, included with Customer's authorized use of the Online Services.
- b. "App Login Credential(s)" means a system-generated application login and associated password, provided when registering a Value-Added Application with ArcGIS Online, which when embedded in a Value-Added Application allows the Value-Added Application to access and use of Online Services.
- c. "Service Credit(s)" means a unit of exchange that is allocated with an Online Services subscription in an amount specified in the Ordering Document.
- d. "Sharing Tools" means publishing capabilities included with Online Services and ArcGIS Website that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.

**3.2 Online Services Descriptions.** Esri publishes Online Services subscription-specific terms of use at <http://www.esri.com/~media/Files/Pdfs/legal/pdfs/e300.pdf>.

### 3.3 Access to Value-Added Applications

- a. Named Users have unique, individual login credentials. Named Users have private access to features of Online Services that are not publicly accessible to Anonymous Users.
- b. Customer may use its Online Services subscription to build a Value-Added Application(s) for internal use by Named Users in accordance with the published Online Services descriptions.
- c. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Online Services subscription.
- d. Customer may not add third parties as Named Users to Customer's Online Services subscription. This restriction does not apply to third parties included within the definition of Named Users.
- e. Customer may not provide a third party with access to ArcGIS Online Services enabled through Customer's ArcGIS Online subscription other than through Customer's Value-Added Applications. This restriction does not apply to third parties included within the definition of Named Users.

- f. Customer may enable Anonymous Users to access Customer's Value-Added Applications running under Customer's own subscription, subject to the following terms:
1. Customer may charge for such access under subscription types that permit use for commercial retail business purposes.
  2. Customer may embed an App Login Credential into Value-Added Applications to enable public use by Anonymous Users but may not embed a Named User Credential.
  3. Customer is responsible for all Service Credits consumed in Anonymous Users' use of Customer's Value-Added Applications.
  4. Customer is solely responsible for providing technical support for Customer's Value-Added Application(s).
  5. Customer may not enable Anonymous Users to access Value-Added Applications that are intended for Customer's internal use only; Value-Added Applications used internally require each user to use Named User login credentials.

### 3.4 Customer's Responsibilities

- a. Customer is solely responsible for the development and operation of Customer Content and Value-Added Applications and for its Named Users' compliance with this MA. Customer and its Named Users or Anonymous Users (if applicable) are the only persons authorized to access Online Services through Customer's subscription. Named Users' login credentials are for designated Named Users only and may not be shared with other individuals. Customer may reassign a Named User License if the former Named User no longer requires access to Online Services.
- b. Customer must include attribution acknowledging that its application uses Esri Online Services, if attribution is not automatically displayed through the use of Online Services. Guidelines are provided in the Documentation.

**3.5 Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.

**3.6 Subscription Fee Changes.** Esri may change fees for subscriptions with a term greater than 1 month by notifying Customer at least 60 days prior to expiration of the then-current subscription term. Esri may change monthly subscription fees upon 30 days' notice. Outside the United States, the distributor may provide notice of rate changes.

### 3.7 Customer Content

- a. *Ownership.* Customer retains all right, title, and interest in Customer Content. Customer hereby grants Esri and Esri's vendors or licensors a nonexclusive, nontransferable, worldwide right to host, run, and reproduce Customer Content solely for the purpose of enabling Customer's use of Online Services. Without Customer's permission, Esri will not access, use, or disclose Customer Content except as reasonably necessary to support Customer's use of Online Services, respond to Customer's requests for customer support, or troubleshoot Customer's subscription or for any other purpose authorized by Customer in writing. If Customer accesses Online Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Online Services, and Customer Content. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure. It is Customer's sole responsibility to ensure that Customer Content is suitable for use with Online Services and for maintaining regular offline backups using the Online Services export and download capabilities.
- b. *Sharing Customer Content.* If Customer elects to share Customer Content using Sharing Tools, then Customer acknowledges that Customer has enabled third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion,

modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools or Online Services, Customer Content, ArcGIS Website, Documentation, or related materials. Customer's use of Sharing Tools is at Customer's sole risk.

- c. *Retrieving Customer Content upon Termination.* Upon termination of this MA or any trial, evaluation, or subscription, Esri will make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so. Thereafter, Customer's right to access or use Customer Content with Online Services will end, and Esri will have no further obligations to store or return Customer Content.

**3.8 Limits on Use of Online Services, Service Credits.** Each Online Services subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service Credit consumption reaches approximately 75% of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer has consumed all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

#### 4.0 DATA

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

- a. "Business Listing Data" means any dataset that includes a list of businesses and may include other associated business attributes.
- b. "Esri Content Package(s)" means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online basemap services.
- c. "Street Data" means Data that includes or depicts information about roads, streets, and related features.

#### 4.2 Permitted Uses

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Customer may include representations of the Data in hard-copy or static, electronic formats (e.g., PDF, GIF, JPEG) in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties subject to restrictions set forth in this MA, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise cache or download such Data.
- d. Esri does not acquire any rights in Customer Content under this MA.

#### 4.3 Use Restrictions

- a. Customer may not act directly or authorize its customers to cobrand Data, use the Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.

- d. *Street Data*. Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
  - 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
  - 2. Synchronized multivehicle routing; or
  - 3. Synchronized route optimization.
- e. *Business Analyst Data*. Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses*: If Customer orders a subset of a dataset (for example, a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Esri MapStudio Data*. Customer may create, publicly display, and distribute maps in hard-copy and static electronic format for news-reporting purposes only.
- h. *Michael Bauer Research International Boundaries Data ("MBR Data")*: Customer's right to use data downloaded to the Customer's premises (e.g. MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates two years after download.

**4.4 Supplemental Terms and Conditions for Data.** Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this MA and are available at [www.esri.com/legal/third-party-data](http://www.esri.com/legal/third-party-data).

**5.0 MAINTENANCE.** Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this MA.

## 6.0 PROFESSIONAL SERVICES

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

- a. "Invention(s)" means patentable inventions, discoveries, innovations, and improvements, excluding Deliverables, relating to the subject matter of a Task Order.
- b. "Inventor(s)" means the parties' principals, employees, consultants, or independent contractors that solely or jointly develop Inventions during Esri's performance under a Task Order.
- c. "Professional Service Package(s)" means a predefined unit of Professional Services, including travel-related expenses, provided at a firm fixed price.

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

## 6.3 Task Orders and Project Schedule

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

#### 6.4 Ownership of Deliverables and Inventions

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

#### 6.5 Acceptance

- a. *For Firm Fixed Price Task Orders.* Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:
  1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
  2. "DELIVERABLE ACCEPTED WITH REWORK" means a deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
  3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in a.1. or a.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2. or a.3., or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

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

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

**6.7 Customer Termination for Convenience.** Customer may terminate any Task Order at any time on 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this MA, including reasonable expenses incurred as a direct result of the termination and the pro rata contract price for the Task Orders affected.

## 6.8 Payment; Invoices

- a. *For Firm Fixed Price Task Orders.* Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- b. *For Professional Service Packages.* Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.
- c. *For Time and Materials Task Orders*
  1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <http://gsa.gov/>. Esri and Customer may include hourly labor rates in this MA; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
  2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

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

## 7.0 ESRI MANAGED CLOUD SERVICES (EMCS)

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

- a. "EMCS Environment" means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of EMCS.
- b. "Hosting" means the business of housing and making accessible Customer Content via the Internet.

