

CONTRACT
SOFTWARE MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

THIS AGREEMENT (the "Contract") is made and entered into this 3rd day of December, 2012 by and between Cuyahoga County, Ohio ("the County"), on behalf of the Cuyahoga County Department of Information Technology / GIS Department and Environmental Systems Research Institute, Inc., ("ESRI"), an Ohio Corporation with offices located at 380 New York Street, Redlands, CA 92373..

WHEREAS, the County has a present need for software support maintenance service of ESRI's ArcGIS Concurrent License products at the Cuyahoga County Department of Information Technology, and

WHEREAS, ESRI's software support services is available under existing State Term Schedule Number 533197-3; and

WHEREAS, the County desires to avail itself of such services located at the Cuyahoga County Department of Information Technology and ESRI is willing to provide such service to the County all upon the terms and conditions set forth herein, the State Term Schedule, and further supplemented herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ESRI and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, ESRI shall provide the County with services in accordance with ESRI's U.S. Maintenance Program available at <http://www.esri.com/legal/pdfs/us-sw-maintenance.pdf> and support ArcGIS Concurrent License products as listed on attached Quote # 25533020 hereto as Schedule A and incorporated by reference herein. In the event that the terms and conditions of Schedule A and this Contract are not in agreement, the County and ESRI hereby expressly agree that the terms and conditions of this Contract will be controlling and will take precedence over Schedule A.

1.2 Term. The term of this Contract shall commence as of January 1, 2013; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of one year from commencement date, (1/1/13 – 12/31/13). The cost of this Contract shall not exceed **Ten Thousand Two Hundred Five Dollars and Zero Cents (\$10,205.00).**

ARTICLE II – SCOPE OF WORK

2.1 Rendering of Services. ESRI hereby agrees to render ArcGIS Server Software Support Services at a total price of Ten Thousand Two Hundred Five Dollars and Zero Cents (\$10,205.00).

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay the costs associated with the Maintenance and Support Agreement yearly upon receipt of said invoice from ESRI and approval of the Cuyahoga County Executive.

3.2 Invoicing. ESRI shall invoice the County for the Maintenance and Support Agreement upon execution of this agreement. ESRI shall submit original invoice(s) to the following address:

Cuyahoga County Department of Information Technology
Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 Indemnities and Warranties. All provisions relating to indemnities and warranties contained in the State Master Maintenance Agreement shall inure to the benefit of Cuyahoga County.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between ESRI and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by ESRI or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

5.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. ESRI, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that ESRI becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against ESRI of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI – MISCELLANEOUS

6.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County: Cuyahoga County Department of Information Technology
ATTN: Jeff Mowry
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of ESRI : Environmental Systems Research Institute Inc
C/O Ajmal Yourish
380 New York Street
Redlands, CA 92373-8100

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

6.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

6.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

6.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

6.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

6.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

6.7 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by ESRI prior to the execution of this agreement by the Cuyahoga County, the same will be provided at ESRI's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by the Cuyahoga County. Upon approval by the County Executive of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

ARTICLE VII - ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

7.1. Electronic Signature. By entering into this Contract, ESRI, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by means electronic by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the original document.

7.2 Compliance with O.R.C ESRI further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, THE County and ESRI have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

Environmental Systems Research Institute, Inc

BY: 

Cuyahoga County, Ohio

BY: 

Edward FitzGerald, County Executive

Edward FitzGerald, County Executive

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