

**Amendment Number 2**  
**to**  
**Contract Number DIR-TSO-3446**  
**between**  
**State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Environmental Systems Research Institute, Inc. (ESRI)**

This Amendment Number 2 to Contract Number DIR-TSO-3446 (“**Contract**”) is between the Department of Information Resources (“**DIR**”) and Environmental Systems Research Institute, Inc. (ESRI) (“**Vendor**”). DIR and Vendor agree to modify the terms and conditions of the **Contract** as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through February 1, 2020 or until terminated pursuant to the termination clauses contained in the Contract. The contract will renew automatically in one-year increments for one (1) additional year under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

2. **Contract, Section 6. Notification**, is hereby restated in its entirety as follows:

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 West 15th Street, Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759  
Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

Traci Tracy  
Environmental Systems Research Institute, Inc.  
227 North Loop 1604 East, Suite 100  
San Antonio, TX 78232  
Phone Number: (210) 499-1044 ext. 8814  
Fax: (210) 499-4112  
Email: [ttracey@esri.com](mailto:ttracey@esri.com)

3. **Appendix A. Standard Terms and Conditions for Product and Related Services Contracts dated 09/24/2015**, is hereby restated in its entirety and replaced with Appendix A Standard Terms and Conditions (per Amendment 2) For Product and Related Services Contracts dated 09/29/2017, except where previous authorized exceptions to Appendix A were allowed and documented as part of the Contract. In such cases, the previously authorized exceptions shall be applied to the portions of the new Appendix A which are comparable to those in the earlier Appendix A for which they were written, and this without regard for the numbering or lettering associated with any of the documents. Applied in such a manner, the exceptions shall remain in full force and effect until such time the contract expires or is terminated.

4. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

**A. Appendix A, Section 3, Definitions, A)** is hereby deleted and replaced in its entirety as follows:

**A) Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;

- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

**B. Appendix A, Section 5, Intellectual Property,** is hereby deleted and replaced in its entirety as follows:

This contract does not contemplate, authorize or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products; then the intellectual property language will be negotiated and applied.

**C. Appendix A, Section 8, Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price** is hereby deleted and replaced in its entirety as follows:

- 1) The price to the Customer shall be calculated as follows:

**Customer Price = (ESRI Large State Government MPA Price) + (Current DIR Admin Fee)).**

- 2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

- 3) If pricing for products or services available under this Contract is provided by the Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) to any other customer under the same terms and conditions provided for the State for the same commodities and services under this contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. Vendor shall notify DIR within ten (10) days and this Contract shall be amended to reflect the lower price.

**D. Appendix A, Section 9, Contract Administration, B. Reporting and Administrative Fees, 1) Reporting Responsibility, b)** is here by deleted and replaced in its entirety as follows:

- b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable Contract books at DIR's expense.

**E. Appendix A, Section 9, Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, b)** is hereby deleted and replaced in its entirety as follows:

**b)** Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

5. **Appendix C – Pricing Index** is hereby restated in its entirety and replaced with Appendix C – Pricing Index (per Amendment 2) attached hereto.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 2, Amendment Number 1 and then the Contract.

**(Remainder of Page intentionally left blank)**

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than 2/01/2019.

**Environmental Systems Research Institute, Inc. (ESRI)**

**Authorized By:** Signature on file

**Name:** William C. Fleming

**Title:** Managing Attorney

**Date:** 2/21/2019

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** Signature on file

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** 2/27/2019

**Office of General Counsel:** Signature on file 2/25/19