

Contract Number S23184191 – Fiber Management System (FMS)

Licensed Software and Professional Services Master Agreement
Customer Number C-2021-01-02181

This Licensed Software and Professional Services Master Agreement (the “Agreement”) dated as of the Effective Date is by and between City of Palo Alto (“Customer”), a California chartered municipal corporation, having an office at 250 Hamilton Ave, 2nd Floor Palo Alto CA, 94302 and 3-GIS, LLC (“3-GIS”), an Alabama limited liability company, having an office at 350 Market Street NE, Suite C, Decatur, AL 35601 (each a “Party” and collectively the “Parties”)

WHEREAS, Customer desires to obtain 3-GIS Licensed Software and related professional services and 3-GIS desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. DESCRIPTION OF SOFTWARE LICENSE AND SERVICES AGREEMENT

3-GIS will make available to Customer certain proprietary Licensed Software, including related proprietary Documentation, and Maintenance, in addition to Services, all as specifically described in individual Orders to this Agreement. Each Order will include a description of the Licensed Software and Services to be provided or performed, any associated Deliverables, and the associated fees. Before 3-GIS will provide any Licensed Software or perform any Services, Customer must execute a corresponding Order.

3-GIS and Customer agree to the incorporation of the following attachments and such additional terms are made a part of this Agreement by reference:

- 1.General Terms and Conditions;
- 2.Licensed Software License Terms and Conditions - Attachment A;
- 3.Addendum for Google Street View Tile Access – Attachment B;
- 4.Base Maintenance Terms and Conditions – Attachment C;
- 5.3-GIS Software Support Plan – Attachment D; and
- 6.API License Terms and Conditions – Attachment E.

II. CUSTOMER AND 3-GIS CONTACTS

City of Palo Alto	3-GIS, LLC
Darren Numoto	Dustin Sutton
CIO	President
250 Hamilton Ave	350 Market Street NE
2nd Floor	Suite C
Palo Alto, CA 94302	Decatur, AL 35601
Tel. No. Tel. No.	Tel. No. 256-560-0744
Email Email	Email dsutton@3-gis.com

SIGNATURE PAGE FOLLOWS

3-GIS CONFIDENTIAL - RESTRICTED ACCESS

This document and the confidential information it contains shall be distributed, routed, or made available solely to authorized persons having a need to know within 3-GIS or Customer’s organization, except with written permission of 3-GIS.

In consideration of the mutual obligations assumed under this Agreement, Customer and 3-GIS agree to the terms and conditions set forth in this Agreement and represent that this Agreement has been executed by each Party's duly authorized representative.

AGREED BY:

CITY OF PALO ALTO, CA

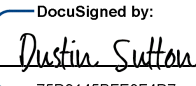
By:  _____
DocuSigned by:

Name: Christine Paras
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Title: Asst. Director Administrative Services

Date: 8/15/2022

3-GIS, LLC

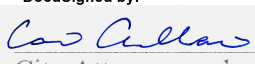
By:  _____
DocuSigned by:

Name: Dustin Sutton
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Title: President

Date: 8/11/2022

APPROVED AS TO FORM:

 _____
DocuSigned by:
City Attorney or designee
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Contract Number S23184191 – Fiber Management System (FMS)

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS.

1.1 “3-GIS IP” means 3-GIS or 3-GIS Affiliate developed, created, or prepared Intellectual Property, but does not include Customer Data.

1.2 “Affiliate” of a Party means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the majority ownership of voting securities or by contract.

1.3 “Business Day” means a day other than Saturday, Sunday, or 3-GIS’ company holidays.

1.4 “Business Hours” means 8:00 a.m. to 5:00 p.m. US Central time on Business Days.

1.5 “Change” means any modification to the terms of an Order.

1.6 “Change Order” means any document agreed to by both Parties to effectuate a Change.

1.7 “Confidential Information” means information of a Party to this Agreement which is provided or disclosed to the other and is marked as confidential or proprietary. If the information is initially disclosed orally then it must be designated as confidential or proprietary at the time of the initial disclosure or within twenty (20) days after disclosure, the information must be reduced to writing and marked as confidential or proprietary. No information of the disclosing Party will be considered Confidential Information to the extent the information:

- (a) is in the public domain through no fault of the recipient either before or after disclosure; or
- (b) is in the possession of the recipient prior to the disclosure, or thereafter is independently developed by recipient’s employees or consultants who have had no prior access to the information; or
- (c) is rightfully received from a Third Party without breach of any obligation of confidence.