## 7.2 Provision of EMCS

- a. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- b. **License to Customer Content.** During the Term of the Task Order issued under this MA, Customer hereby grants to Esri and its subcontractors permission to use Customer Content to support the provision of EMCS. Such permission shall include, but not be limited to, the grant of rights and license to manipulate, publish, distribute, and implement Customer Content within the EMCS Environment in any reasonable manner needed to support the provision of EMCS.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the EMCS to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary

storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the EMCS Environment.

- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the EMCS Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this MA, Customer shall notify Esri if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to use, any software, documentation, or other material that contains, links to, or is derived (in whole or in part) from any software, documentation, or other material distributed as free software, open-source software, or other similar licensing or distribution models including, but not limited to, software, documentation, or other material licensed or distributed under any of the following license or distribution models or license or distribution models similar to any of the following: (i) the GNU General Public License (GPL), Affero General Public License (AGPL), Lesser/Library GPL V3.X or higher (LGPL), or Free Documentation License; (ii) the Artistic License (e.g., Perl); (iii) the Mozilla Public License (MPL); (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); and (vi) the Sun Industry Standards Source License (SISSL) ("Public Software") in connection with the Customer Content in any manner that requires, pursuant to the license applicable to such Public Software, that any component of the EMCS be (1) disclosed or distributed in source code form, (2) made available free of charge to recipients, or (3) modifiable without restriction by recipients.
- g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this MA. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this MA.

**7.3 Takedown or Termination of EMCS.** In the event of takedown of Customer Content or upon any expiration or termination of an applicable Task Order while Esri is providing EMCS, Esri will download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer. Customer will be responsible for any unpaid fees due through the date of termination.

## 8.0 TRAINING

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

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Mobile Lab"** means Esri equipment consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches provided to Customer for use in conjunction with Training.
- c. **"Esri Training Event Assistant"** means Customer's primary Esri liaison in organizing private Training events.
- d. **"Student"** means a Customer employee or agent who is a registered participant in a specific Training course, Customer coaching services, or training-related services. If Customer is an individual, then Student means Customer.

## 8.2 Permitted and Prohibited Uses

- a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the training course for which the Training Materials are provided.
- b. Each Student may run and install 1 copy of Training Materials and reproduce 1 copy of Training Materials. The Student may make 1 additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.
- c. Customer may not permit any Student to (i) separate the component parts of the Training Materials for use on multiple systems or in the cloud, (ii) use the Training Materials in conjunction with any other software package,



- (iii) merge and compile the Training Materials into a separate database(s) or documents for other analytical uses, or (iv) use audio or video recording equipment during a Training course.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products for Training purposes only and under the terms of this MA. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Training event.
- e. Customer will retain ownership of any Customer-Supplied Training Data.

### 8.3 Esri's Responsibilities

Esri will

- a. Provide an instructor qualified to conduct the Training;
- b. Provide all necessary Training Materials for Student;
- c. Confirm class approximately 10 business days prior to the scheduled start date. Customer site and private classes confirmation is dependent on receipt of the completed Customer site training request form and intended method of payment.

### 8.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training event. Unregistered students may not view or participate in an online classroom Training event. Esri reserves the right to disconnect any Student who permits access to an unregistered student;
- b. Confirm that all Students meet the minimum prerequisites for the applicable Training event as listed on Esri's Training website;
- c. Submit registrations with a confirmed payment commitment at least 15 business days before the scheduled start date. Esri will not confirm reservations for registrations submitted without payment commitment but will instead add the registration to a waiting list pending payment confirmation. All waiting list reservations are subject to availability;
- d. Provide the Esri Training Event Assistant with a list of the names and email addresses of any Students who are to attend an event at least 3 business days before the scheduled start date.
- e. Be responsible for all Student travel arrangements and hold Esri harmless for losses from any nonrefundable travel arrangements due to the denial of Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations;
- f. For classes held at the Customer-designated facility, complete a client site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- g. Ensure that Student use of Training Materials provided by Esri complies with the terms of this MA; and
- h. Assume full responsibility for Student attending Training course(s) under this MA. Customer agrees to indemnify Esri, its officers, directors, and employees for any and all claims, liabilities, and expenses (including reasonable legal fees) arising out of or based on any uncured material breach by Student of the terms and conditions of this MA.
- i. If the Esri Mobile Lab is used, Customer will
  - 1. Immediately report any previously damaged Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the equipment.
  - 2. Keep Esri Mobile Lab equipment in a secure, locked area between Training event sessions.
  - 3. Ensure that only Students use Esri Mobile Lab equipment.
  - 4. Be responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession.
  - 5. Maintain sufficient insurance coverage to meet obligations created by this MA and by law or regulation.

6. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of Training. Esri will notify Customer in writing of any damage to Esri Mobile Lab equipment due to Student use, excluding normal wear and tear. Customer will be financially responsible for any repair or replacement of equipment resulting from such damage.
7. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the Training event.

#### 8.5 Student Registration and Training Event Change Policy

- a. *Individual Student Seats.* Customer will provide written notice to the Esri Customer Service department at [service@esri.com](mailto:service@esri.com) of any Student transfer, cancellation, or substitution requests at least 3 business days before the scheduled start date.
  1. Multiple requests and any requests that occur without the 3 business days' advance notice are subject to a fee, as determined by Esri.
  2. Cancellation of Student registrations that occurs without the 3 business days' advance notice is subject to the full Training event fee.
  3. Any substitute Student must be from the same organization as the Student being replaced.
- b. *Customer Site/Private Class/Coaching Services (Training Event).* Customer will provide written notice to Esri Customer Service at [service@esri.com](mailto:service@esri.com) of any Training event rescheduling, cancellation, or Student substitution requirements at least 3 business days before the scheduled start date.
  1. Training event rescheduling and cancellations that occur without the 3 business days' advance notice are subject to the full Training event fee. Customer will be responsible for all of Esri's reasonable travel expenses and shipping costs (including Esri Mobile Lab) for all rescheduled or canceled Training events.
  2. Student substitutions that occur without the 3 business days' advance notice are subject to a fee, as determined by Esri. Any substitute Student must be from the same organization as the Student being replaced.
- c. If cancellation of a Training event is necessary due to causes beyond the party's reasonable control, the affected party is released in full from the 3-business-day notification requirement. The affected party will either reschedule or cancel the Training without incurring any liability.
- d. If Esri is unable to conduct the Training on the scheduled date, Esri will notify Customer at least 3 business days before the scheduled start date.
- e. Esri will not permit any Student who is a resident of a US embargoed country or is listed on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists to attend the Training event.
- f. *Termination of MA.* Students who are currently registered for a Training course as of the date of termination of this MA may attend the scheduled Training, subject to the terms and conditions of this MA.

#### 8.6 Invoicing; Prepaid Fees

- a. Esri will invoice Customer upon completion of each Training course or immediately upon receipt of a purchase order if mutually agreed to by the parties.
- b. If Customer is invoiced and pays that invoice prior to the scheduled Training event, then Customer has 1 calendar year from the date of the invoice to consume the Training days. For a multiyear order, the Training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

## 9.0 ESRI ENTERPRISE ADVANTAGE PROGRAM

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

- a. "Activity Description" means a confirmation email or document received from Customer that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate.
- b. "Authorized EEAP Contact" means the Customer point of contact for EEAP identified below.
- c. "EEAP" means the Esri Enterprise Advantage Program as described in this section.
- d. "Learning and Services Credits" means credits that Customer may use in exchange for Professional Services, Training, PSS, EMCS, or related travel expenses as described below.
- e. "Premium Support Services" or "PSS" means a prioritized incident management and technical support program further described at <http://support.esri.com/en/support/premium>.
- f. "Technical Advisor" means an Esri advisor assigned to work with Customer to provide Professional Services comprising advising on GIS strategies, facilitating annual account planning, and developing and coordinating a collaborative technical work plan under EEAP.

9.2 **EEAP Description.** EEAP is provided on an order-by-order, annual subscription basis. EEAP is a menu of Professional Services, Training, PSS, and EMCS that provides Customer with the flexibility to select the components that best meet its needs. The current EEAP is further described at [www.esri.com/services/eeap/components](http://www.esri.com/services/eeap/components), which may be changed from time to time. EEAP includes

- a. **Technical Advisor.** Customer will receive up to the number of Technical Advisor hours ordered. Customer may elect to retain additional Technical Advisor hours for a supplemental price.
- b. **Annual Account Planning Session.** A 1-day annual account planning and review meeting is included.
- c. **Technical Work Plan.** A collaboratively developed document designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, EMCS or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the following website: [www.esri.com/services/eeap/components#learning](http://www.esri.com/services/eeap/components#learning). Esri will provide the Authorized EEAP Contact with a monthly report outlining usage of EEAP Learning and Services Credits to date.
- e. **Quarterly Technology Webcast.** Esri will provide an email invitation to the Authorized EEAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.
- f. **No Development Services.** EEAP is not designed for Esri to provide project-specific professional services such as custom application or database development for solutions or applications. If these types of professional services are required, Customer will need to enter into a separate Task Order for Professional Services.

9.3 **Authorized EEAP Contact Information.** Customer identifies the following person as its initial Authorized EEAP Contact.

(to be completed by Customer):

Contact Name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Fax: \_\_\_\_\_  
City, State, ZIP: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**9.4 Current on Maintenance.** Customer must remain current on standard Software Maintenance during the EEAP Term.

**9.5 Authorization of Learning and Services Credits Use.** Customer will contact its account manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Customer a Learning and Services Credit estimate by email for confirmation and authorization to use the Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an Activity Description. Esri will begin performance and deduct the amount quoted from the unused Learning and Services Credits available.

**9.6 Activity Descriptions for EMCS.** The Activity Description for EMCS orders must include the following:

- a. **The EMCS term**—The time period in which Esri provides the EMCS to Customer. The EMCS term does not begin until setup and deployment of the data and application are complete.
- b. **Targeted system availability**—The minimum percentage of time that Customer has external access to the application and associated Customer Content through the Internet. Examples of supported levels of system availability are 95 percent, 99 percent, and 99.9 percent. Not all EMCS offerings include a targeted system availability.
- c. **Number of anticipated requests**—A request is made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the EMCS Environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. **Amount of data storage**—The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications or Cloud Services.
- e. **Learning and Services Credits Consumption**—The price for the EMCS in Learning and Services Credits.

The Data storage location may be defined in the Activity Description.

**9.7 Travel and Per Diem Expenses.** Any Esri travel and per diem expenses will be quoted separately. Customer may direct Esri to use Learning and Services Credits for travel and per diem expenses, or Customer will issue a purchase order and Esri will invoice Customer for the travel and per diem expenses as set forth in the "Professional Services" section of this MA.

**9.8 Notification of Consumed Credits.** Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all of its Learning and Services Credits.

**9.9 Review of Proposed Activities.** Any activities proposed to be completed under the EEAP will be subject to review and approval by Esri to ensure alignment with the intent of the program.

#### **9.10 Invoicing**

- a. Esri shall invoice Customer as quoted for the EEAP subscription, additional Learning and Services Credits, or Technical Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the EEAP subscription expiration date. Esri will extend the EEAP subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Technical Advisor services upon receipt of Customer's order.
- b. Pricing for annual program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

**9.11 Termination and Expiration.** Upon termination or expiration of an EEAP subscription

- a. Technical Advisor, annual account planning session, and Activity Description services will end as of the expiration or termination date unless Customer renews its subscription;
- b. Unless either party terminates the EEAP subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the EEAP subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from their purchase date or termination of the EEAP agreement, whichever comes first.

**ATTACHMENT A  
GLOSSARY OF TERMS**

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this MA. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this MA.

"API" means application programming interface.

"ArcGIS Website" means [www.arcgis.com](http://www.arcgis.com) and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and EMCS.

"Commercial ASP Use" means use as a commercial application service provider, that is, to generate revenue by providing access to Software or Online Services through a Value-Added Application, for example, by charging a subscription fee, service fee, or any other form of transaction fee or by generating more than incidental advertising revenue.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes, that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to a Customer as a result of performance of Professional Services other than Products, Training, or Services performed under EEAP.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" or "EMCS" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

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

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles the Customer to Product updates and other benefits such as access to technical support and to self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial-of-service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"**Named User(s)**" is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique secure named user login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.

"**Named User Credential(s)**" means an individual person's login and associated password enabling that person to access and use Products.

"**Named User License or Subscription**" means a license or subscription for use by a single Named User.

"**Online Services**" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"**Ordering Document(s)**" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying the Esri Offerings, updates, or Services that Customer orders.

"**Perpetual License**" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this MA.

"**Personal Use**" means personal, noncommercial use by an individual Customer. Personal Use excludes use for the benefit of any third party, including commercial, educational, governmental, or nonprofit entities.

"**Product(s)**" means Software, Data, and Online Services.

"**Professional Services**" means any development or consulting services that Esri provides to Customer.

"**Sample(s)**" means sample code, sample applications, add-ons, or sample extensions of Products.

"**Service(s)**" means Maintenance. If Esri provides EMCS, Training, or Professional Services directly to Customer, then Services also include EMCS, Training, and Professional Services.

"**Software**" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"**Specification(s)**" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"**Task Order(s)**" means an Ordering Document for Services.

"**Term License**" means a license for use of an Esri Offering for a limited time period ("**Term**").

"**Third-Party Content**" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"**Training**" means standard Product training that Esri provides under this MA.

"**Training Materials**" means digital or printed content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, and exams.

"**Value-Added Application(s)**" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

**ATTACHMENT B  
GENERAL TERMS AND CONDITIONS**

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this MA. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this MA.