1.8 “Customer Data” means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer to 3-GIS.

1.9 “Deliverable” means any written summary of results or any other written data, information, Document Deliverable, Software Deliverable, or other tangible materials provided to Customer and identified as a Deliverable in the Order.

1.10 “Document Deliverable” means any written summary of results or any other written data, information, or materials provided to Customer including data, comments, and conclusions pertaining to the Professional Services performed pursuant to the Order.

1.11 “Documentation” means, for a particular Release of the Licensed Software, 3-GIS’ proprietary materials and written information applicable to such Release, which is generally included with such Release at no additional charge, whether provided as printed material, as a document file, or online. Documentation normally includes, but is not limited to, a user guide and release content letters. For the avoidance of doubt, Documentation does not include any sales or marketing literature or other documentation that is not generally delivered with a Release of the Licensed Software. All Documentation shall be provided in English.

1.12 “Effective Date” means the date and time the last of the executing Parties to the Agreement in fact executes the Agreement.

3-GIS CONFIDENTIAL - RESTRICTED ACCESS

This document and the confidential information it contains shall be distributed, routed, or made available solely to authorized persons having a need to know within 3-GIS or Customer’s organization, except with written permission of 3-GIS.

1.13 “Fixed Price Services” means Services provided for a fixed fee as set forth in the Order.

1.14 “Intellectual Property” means all forms of intellectual property including, but not limited to, patents, trademarks, copyrights, trade secrets, methodologies, logos, techniques, processes, know-how, formulae, algorithms, logic designs, screen displays, schematics, source and object code computer programs or software, documents, mask work rights, design, ideas, product information, inventions and improvements thereto (whether or not patentable), and all works of authorship fixed in any medium of expression (including any form of online, digital, or electronic medium), whether or not copyrightable and whether registered or not.

1.15 “Licensed Software” means the proprietary software of 3-GIS that is in fact licensed to Customer pursuant to the terms of this Agreement, provided in object code form only, along with any Documentation, all associated files, disk, CD-ROMs, or other media on which the Licensed Software is provided, and any modifications, derivatives, adaptations, or customizations thereof or related thereto, whether or not such modifications, derivatives, adaptations, or customizations are provided pursuant to Support Services or otherwise.

1.16 “Malicious Code” means a computer program or piece of code that intentionally corrupts computing systems, software, and/or computer networks, including any so-called “worms” or “viruses”.

1.17 “Named User” means an individual who is an employee or contractor of Customer authorized by Customer to use Licensed Software installed on the Customer’s system, for whom Customer has obtained a license to the Licensed Software, and who has been supplied a unique Named User identification and password.

1.18 “Non-Production Environment” means the computing environment composed of hardware systems and software applications being used only for the Customer’s internal test, training, and development use.

1.19 “Order” means each documented purchase of any item or service referencing this Agreement and executed by authorized representatives of both Parties.

1.20 “Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

1.21 “Professional Services” means the work, services, projects, assignments, or tasks 3-GIS shall perform as specifically set forth in an Order.

1.22 “Service(s)” means Professional Services, and/or Support Services as described in an Order.

1.23 “Software Deliverable” means the instructions for a computer, whether in the form of source code, object code, executable code, firmware, or otherwise and whether tangible or intangible, that is provided to Customer as a result of the performance of the Professional Services. For the avoidance of doubt, neither 3-GIS licensed software products nor the Licensed Software are Software Deliverables.

1.24 “Specification” means the technical and functional requirements for a Service or Deliverable as included in an Order or as otherwise agreed to in writing by the Parties.

1.25 “Third Party” means any Person not a signatory to this Agreement.

1.26 “Third Party Software” means any software that is not 3-GIS IP.

1.27 “Time and Materials Services” means 3-GIS will perform the Professional Services set forth in an Order on a per unit of time basis until the project is either completed or the authorized time is exhausted, whichever comes first.

2. EFFECTIVE DATE. This Agreement is effective on the date this Agreement is signed by both parties (“Effective Date”) and is valid for three (3) years with an option to renew for an additional two (2) years with City Council approval or until the expiration or termination of the Agreement.

3. FEES AND EXPENSES. Customer shall pay 3-GIS (a) License Fees, (b) Maintenance Fees, (c) Support Services Fees, and/or (d) fees for all other Services as applicable in the amounts stated in an Order. The fees for Services may be either a fixed price fee or a time and materials fee based upon the actual time worked and the applicable fee schedule, as indicated in an Order. Customer shall also reimburse 3-GIS for all reasonable expenses incurred in connection with the provision of the Licensed Software or Services, including travel, lodging, meals, and telephone costs. Actual travel time will be charged for services requiring more than three (3) hours of travel each way. 3-GIS reserves the right to limit Services to no more than eight (8) hours within a 24-hour period.

4. BILLING. For license fees and for Fixed Price Services, 3-GIS shall submit invoices to Customer according to the invoicing schedule set forth in the applicable Order or, if no invoicing schedule is provided, upon delivery of the Licensed Software or initiation of the Fixed Price Service. For reimbursable expenses and Services provided under a time-and-materials fee, 3-GIS shall submit monthly invoices to Customer, and Customer shall pay 3-GIS for Services rendered and expenses incurred as set forth on such invoice.

5. PAYMENTS. Payments to 3-GIS must be in United States dollars and paid utilizing one of the following two methods:

ACH:

Beneficiary Bank:
PNC Bank, N.A.
249 Fifth Avenue
Pittsburgh, PA 15222
Beneficiary Bank Account Name: 3-GIS LLC
Beneficiary Bank Account Number: 3120135878
Routing/ABA Number: 083000108
Beneficiary: 3-GIS, LLC
350 Market St, NE Suite C
Decatur, AL 35601

Please send an email to: accounting@3-GIS.com immediately following transfer.

OR

Mail a check to:

3-GIS, LLC
Attention: Accounting Officer
350 Market St NE; Suite C
Decatur, AL 35601

Customer shall pay invoiced amounts within thirty (30) days of the date on the invoice. 3-GIS reserves the right to require Customer to secure an irrevocable, standby letter of credit from a bank acceptable to 3-GIS to support payments to 3-GIS for any order placed pursuant to this Agreement at Customer's sole cost and expense. The letter of credit shall be in an amount as determined by 3-GIS and may not expire prior to one hundred twenty (120) days from its issuance.

6. OVERDUE PAYMENTS. If Customer fails to make any payment when due then, in addition to all other remedies that may be available: (i) 3-GIS may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the maximum rate permitted under applicable law; and (ii) if such failure continues for ten (10) or more days following any notice that a payment is overdue, 3-GIS may suspend performance of any service ordered pursuant to this Agreement, including returning any on-site personnel to their usual work locations, until all past due amounts and interest thereon have been paid. The costs and expenses of any ramp-down and any subsequent re-start occasioned by this clause (including travel expenses) shall be fully borne by Customer. 3-GIS shall incur no liability to Customer or any Person as a result of a suspension occasioned by this clause.

7. TAXES. Fees payable under this Agreement are exclusive of taxes. Customer shall pay or reimburse 3-GIS for all transactional taxes (“Transactional Taxes”), including but not limited to value added, income, withholding, sales, or use taxes, customs or import duties, or other transactional assessments or levies imposed by any authority, government or government agency in connection with this Agreement, but excluding any taxes imposed on the net income of 3-GIS. If 3-GIS, its subcontractors, and/or their respective employees are required to pay any Transactional Taxes in connection with this Agreement, the fees under this Agreement shall be correspondingly increased. If, after the effective date of this Agreement, there are changes or developments which may result in an increase in any Transactional Taxes, and/or any new Transactional Taxes are levied upon the transactions contemplated by this Agreement, or if the methods of administering or the rates of any such Transactional Taxes are changed, and such new taxes or modified Transactional Taxes result in an increased potential transactional tax liability for 3-GIS, its subcontractors, and/or their respective employees under this Agreement, the fees under this Agreement shall be correspondingly increased. If Customer fails to pay any fees under this Agreement, or any associated taxes, duties, levies or assessments, Customer shall pay all reasonable expenses incurred by 3-GIS, in collecting these sums, including reasonable attorney’s fees, interest and penalties. Customer shall provide to 3-GIS a summary of all amounts withheld during the year no later than thirty (30) Business Days after December 31 of each year, addressed to:

3-GIS, LLC
 Attention: Accounting Officer, 3-GIS
 350 Market St NE; Suite C
 Decatur, AL 35601

8. CONFIDENTIALITY/NON-DISCLOSURE

8.1 Use of Confidential Information. Confidential Information disclosed by either Party to the other in connection with the Agreement will be used by the recipient Party only for the performance of this Agreement.

8.2 Disclosure of Confidential Information. Confidential Information disclosed under this Agreement by one Party to the other will be protected by the recipient from further disclosure, publication, and dissemination to the same degree and using the same care and discretion as the recipient applies to protect its own confidential or proprietary information from undesired disclosure, publication and dissemination. Except as set forth in the following paragraph, neither Party will disclose the other’s Confidential Information to any Third Party, other than an Affiliate, without prior written consent from the other Party. If Confidential Information is required by law, regulation, or court order to be disclosed, the recipient must first notify the disclosing Party and permit the disclosing Party to seek an appropriate protective order. The Parties acknowledge Customer is a local agency subject to the requirements of the California Public Records Act.

8.3 Disclosure to Employees and Consultants. Confidential Information disclosed under this Agreement may be disclosed to a receiving Party’s employees (including contract employees) or consultants who participate in the Services if the employees and consultants have been made aware of their responsibilities under this Agreement and the consultants (including contract employees) have signed a statement agreeing to be bound by the terms of this Agreement with respect to confidentiality.

8.4 Misuse of Confidential Information. Either Party’s failure to fulfill the obligations and conditions with respect to any use, disclosure, publication, release, or dissemination of the other Party’s Confidential Information in violation of the terms of this Article entitled “Confidentiality/Non-Disclosure” constitutes a material breach of this Agreement. In that event the aggrieved Party may, at its option and in addition to any other remedies that it may have, terminate this Agreement, its obligations and any rights or licenses granted upon thirty (30) days written notice to the other Party. In addition to any other remedies it may have, the aggrieved Party has the right to demand the immediate return of all copies of Confidential Information provided to the other Party under this Agreement. The Parties recognize that disclosure of

Confidential Information in violation of this Agreement will result in irreparable harm. Each Party shall have the right to injunctive relief in the event of a disclosure in violation of this Agreement.

9. ASSIGNMENT. Neither this Agreement nor any license, right, or obligation granted under this Agreement shall be assignable or transferable (through insolvency proceedings, by mergers, by operation of law, by purchase or otherwise) by Customer without the prior written consent of 3-GIS. No purported assignment or transfer of this Agreement or of any license, right, or obligation granted under this Agreement shall be effective without such written consent, which shall not be unreasonably withheld.

10. LIMITATION OF LIABILITY. IN NO EVENT WILL 3-GIS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, LOST PROFITS, LOSS OF USE OR PRODUCTION, LOSS OF REVENUE, LOSS OF DATA, OR CLAIMS OF THIRD PARTIES EVEN IF 3-GIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCE WILL 3-GIS' LIABILITY ARISING UNDER THIS AGREEMENT EXCEED THE AMOUNT THAT 3-GIS HAS BEEN PAID BY CUSTOMER WITHIN TWO (2) YEARS PRIOR TO THE EVENT, ACTION, OR CIRCUMSTANCE GIVING RISE TO THE LIABILITY OR, IF THERE ARE MULTIPLE EVENTS, ACTIONS, OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY, THE MAXIMUM CUMULATIVE AMOUNT PAID BY CUSTOMER TO 3-GIS UNDER THIS AGREEMENT IN ANY CONSECUTIVE PERIOD OF THREE (3) YEARS, EXCLUDING ONLY (1) CLAIMS FOR MISAPPROPRIATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR NON-COMPLIANCE WITH CONFIDENTIALITY AND PRIVACY-RELATED OBLIGATIONS, (2) ENFORCEMENT OF INDEMNIFICATION OBLIGATIONS, OR (3) WILLFUL MISCONDUCT.