**ARTICLE 1—GENERAL USE RESTRICTIONS**

Except as expressly permitted in this MA, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Esri Offerings;
- b. Use Software for Commercial ASP Use or service bureau purposes;
- c. Distribute or provide direct access to Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- d. Distribute Authorization Codes to third parties;
- e. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- f. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- g. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or regulation;
- h. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- i. Unbundle or independently use individual or component parts of Esri Offerings;
- j. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- k. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- l. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any part of the Esri Offerings to open-source or open-database license terms that require any part of the Esri Offerings to be
  1. Disclosed in source code form to third parties;
  2. Licensed to third parties for the purpose of making derivative works; or
  3. Redistributable to third parties at no charge.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

**ARTICLE 2—TERM AND TERMINATION**

Customer may terminate this MA or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this MA. Either party may terminate this MA or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this MA for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this MA continue under the terms of this MA.

If Esri terminates this MA following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions in Esri Offerings. If Customer terminates this MA for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.



Upon any termination of a license or subscription, Customer will

- a. Stop accessing and using the terminated Esri Offerings;
- b. Clear any client-side data cache derived from the terminated Cloud Services; and
- c. Stop using and uninstall, remove, and destroy all copies of affected Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this MA. This MA terminates upon the insolvency, liquidation, or dissolution of either party.

**ARTICLE 3—LIMITED WARRANTIES AND DISCLAIMERS.** Article 14 Limited Warranties and Disclaimers found in Esri contract number 328530 applies to this MA.

**ARTICLE 4—LIMITATION OF LIABILITY.** Article 26 Liability of the Parties found in Esri contract number 328530 applies to this MA.

**ARTICLE 5—INFRINGEMENT INDEMNIFICATION.** Article 11 Infringement Indemnity found in Esri contract number 328530 applies to this MA.

**ARTICLE 6—RESERVED**

**ARTICLE 7—SECURITY AND COMPLIANCE**

**7.1 Security.** Esri publishes its security capabilities at <http://doc.arcgis.com/en/trust/security/security-overview.htm>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at [securesupport@esri.com](mailto:securesupport@esri.com) for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

**7.2 Malicious Code.** Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through third-party Content.

**7.3 Export Compliance.** Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not

perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

## ARTICLE 8—CLOUD SERVICES

**8.1 Prohibited Uses.** Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Spams, spoofs, or phishes email; transmits junk email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

**8.2 Service Interruption.** System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

**8.3 Removal of Customer Content.** Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this MA. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at [www.esri.com/legal/dmca\\_policy](http://www.esri.com/legal/dmca_policy).

**8.4 Service Suspension.** Esri may suspend access to Cloud Services (i) if Customer materially breaches this MA and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above.

**8.5 Notice to Esri.** Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

## ARTICLE 9—GENERAL PROVISIONS

**9.1 Payment.** Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the distributor's invoices in accordance with the distributor's payment terms.

**9.2 Feedback.** Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

**9.3 Patents.** Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

**9.4 Restrictions on Solicitation.** Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

**9.5 Taxes and Fees; Shipping Charges.** Fees that Esri quotes to Customer are exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; and shipping and handling charges. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

**9.6 Compliance Review.** Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this MA. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

**9.7 No Implied Waivers.** The failure of either party to enforce any provision of this MA is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**9.8 Severability.** If any provision of this MA is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this MA will remain in effect.

**9.9 Successor and Assigns.** Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this MA without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This MA will be binding on the respective successors and assigns of the parties to this MA. Notwithstanding, a contractor under contract to the government to deliver Products may assign this MA and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this MA. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this MA; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

**9.10 Survival of Terms.** The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this MA: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnification," and "General Provisions."

**9.11 Reserved.**

**9.12 Governing Law.** This MA is not subject to the United Nations Convention on Contracts for the International Sale of Goods. The applicable laws of Customer's jurisdiction govern this MA.

**9.13 Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.

**9.14 Force Majeure.** A party will not be liable for any failure of or delay in the performance of this MA for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

**9.15 Independent Contractor.** Esri is and at all times will be an independent contractor. Nothing in this MA creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and

Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

**9.16 Notice.** Customer may send notices required under this MA to Esri at the following address:

Environmental Systems Research Institute, Inc.  
Attn: Contracts & Legal Department  
380 New York Street  
Redlands, CA 92373-8100  
USA

Tel.: 909-793-2853  
Email: [LegalNotices@esri.com](mailto:LegalNotices@esri.com)

**ATTACHMENT C  
SAMPLE TASK ORDER**

Esri Agreement No. \_\_\_\_\_  
Task Order No. \_\_\_\_\_

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

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

In addition to the foregoing, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Customer 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 Customer and (2) copies of ordinances, codes, regulations, or other governmental documents.

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

ACCEPTED AND AGREED:

[sample only—do not sign]  
(Customer)

Signature: [sample only—do not sign]

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

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

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

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

Signature: [sample only—do not sign]

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

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

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

**ATTACHMENT D  
TIME AND MATERIALS RATE SCHEDULE**

See Quotation for Pricing.



## ESRI MAINTENANCE AND SUPPORT PROGRAM

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

This Esri Maintenance and Support Program document describes Esri's commitment to support Customer's use of Esri's unmodified Qualifying Products by providing some or all of the following maintenance benefits: technical support, new version software, hot fixes, patches, software updates, Self-Paced E-Learning, beta programs, and/or Esri User Conference registration ("**Maintenance**"). Maintenance benefits may vary by product or program. For Maintenance details, contact Esri Customer Service or visit Esri's product qualification web page at <http://www.esri.com/software/maintenance/benefits>.

In addition to Maintenance, customers in the United States of America may purchase Premium Support Services (PSS), which enhance the benefits of Maintenance, including access to a designated Technical Account Manager (TAM), the ability for Premium LAC to convert a Case into a PSS Case at any time, priority Case management, and additional enhanced support and services. For Premium Support Services details, contact Esri or visit Esri's Premium Support web page at <http://support.esri.com/other-resources/SupportServices>.

Esri reserves the right to change the Esri Maintenance and Support Program at any time and, if reasonable under the circumstances, Esri will provide thirty (30) days' advance written notice of any material alterations. Any material alterations will become effective upon renewal.

### ARTICLE I—DEFINITIONS

The terms used are defined as follows:

- a. "**Authorized Caller(s)**" means the Customer-designated individual who may contact Esri to request standard technical support (e.g., to report technical issues or request product assistance).
- b. "**Case**" previously referred to as Incident, means the Esri record that contains technical notes and documentation of all related interactions between Customer and Esri Support Services for a given technical issue. Depending on how the request was initiated, Esri will provide phone, email, or chat confirmation of the Case creation. The Case will be given a unique identification number for reference and tracking.
- c. "**Customer**" means City and County of San Francisco.
- d. "**Customer Advocacy Program**" means an Esri program that gathers feedback from customers in order to improve Esri products in future releases. Feedback is gathered through ideas, customer support cases, and customer support surveys.
- e. "**Customer Number**" means a unique number created by Esri to identify each Customer office or site and that will be included on the invoice and/or packing list with any shipment.
- f. "**Hot Fix(es)**" means a single fix in one of the specific functional areas that is critical to Customer (e.g., Customers production has stopped) Esri will send the Hot Fix to Customer as soon as Esri completes a technical feasibility assessment. With the Hot Fix, Esri will deliver documentation that will clearly identify the technical problems addressed and any limitations. Esri will conduct limited testing on Hot Fixes before providing them to Customer. Esri will incorporate Hot Fixes into subsequent service packs. Hot Fixes do not provide new functionality. Hot Fixes will only function with the associated Esri product type and release.
- g. "**Patch(es)**" means a single fix (see Hot Fix[es]) or a set of related fixes that are in a specific functional area of the Esri product and will apply to multiple Esri customers. Once a Patch is released, it will be incorporated into a subsequent service pack release. Esri conducts limited testing on Patches before providing them to customers. Patches do not provide new functionality. Patches will only function with the associated Esri product type and release.
- h. "**Premium LAC**" means up to two (2) individuals selected by Customer to report a PSS Case and work directly with the TAM.
- i. "**PSS Case(s)**" means a Case that is opened as or elevated to PSS via Customer request or technical support's elevation process.