11. INDEMNIFICATION BY CUSTOMER. Customer agrees to indemnify, defend, and hold harmless 3-GIS, 3-GIS' Affiliates, and 3-GIS' employees and agents from any and all third party liability, claims, and or demands and all costs and expenses, including reasonable attorneys' fees, in connection therewith, for or arising out of claims or lawsuits brought by third parties against 3-GIS, its Affiliates, its employees and agents based on: (i) Customer's misuse of the Licensed Software, information or Deliverables provided under this Agreement, and or (ii) the possession or use by 3-GIS of any of the information, specifications, or data furnished to 3-GIS by Customer hereunder, which is claimed to constitute an infringement of a patent, copyright, trade secret, or other intellectual property right of any Third Party.

12. PUBLICITY. Except as expressly stated below, neither Party has any right or license to use in advertising, publicity, promotion, marketing, or other similar activity, any name, trade name, trademark, or other designation including any abbreviation, contraction, or simulation of the other without the prior, express, written permission of the other Party.

13. WAIVER. The failure of either Party at any time to enforce any of the provisions of this Agreement or any right under this Agreement, or to exercise any option provided, will in no way be construed to be a waiver of the provisions, rights, or options, or in any way to affect the validity of this Agreement. The failure of either Party to exercise any rights or options under the terms or conditions of this Agreement will not preclude or prejudice the exercising of the same or any other right under this Agreement.

14. FORCE MAJEURE.

14.1 3-GIS shall not be liable or responsible to the Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond 3-GIS' control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, explosion, earthquake, epidemics, pandemics, or quarantines; (c) war, invasion, hostilities or war-like actions (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, action, or shutdown; (e) laws, actions, embargoes, or blockades in effect after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency;

(h) strikes, labor stoppages or slowdowns, labor shortages, or other industrial disturbances; and (i) shortage of adequate power, communication, or transportation facilities.

14.2 The impact of a Force Majeure Event on a 3-GIS supplier or subcontractor shall be considered to be a Force Majeure Event on 3-GIS.

14.3 In case of a Force Majeure Event, 3-GIS' performance shall be extended by a reasonable period of time corresponding to the delay caused by the Force Majeure Event.

15. GOVERNING LAW AND JURISDICTION. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement or any license or service provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the County of Santa Clara, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded in its entirety, and the Parties expressly agree not to be governed by the Uniform Computer Information Transactions Act or similar laws. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

16. DISPUTE RESOLUTION.

16.1 Resolution Protocol. In the event of any controversy, claim, or dispute between the Parties arising under this Agreement that cannot be settled at the project manager level, the Parties shall first attempt to resolve the dispute at the business unit director level. Upon the written request of any Party (each a "Dispute Notice"), the other Party shall, within five (5) Business Days, designate an authorized representative for the purposes of resolving any dispute. If no authorized representative is designated within five (5) Business Days, the authorized representative shall be the Party's signatory of this Agreement. If the dispute is not resolved at this level within ten (10) Business Days of the written request, the Parties shall attempt to resolve the dispute at the division president or equivalent level, for an additional period of ten (10) Business Days. Prior to the initiation of arbitration, all good faith efforts shall be made by the Parties to resolve all disputes on an informal basis.

16.2 Arbitration. To the extent any controversy, claim, or dispute is not resolved through the process outlined in the previous section and remains unresolved, the Parties may agree that all such unresolved controversies, claims, or disputes or the breach of this Agreement, including questions concerning the scope and applicability of this dispute resolution provision, shall be finally settled by arbitration in Palo Alto, California, pursuant to the rules then applying of the American Arbitration Association and the laws of the State of California. Should the Parties agree to arbitration, the decision or award in writing of the arbitrator shall be binding and conclusive on the Parties to this Agreement and may if necessary be enforced by any court having jurisdiction in the same manner as a judgement in such court. The Parties undertake and agree that all arbitral proceedings conducted under this section shall be kept strictly confidential, and all information, documentation, materials in whatever form disclosed in the course of such arbitral proceeding shall be used solely for the purpose of those proceedings.

16.3 Injunctive Relief. Notwithstanding the foregoing, either Party may, before or during the exercise of the dispute resolution procedures set forth above, apply to a court identified in the section entitled "Governing Law and Jurisdiction" for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the dispute resolution procedures.

16.4 Continued Performance. Compliance with this article entitled “Dispute Resolution” shall not relieve either Party from compliance with any other obligation set out in this Agreement. Unless otherwise provided in this Agreement or except where clearly prevented by the issue in dispute, the Parties agree to continue performing their respective obligations under this Agreement during dispute resolution proceedings.

17. COMPLIANCE WITH LAWS. Customer agrees to comply with all applicable laws and is responsible, at its sole cost and expense, for obtaining any and all governmental licenses, permits, authorizations, passes and approvals that may be required in connection with this Agreement.

18. CUSTOMER’S REEXPORT OBLIGATIONS.

18.1 Customer acknowledges that any services, commodities, software, and/or technical data provided under this Agreement shall be subject to the Export Administration Regulations (the “EAR”) administered by the United States Commerce Department, and that any export or reexport thereof must be in compliance with the EAR. Any technology provided by 3-GIS that is controlled for export purposes, may require prior approval by the appropriate U.S. Government agency. Should this technology provided by 3-GIS be export controlled, Customer will be bound by U.S. export statutes and regulations and shall comply with all export control requirements. Customer agrees that it shall not export or reexport, directly or indirectly, either during the term of this Agreement or after its expiration, any commodities, software and/or technical data (or direct products thereof) provided under this Agreement in any form to any person, entity, or location in violation of the EAR, or to destinations that are otherwise controlled or embargoed under United States law.

18.2 This Agreement is subject to the receipt of any approvals and/or consents required by applicable government agencies and authorities as may be required for the consummation of the transactions contemplated by this Agreement. 3-GIS shall have no liability to Customer for failure to deliver any deliverable or service under this Agreement as a result of the refusal of any governmental agency to issue any necessary approvals and consents for the delivery or performance of any such product, software, Deliverable or Service.

18.3 Customer is responsible for complying with any applicable laws in the jurisdiction(s) where Customer is located and where Customer is using the Licensed Software, including but not limited to data security, privacy, and export and import laws.

19. TERMINATION FOR CAUSE.

3-GIS shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately upon written notice to Customer, if Customer:

- (a) is in material or persistent breach of any of its obligations under this Agreement and either the breach is incapable of remedy or Customer has failed to remedy such breach within thirty (30) days after receiving written notice requiring it to remedy such breach; or
- (b) (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

20. SURVIVAL. The terms and conditions of this Agreement regarding confidentiality, payment, warranties, liability, dispute resolution, export laws, the terms of any license grant, as well as any other terms of this Agreement that by their sense and context are intended to survive the execution, delivery, performance, termination, or expiration of this Agreement shall survive and remain in effect after expiration

or termination of the Agreement, and shall apply to any permitted successors and assigns. Upon termination of the Agreement, the provisions of the Agreement, including those in the preceding sentence, which by their express terms survive termination, shall remain in full force and effect.

21. SEVERABILITY. If any provision of this Agreement or is void, voidable, unenforceable, or illegal in its terms, but would not be so if it were rewritten to eliminate such terms that were found to be voidable, unenforceable, or illegal and such rewrite would not affect the intent of the provision, then the provision must be rewritten to be enforceable and legal.

22. HEADINGS. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

23. ENGLISH LANGUAGE. Unless otherwise explicitly stated in an Order, 3-GIS shall provide all Services, materials, and Documentation in the English language.

24. ORDER OF PRECEDENCE. The terms of this Agreement shall be considered incorporated into each Order executed pursuant to the terms of this Agreement. In the event of any conflict or inconsistency among documents related to this Agreement, the following order of precedence shall be used to determine the resolution of the discrepancy, unless both Parties mutually agree in writing to an alternative decision. The order of precedence for between documents shall be as follows, from highest precedence to lowest precedence:

- a) An Order, as amended or modified by a Change Order (however, no Order shall be considered an amendment to this Agreement);
- b) Any amendments to this Agreement;
- c) Any exhibits or attachments to the Agreement; and
- d) The General Terms and Conditions of the Agreement.