- j. **"Qualifying Product(s)"** means Esri's unmodified Products or Products that were modified by Esri or under Esri's direction and are eligible for some or all of the Maintenance benefits licensed to Customer subject to the terms and conditions of the Master Agreement.
- k. **"Self-Paced E-Learning"** means a collection of self-paced learning resources for the ArcGIS Platform, accessible from the Esri Training website.
- l. **"Software Updates"** means a collection of files that enhance or correct a Qualifying Product and that will be available for Customer to download during the Maintenance term.
- m. **"TAM"** means the Technical Account Manager who will be the primary point of contact for the coordination and escalation of PSS Cases.

## ARTICLE 2—PAYMENT, EXPIRATION, RENEWAL, AND REINSTATEMENT

**2.1 Payment.** Esri will automatically provide Maintenance for the first twelve (12) consecutive months from the licensed date of Qualifying Products. Thereafter, Customer can purchase Maintenance and/or PSS in advance, on an annual basis with payment terms of net thirty (30) days, unless otherwise agreed to in another agreement between Customer and Esri. Customer may issue a purchase order for its initial PSS order at any time during a Maintenance term. This section is not applicable to ELA Maintenance provided under the ELA.

**2.2 Term Expiration.** Esri will send Customer a notice of expiration one hundred twenty (120) days before the term expires. Esri will issue a quote ninety (90) days before the expiration date ("Renewal Quote"). The Renewal Quote will be sent via email or fax and provide Customer with a breakdown of the Products licensed and PSS due to expire and the associated fees to renew. If Esri does not receive a purchase order or payment prior to the expiration date, Esri will notify Customer that the term has expired. Esri will continue to provide standard technical support for an additional thirty (30) days, but Customer will no longer receive Software Updates released after the Maintenance term's expiration, or have access to PSS. If Customer does not reinstate Maintenance within thirty (30) days after the expiration date, Customer will no longer receive technical support. All other Maintenance benefits and Premium Support Services will end with the expiration of the Maintenance term.

**2.3 Prorating Renewal Terms.** If Customer has acquired multiple Qualifying Products throughout the course of a year, Esri will provide a single Renewal Quote with prorated fees and a common renewal term for all Qualifying Products and PSS (if applicable). The common renewal term will start on the earliest of the Qualifying Products' renewal dates. This section is not applicable to ELA Maintenance provided under the ELA.

**2.4 Reinstatement Fee for Past Due Renewals.** Esri will reinstate Maintenance and PSS (if applicable) if Customer sends a purchase order or payment within thirty (30) days of the expiration date. If Customer does not renew Maintenance or PSS (either as a stand-alone order or through the Esri Enterprise Advantage Program) within thirty (30) days of the expiration date but at a later date wants to reinstate Maintenance, Maintenance fees will include the Maintenance fees that Customer would have paid since the expiration date. Renewal Maintenance and PSS will be reinstated at the then-current pricing.

## ARTICLE 3—ESRI USER CONFERENCE REGISTRATION; SELF-PACED E-LEARNING

**3.1 Esri User Conference Registration.** During the Maintenance term, Customer may be eligible for complimentary registrations to attend the Esri User Conference. Unless otherwise agreed to in writing by Esri and Customer, Customer's eligibility will be dependent on the license type(s) and quantity of Qualifying Products. Customer may purchase additional registrations. Customer must submit a registration form for each individual attending the conference. Esri User Conference registrations are assigned in the order received and are nontransferable.

**3.2 Self-Paced E-Learning.** During the Maintenance term, Customers will receive access to Self-Paced E-Learning. Each individual must have an Esri account, a broadband Internet connection, and must be an employee, agent, consultant, or contractor of Customer. For education accounts, individuals may include registered students.



## ARTICLE 4—TECHNICAL SUPPORT

**4.1 Scope of Technical Support.** During the Maintenance term, Qualifying Products will receive the level of technical support corresponding to the respective life cycle phase. Information on the Qualifying Product life cycle phase and the ArcGIS Product Life Cycle Support Policy can be found at <http://support.esri.com/en/content/productlifecycles>. Esri does not provide technical support for (a) sample applications; (b) patches received outside of a life cycle; or (c) third-party software, hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, or similar peripherals that are not provided by Esri. However, Esri does answer questions about how to interface Esri products with supported devices.

**4.2 Authorized Callers.** Customer may designate a limited number of Authorized Callers per Qualifying Product. Customer may replace Authorized Callers at any time by notifying Esri Support Services or through the My Esri site. If Customer has an enterprise agreement, site license agreement, or paid PSS subscription with Esri, Authorized Callers will be identified by name in the corresponding agreement or documentation.

**4.3 Telephone, Chat, and Web Form.** If Customer needs help with a technical issue, Authorized Caller may contact Esri by phone, chat, or web form.

- a. *By Telephone.* Each technical support request will be logged as a Case. After a Case is logged, the caller will be connected to a technical specialist who will be dedicated to work on the technical issue. If a technical specialist is unavailable, the Case will be placed in a dispatch queue for the next available technical specialist.
- b. *By Chat.* To initiate a chat consultation, click the Chat with an Analyst button at <http://support.esri.com/en/webform-chat>. Chat-based requests can only be made during Esri Support Services operating hours, listed in Article 7 below. Each technical support request will be logged as a Case. After a Case is logged, Authorized Caller will be connected to a technical specialist. If a technical specialist is unavailable, Authorized Caller can opt to receive an email notification when the next technical specialist is available.
- c. *By Web Form.* Authorized Caller may request technical support by completing an online web form available at <http://support.esri.com/en/webform>. Requests made through this channel are received twenty-four (24) hours a day, seven (7) days a week, but are logged and assigned to a technical specialist the next business day. Esri will respond on a first come, first served basis. All Cases reported by web form are given the same priority and level of attention as those reported by telephone.

**4.4 Esri Online Support Center and My Esri.** Esri has created a self-help support website center for Authorized Caller to submit technical issues; chat with technical specialists; track technical support Cases through the Esri Customer Care portal; and view technical articles, updated product documentation, blogs, links to forums, and technology announcements. The Esri Support website can be found at <http://support.esri.com>. My Esri can be found at <https://my.esri.com>.