25. NOTICES. Any notice, request, consent, claim, demand, waiver, or other communication under this Agreement have legal effect only if in writing and addressed to a Party as follows (or to such other address or such other person that a Party may designate from time to time upon notice to the other Party):

CITY OF PALO ALTO, CA

Darren Numoto

CIO

250 Hamilton Ave

2nd Floor

Palo Alto, CA 94302

Tel. No.

3-GIS, LLC

Dustin Sutton

President

350 Market Street NE

Suite C

Decatur, AL 35601

Tel. No. (256) 560-0744

Notices sent in accordance with this Article 25 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; and (c) when received if sent by certified or registered US Mail, return receipt requested and postage prepaid.

26. INTERPRETATION. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to

a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

27. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof. This Agreement supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of this Agreement. Any future representations, promises and verbal agreements related to the products, product features, future product enhancements, product functionality, or services covered by this Agreement will be of no force or effect unless reduced in writing and made a part of this Agreement. This Agreement may not be amended or modified unless so done in writing signed by authorized representatives of both Parties. Any and all amendments to this Agreement shall specifically reference the fact the amendment is intended to alter the terms and conditions set forth herein. No Change Order or Specification shall affect the terms and conditions set forth herein. All terms and conditions printed on a Customer's PO are void, even if issued subsequent to the effective date of this Agreement, and no term or condition printed on a Customer's PO shall be deemed to constitute a change to this Agreement or impose a term or condition on 3-GIS, its Affiliates, or any other Person.

END OF GENERAL TERMS AND CONDITIONS

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ATTACHMENT A - LICENSED SOFTWARE TERMS AND CONDITIONS

The additional terms and conditions set forth in this Attachment A and the General Terms and Conditions of the Agreement shall govern the licensing and use of 3-GIS Licensed Software as described in an Order.

1. DEFINITIONS.

1.1 “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.

1.2 “Backup License” means a type of license that is installed in a cold standby environment intended to support a manual switchover of the Licensed Software product in the event of failure of the Production License environment. Each Backup License requires a corresponding Production License and the duration of the Backup License shall not exceed the term of the applicable Production License.

1.3 “Concurrent License” means a license that permits execution of the Licensed Software on any computer on the network. The number of simultaneous/concurrent users may be controlled by a License Manager to access and use the Software, Data, or Documentation

1.4 “Non-Production License” means a software license type that is installable and useable only in a Non Production Environment.

1.5 “Production License” means the license(s) of the Licensed Software product provided to Customer for general production use as authorized by the Agreement.

1.6 “Release” means a particular, numbered version of the Licensed Software.

1.7 “Documentation” means, for a particular Release of the Licensed Software, 3-GIS’ proprietary materials and written information applicable to such Release, which is generally included with such Release at no additional charge, whether provided as printed material, as a document file, or online.

2. TITLE TO LICENSED SOFTWARE.

2.1 The Licensed Software and Documentation are licensed, not sold, to Customer by 3-GIS and Customer does not have under or in connection with this Agreement any ownership interest in the Licensed Software or Documentation. Title, copyright, and all other ownership rights to the intellectual property in the Licensed Software and Documentation, including any modifications or customization thereof made hereunder, remains in 3-GIS. Title to Third Party Software remains with the licensor of such Third-Party Software.

3. **SYSTEM REQUIREMENTS.** The Technical Operating Environment (“TOE”) means the hardware and software that is necessary for the proper operation of the Licensed Software, as stated in the current Documentation. Customer is responsible for licensing, procuring, installing, and maintaining the required TOE.

4. LICENSE GRANT.

4.1 Customer is hereby granted a personal, limited duration, nontransferable, and nonexclusive license to use the Licensed Software solely in conjunction with the license duration and the number of Named Users stated in an Order and solely for Customer’s internal business purposes. Additionally, Customer is granted a concurrent personal, nonexclusive, and nontransferable right to use the Documentation solely for Customer’s internal business purposes only for the license duration set forth in the Order.

5. **LICENSE RESTRICTIONS.** The Licensed Software and Documentation are subject to the following license restrictions:

- (a) Customer may make one (1) archival or backup copy of the Licensed Software only for the license duration set forth in the Order.