**4.5 Technical Support Case Reporting/Logging.** For most Qualifying Products, Authorized Caller may contact Esri as many times as needed. All requests for technical support must contain detailed information about the technical issue. Authorized Caller must be prepared to provide as much of the following information as possible:

- The Esri Customer Number
- The phone number and email address where Authorized Caller can be reached
- The version of the software and operating system in use
- The database in use, if applicable
- The Esri Global ID
- A description of what Customer was doing when the problem occurred
- The exact wording of any error messages that appear on the screen
- Any steps taken to resolve the problem

**4.6 Standard Technical Support Response Time.** Esri will respond to a technical support request during Esri Support Services operating hours. Esri will make commercially reasonable efforts to respond and provide status updates to Authorized Caller according to the severity level of the technical issue as shown in the table below.

Authorized Caller may request that the technical specialist change a technical issue severity level, but requests for critical- and high-severity levels must be made via telephone.

| Severity | Criteria  | Response Time            | Status Updates  |
|----------|---|--------------------------|---|
| Critical | <ul style="list-style-type: none"> <li>▪ Causes a severe impact to business operations (e.g., critical business processes are disabled)</li> <li>▪ No workaround available</li> </ul>                           | Six (6) business hours   | Esri will provide status every business day until closure of the Case.            |
| High     | <ul style="list-style-type: none"> <li>▪ Causes a noncritical impact to business operations (e.g., significant degradation of quality or handling of data)</li> <li>▪ No stable workaround available</li> </ul> | Eight (8) business hours | Esri will provide status every business day until closure of the Case.            |
| Medium   | <ul style="list-style-type: none"> <li>▪ Causes a minor impact to business operations</li> </ul>  | Two (2) business days    | Esri will provide status every three (3) business days until closure of the Case. |
| Routine  | <ul style="list-style-type: none"> <li>▪ Causes little or no impact to business operations</li> </ul>   | Two (2) business days    | Esri will provide status every five (5) business days until closure of the Case.  |

**4.7 Resolution Time.** After the Technical Support Case is logged, Esri will use commercially reasonable efforts to provide corrections to a technical issue or supply a workaround. While it is Esri's goal to provide an acceptable resolution to technical issues, Esri cannot guarantee that all technical issues can be fixed or resolved.

**ARTICLE 5—PREMIUM SUPPORT SERVICES (US CUSTOMERS ONLY)**

If Customer is current on Maintenance, pays for and utilizes Premium Support Services, in addition to all benefits described for in Article 4 above, Customer will receive (i) access to a designated TAM, (ii) the ability for Premium LAC to convert a Case into a PSS Case at any time, (iii) priority Case management, and (iv) additional enhanced support and services.

**5.1 Technical Account Manager.** Esri will assign a TAM to Customer to work directly with Premium LAC to oversee open Cases.

- a. TAM will (i) become familiar with Customer's geographic information system (GIS) software architecture and infrastructure; (ii) verify that all open PSS Cases are prioritized above Cases opened under Maintenance; (iii) work closely with Premium LAC and Esri senior support analyst toward the resolution of all open PSS Cases; (iv) provide Premium LAC with a daily status update on all PSS Cases or as agreed to by TAM and Customer; and (v) make reasonable efforts to be available from 5:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except on Esri holidays.
- b. Esri may replace TAM with another TAM of similar skill and background, by written notice to Customer.
- c. All communications will be conducted in the English language unless by written agreement of both parties.

**5.2 Priority Case Management.** Priority Case management will include the following protocol:

- a. Cases reported by Premium LAC and converted to a PSS Case will be given priority handling after the initial Case is created and documented (excluding chat Cases); and
- b. The Customer Advocacy Program within Esri support services, created to improve Esri's ability to understand and respond to technical issues, will give priority to Qualifying Product defects affecting Customer.

**5.3 PSS Response Time.** In addition to the response times outlined in Article 4.6, Esri will make commercially reasonable efforts to call or send an email response within one (1) business hour of receipt of a new PSS Case, regardless of its severity level. Esri will provide a status report every business day until closure of the PSS Case.

## ARTICLE 6—CONFIDENTIALITY

All data, conversations, and Cases are confidential in nature. Esri will treat all Cases (including PSS Cases) as confidential, using the same degree of care, but no less than reasonable care, as Esri uses to protect its own confidential information. Within ninety (90) days of closing a Case, Esri will delete or destroy all information provided within a Case, unless otherwise requested by Licensee, in writing, to delete specific datasets more than ninety (90) days closing a Case. This obligation to delete or destroy excludes information retained in backup media or other archival records maintained in the ordinary course of business that are not readily accessible by Esri personnel, or information retained for future review by Esri's development team.

## ARTICLE 7—CONTACTING ESRI

### Esri Support Services

Web: <http://support.esri.com/>

Tel.: 909-793-3774

Toll-Free Phone: 888-377-4575, extension 2

Support Web Form: <http://support.esri.com/en/webform>

MyEsri: <http://my.esri.com>

Chat: <http://support.esri.com/en/webform-chat>

### Esri Corporate Offices

Tel.: 909-793-2853

Fax: 909-793-5953

Email: [info@esri.com](mailto:info@esri.com)

### Esri Customer Service

Tel.: 888-377-4575, extension 5

Email: [service@esri.com](mailto:service@esri.com)

Web: <http://service.esri.com>

Operating Hours: 5:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except Esri holidays

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY -- TISDept. Code: TISType of Request:  Initial  Modification of an existing PSC (PSC # \_\_\_\_\_)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: Professional Technical and Training ServicesFunding Source: General Funds and Enterprise FundsPSC Amount: \$100,000PSC Est. Start Date: 07/01/2018PSC Est. End Date 06/30/2021**1. Description of Work**

## A. Scope of Work/Services to be Contracted Out:

Training users on the citywide Enterprise Licensed Environmental Systems Research Institute Geographic Information System (GIS) software products, and Geographic Information System Project consulting, on an as-needed basis.

## B. Explain why this service is necessary and the consequence of denial:

This service is necessary to provide training and project consulting for Citywide use of Environmental Systems Research Institute's Geographic Information System Software products on an as-needed basis. These services require special technical knowledge of Environmental Systems Research Institute products. These products are critical to the functions of twenty-eight City Departments and if denied will adversely affect their operations.

## C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

PSC# 43213 – 14/15 was approved by the Commission on January 5, 2015, in the amount of \$750,000. The duration of the approved PSC# 43213 – 14/15 began January 9, 2015, and ends on September 30, 2018. This new PSC request is being submitted for a new Enterprise Agreement to be executed between Environmental Systems Research Institute and the City. The scope of the services identified in the initial PSC is identical to the services described herein.

## D. Will the contract(s) be renewed?

Yes.

## E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

**2. Reason(s) for the Request**

## A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

## B. Explain the qualifying circumstances:

Services required on an intermittent basis and require proprietary technical knowledge of Environmental Systems Research Institute Geographic Information System Products that are not available to City staff and cannot access due to the proprietary nature of the Geographic Information System Software.

### 3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Specify required skills and/or expertise: Specialized proprietary technical knowledge of Environmental Systems Research Institute Desktop and Server-side Geographic Information System Software products, Geographic Information System Technical Requirement and Solution Development, Geographic Information System Project Management and Implementation, Geographic Information System Software Training.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1033, IS Trainer-Senior; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1053, IS Business Analyst-Senior; 1063, IS Programmer Analyst-Senior;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:  
No.

### 4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Departments cannot get these services through available resources because of the proprietary nature of the technical knowledge required.

### 5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.  
Training and Project Consulting Services require extensive technical knowledge and expertise with proprietary Environmental Systems Research Institute Geographic Information System Software. Additionally, Project Consulting Services may require access to Environmental Systems Research Institute source codes that are proprietary to Environmental Systems Research Institute and not available to City employees.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, because the services require technical knowledge and expertise with proprietary Environmental Systems Research Institute Geographic Information System Software, and access to Environmental Systems Research Institute source codes.

### 6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Yes. The training will be for City Departments utilizing Environmental Systems Research Institute Geographic Information System Software on an as-needed basis. The approximate number of hours and the scope of any training will be determined when a Department identifies a Geographic Information System project they need assistance with. At the time of this new Enterprise Agreement, no training activities have been identified.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.

- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes. Environmental Systems Research Institute has only provided virtual training/webcourses under the current agreement.

7. **Union Notification:** On 06/06/2018, the Department notified the following employee organizations of this PSC/RFP request:  
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: One South Van Ness, 2nd Floor San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 37663 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Not Required

Approved by DHR on 06/22/2018

PSC 37663-17/18

**Similar Service was Provided Under 43213-14/15**

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGYDept. Code: TISType of Request:  Initial  Modification of an existing PSC (PSC # 43213 - 14/15)Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)Type of Service: Esri Geographic Information System (GIS) Software Training, and Project Consulting ServicesFunding Source: Enterprise and General FundsPSC Original Approved Amount: \$750,000PSC Original Approved Duration: 01/09/15 - 09/30/18 (3 years 37 weeks)PSC Mod#1 Amount: no amount addedPSC Mod#1 Duration: 10/01/18-09/30/21 (3 years 1 day)PSC Cumulative Amount Proposed: \$750,000PSC Cumulative Duration Proposed: 6 years 37 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Training users on the citywide Enterprise Licensed Esri Geographic Information System (GIS) Software products, and Geographic Information System (GIS) Project consulting

**B. Explain why this service is necessary and the consequence of denial:**

This service is necessary to provide training and project consulting for Citywide use of Esri's Geographic Information System (GIS) Software products on an as-needed basis. These services require special technical knowledge of Esri products. These products are critical to the functions of multiple City Departments and if denied will adversely affect their operations.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

Yes

**D. Will the contract(s) be renewed?**

Yes

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:**

The City currently has an Enterprise License Agreement (ELA) with Esri, which took effect January 12, 2015, and expires on June 30, 2018. The Esri geographic information system (GIS) software is currently being used by twenty-eight City departments. The City desires to renew its engagement with Esri for an additional 3-year term, to take effect July 1, 2018, and end on June 30, 2021, for continued use of the GIS software suite. Esri's licensing fee includes standard/routine maintenance of the software. Maintenance in this context covers technical support via telephone, chat and web, new software versions, hot fixes, patches and updates. The City can also purchase technical services and/or training on an as-needed basis. The City would only engage Esri for technical services and/or training on a project-by-project basis, and



only for assistance requiring back-end reconfiguration of the software. During the term of the current agreement (1/12/15 – 6/30/18), the City has only expended \$86,000 for services and training. Due to the proprietary nature of the Esri GIS software suite, this type of technical services and training can only be performed by Esri employees who are familiar with the software capabilities and may require access to its source code. No City employee has this technical expertise or access to source code to be able to perform this type of service and training.

## 2. Reason(s) for the Request

### A. Display all that apply

- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

Services required on an intermittent basis and require proprietary technical knowledge of Esri Geographic Information System (GIS) Products that City staff do not have and cannot get due to the proprietary nature of the Geographic Information System (GIS) Software

### B. Reason for the request for modification:

PSC# 43213 – 14/15 was approved by the Commission on December 15, 2014, in the amount of \$750,000. The duration of the approved PSC# 43213 – 14/15 began January 9, 2015, and ends on September 30, 2018. The original approved amount of \$750,000 was to be used on an as-needed basis, of which only \$86,000 has been used for services and training. DT is now submitting this modification request to continue contracting out the same services for an additional three years, consistent with the renewal of the licensing term for continued use of the Esri software. DT is not seeking an increase to the original approved PSC amount of \$750,000, rather, we are only requesting an extension of the PSC duration to September 30, 2021.

## 3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Specialized proprietary technical knowledge of Esri Desktop and Server-side Geographic Information System (GIS) Software products, Geographic Information System (GIS) Technical Requirement and Solution Development, Geographic Information System (GIS) Project Management and Implementation, Geographic Information System (GIS) Software Training.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1033, IS Trainer-Senior; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1053, IS Business Analyst-Senior; 1063, IS Programmer Analyst-Senior;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

## 4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Training and Project Consulting Services require extensive proprietary technical knowledge of Esri Geographic Information System (GIS) Software products
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, because the services require proprietary technical knowledge and expertise with Esri Geographic Information System (GIS) Software.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Please see attachment "PSC 43213 14-15 Training Services Description"
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Yes, Esri will continue to provide needed services.

**7. Union Notification: On 03/28/18, the Department notified the following employee organizations of this PSC/RFP request:**

Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: 1 South Van Ness Ave 2nd Floor, San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 43213 - 14/15

DHR Analysis/Recommendation:

Commission Approval Required

05/07/2018 DHR Approved for 05/07/2018

05/07/2018

Approved by Civil Service Commission

- Describe the training and indicate approximate number of hours.  
The training will be for City Departments utilizing Esri Geographic Information System (GIS) Software on an as-needed basis. Approximate number of hours will be determined by the number of ongoing Geographic Information System (GIS) projects at any given time.
- Indicate occupational type of City and County employees to receive training (i.e., clerks, civil engineers, etc.) and approximate number to be trained.
  - 5277 Planner 1: 10 Employees
  - 5278 Planner 2: 10 Employees
  - 5291 Planner 3: 5 Employees
  - 5293 Planner 4: 5 Employees
  - 5283 Planner 5: 3 Employees
  - 5288 Transit Planner 2: 5 Employees
  - 5289 Transit Planner 3- 5 Employees
  - 5290 Transit Planner 4: 3 Employees
  - 5298 Planner 3 Environmental Review: 5 Employees
  - 5299 Planner 4 Environmental Review: 3 Employees
  - 1043 IS Engineer Senior: 5 Employees
  - 1044 IS Engineer Principal: 2 Employees
  - 1063 IS Programmer Analyst Senior: 5 Employees
  - 1053: IS Business Analyst Senior: 5 Employees
  - 1054 IS Business Analyst Principal: 5 Employees

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request:  Initial  Modification of an existing PSC (PSC # 4105 10/11)

Type of Approval:  Expedited  Regular  Annual  Continuing  (Omit Posting)

Type of Service: Pharmacist and Pharmacy Technician Registry Services

Funding Source: General Fund

PSC Original Approved Amount: \$6,200,000

PSC Original Approved Duration: 01/01/2011 - continuous

PSC Mod#1 Amount: \$3,790,000

PSC Mod#1 Duration: 01/01/14 - continuous

PSC Mod#2 Amount: \$5,000,000

PSC Mod#2 Duration: 01/01/19 - continuous

PSC Cumulative Amount Proposed: \$14,990,000

PSC Cumulative Duration Proposed: 01/01/2011 - continuous

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

Intermittent, as-needed pharmacist and pharmacy technician registry services for use during unusually high patient activity, workload peaks or low staffing levels of Civil Service employees due to unscheduled staff absences or shortages.

B. Explain why this service is necessary and the consequence of denial:

These services are necessary to provide an adequate level of pharmacy staff for San Francisco General Hospital (SFGH), Laguna Honda Hospital (LHH), and Jail Health Services, in order to maintain quality levels of care and meet licensing and regulatory requirements. Failure to have access to these registry services when Civil Service staff are temporarily unavailable will compromise patient care and jeopardize facility licenses and related funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes.

D. Will the contract(s) be renewed?

Yes, if funding is available and the need persists.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The Department expects the need for these intermittent services to continue, to provide back-up coverage to Civil Service staff positions during scheduled and unscheduled staff absences.

**2. Reason(s) for the Request**

A. Display all that apply

- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

Services are needed intermittently to provide back-up coverage to Civil Service staff positions during scheduled and unscheduled staff absences.

B. Reason for the request for modification:

To extend the PSC duration and corresponding amount due to new RFP for these services.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: Contractors must have valid, current California State Board of Pharmacy licenses, and a minimum of two years experience which includes the use of a current inpatient/outpatient pharmacy computer system(s).
- B. Which, if any, civil service class(es) normally perform(s) this work? 2409, Pharmacy Technician; 2450, Pharmacist;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The requested services are supplemental, as-needed services only. The registry services are only utilized to maintain staffing levels during unusually high patient activity workload peaks or low staffing levels of Civil Service employees due to unscheduled staff absences or shortages.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Civil Service classifications already exist. It would be impractical to establish new classes, as the required services are on an as-needed, intermittent basis. These registry services are necessary because of workload peaks and/or unscheduled Civil Service absences (see attachment).

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
Training of civil service staff is not included in these services.

- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

7. **Union Notification:** On 05/23/18, the Department notified the following employee organizations of this PSC/RFP request:  
SEIU Local 1021;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jacquie Hale Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 1380 Howard Street, Rm. 421b, San Francisco, CA 94103

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**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 4105 10/11

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 08/20/2018

# **Receipt of Union Notification(s)**



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**From:** dhr-psccordinator@sfgov.org on behalf of jacquie.hale@sfdph.org  
**Sent:** Wednesday, May 23, 2018 3:27 PM  
**To:** Hale, Jacquie (DPH); sarah.wilson@seiu1021.org; thomas.vitale@seiu1021.org; Ricardo.lopez@sfgov.org; Basconcillo, Katherine (PUC); Sandeep.lal@seiu1021.me; pcamarillo\_seiu@sbcglobal.net; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; davidmkersten@gmail.com; ablood@cirseiu.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA); david.canham@seiu1021.org; jtanner940@aol.com; Girma, Mahlet (DPH); DHR-PSCCoordinator, DHR (HRD)  
**Subject:** Receipt of Modification Request to PSC # 4105 10/11 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC HEALTH -- DPH has submitted a modification request for a Personal Services Contract (PSC) for \$5,000,000 for services for the period January 1, 2019 – no date entered, contact dept coordinator. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/1088>

Email sent to the following addresses: jtanner940@aol.com david.canham@seiu1021.org Sin.Yee.Poon@sfgov.org xiumin.li@seiu1021.org ablood@cirseiu.org davidmkersten@gmail.com leah.berlanga@seiu1021.org ted.zarzecki@seiu1021.net pscreview@seiu1021.org Wendy.Frigillana@seiu1021.org pcamarillo\_seiu@sbcglobal.net Sandeep.lal@seiu1021.me Kbasconcillo@sfgov.org Ricardo.lopez@sfgov.org thomas.vitale@seiu1021.org sarah.wilson@seiu1021.org

# **Additional Attachment(s)**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH Dept. Code: DPH

Type of Request: [ ] Initial [x] Modification of an existing PSC (PSC # 4105 10/11)

Type of Approval: [ ] Expedited [x] Continued [ ] Omit Posting

Type of Service: Pharmacist and Pharmacy Technician Registry Services

Funding Source: General Fund

PSC Original Approved Amount: \$6,200,000

PSC Original Approved Duration: 01/01/2011 - continuous

PSC Mod#1 Amount: \$3,790,000

PSC Mod#1 Duration: 01/01/14 - continuous

PSC Mod#2 Amount:

PSC Mod#2 Duration:

PSC Cumulative Amount Proposed: \$9,990,000

PSC Cumulative Duration Proposed: 01/01/2011 - continuous

1. Description of Work

A. Scope of Work:

Intermittent, as-needed pharmacist and pharmacy technician registry services for use during unusually high patient activity, workload peaks or low staffing levels of Civil Service employees due to unscheduled staff absences or shortages.

B. Explain why this service is necessary and the consequence of denial:

These services are necessary to provide an adequate level of pharmacy staff for San Francisco General Hospital (SFGH), Laguna Honda Hospital (LHH), and Jail Health Services, in order to maintain quality levels of care and meet licensing and regulatory requirements. Failure to have access to these registry services when Civil Service staff are temporarily unavailable will compromise patient care and jeopardize facility licenses and related funding.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.

Yes

D. Will the contract(s) be renewed? Yes, if funding is available and the need persists.

2. Union Notification: On 12/26/13, the Department notified the following employee organizations of this PSC/RFP request: SEIU Local 1021;

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FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4105 10/11

DHR Analysis/Recommendation: 12/16/2013

Commission Approval Required Approved by Civil Service Commission

DHR Approved for 12/16/2013 12/16/2013

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise:

Contractors must have valid, current California State Board of Pharmacy licenses, and a minimum of two years experience which includes the use of a current inpatient/outpatient pharmacy computer system(s).

B. Which, if any, civil service class(es) normally perform(s) this work?

2450,2409,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

No.

**4. Why Classified Civil Service Cannot Perform**

A. Explain why civil service classes are not applicable:

The requested services are supplemental, as-needed services only. The registry services are only utilized to maintain staffing levels during unusually high patient activity workload peaks or low staffing levels of Civil Service employees due to unscheduled staff absences or shortages.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No. Civil Service classifications already exist. It would be impractical to establish new classes, as the required services are on an as-needed, intermittent basis. These registry services are necessary because of workload peaks and/or unscheduled Civil Service absences (see attachment)

**5. Additional Information (if "yes", attach explanation)**

**YES NO**

- |  |                          |                                     |
|--|--------------------------|-------------------------------------|
| A. Will the contractor directly supervise City and County employee?  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| B. Will the contractor train City and County employee?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| C. Are there legal mandates requiring the use of contractual services?                                       | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| D. Are there federal or state grant requirements regarding the use of contractual services?                  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| E. Has a board or commission determined that contracting is the most effective way to provide this service?  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD  
ON 12/26/13 BY:

Name: \_\_\_\_\_ Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 101 Grove Street, Room 307 San Francisco, CA 94102