(b) Customer may make copies of the Documentation solely for its internal use only for the license duration set forth in the Order.

(c) Customer shall not remove or obscure any copyright, trademark notice or restrictive legend on the Licensed Software or Documentation. Customer shall reproduce such notices and legends on any copy of the Licensed Software or Documentation which Customer makes pursuant to the terms of this Agreement.

(d) No additional title or rights are transferred or implied, although a licensed right to use is granted.

(e) Except as may be explicitly agreed in any contract between 3-GIS and Customer, 3-GIS reserves the right, in any way and without notice, to revise, not revise, update, or modify the Licensed Software, or the information upon which the Licensed Software was based, and assumes no responsibility for: (i) protecting the Licensed Software against obsolescence, (ii) providing any additional functionality in the Licensed Software, (iii) maintaining the Licensed Software, or (iv) providing other services with respect to the Licensed Software.

(f) Customer shall not: (i) sell, distribute, assign, transfer, lend, or lease the Licensed Software; or (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) use the Licensed Software in any manner that exceeds the usage limits or license duration as stated in an Order; (iv) make the Licensed Software available to anyone other than Named Users; (v) distribute Authorization Codes to any Third Party; (vi) make any attempt to circumvent the technological measure(s) that control access to the Licensed Software; (vii) use the Licensed Software to store or transmit infringing, libelous, tortious, or otherwise unlawful material, or to store or transmit material in violation of third-party privacy or intellectual property rights; (viii) unbundle or independently use individual component parts of a bundled Licensed Software solution; (ix) store or transmit Malicious Code; (x) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof; or (xi) access the Licensed Software to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions, interfaces, or graphics, (3) copy any ideas, features, functions, interfaces, or graphics of the Licensed Software or (4) determine whether the Licensed Software is within the scope of any patent.

(g) Licensed Software is subject to usage limits. Unless otherwise explicitly stated in an Order: (i) a quantity in an Order refers to Named Users, and the Licensed Software may not be accessed by more than that number of Named Users, (ii) a Named User's user name, password, or any other Named User login credential may not be shared with any other individual, (iii) except as set forth in an Order, a Named User identification may only be reassigned to a new individual replacing one who will no longer use the Licensed Software, and (iv) Customer may not add a Third Party as Named User, other than a Third Party included within the definition of Named Users and subject to the terms of use applicable to the Licensed Software. If Customer exceeds a contractual usage limit, 3-GIS may work with Customer to seek to reduce Customer usage so that it conforms to that limit. If, notwithstanding 3-GIS efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute a Change Order for additional quantities of the applicable Licensed Software promptly upon 3-GIS delivery of the same.

6. INDEMNIFICATION BY 3-GIS.

6.1 3-GIS shall defend so much of any Third-Party claim, action, or suit brought against Customer to the extent that such claim, action or suit alleges that the Licensed Software, or the use or possession of the Licensed Software, infringes or violates any existing United States patent or United States copyright. 3-GIS shall pay, indemnify, and hold Customer harmless (up to the total of the license fees received by 3-GIS under this License Agreement) from and against any and all settlements agreed to by 3-GIS or final judgments which are attributable to such claims, including costs, damages and reasonable attorney's fees

as finally awarded or agreed to in such settlements, provided, however, Customer notifies 3-GIS promptly, in writing, of such claim and grants 3-GIS sole control of the defense and all negotiations for settlement or compromise of such claim.

6.2 In the event an injunction is obtained against Customer's use of the Licensed Software, or, in 3-GIS' opinion, it appears likely that such an injunction will be obtained, 3-GIS shall, at its option: (i) secure Customer's right to continue using such Licensed Software, (ii) replace or modify such Licensed Software to make it noninfringing, without altering its capabilities and functioning in the computer in which it was installed, or, if neither option (i) nor (ii) is commercially reasonable, then (iii) terminate/cancel Customer's licenses and rights and refund Customer an amount representing the value of the unused portion of the license for the Licensed Software. The value of such unused portion of the license shall be a pro rata portion of the license fees actually paid by Customer to 3-GIS under this License Agreement and shall be determined by depreciating such fees over five years beginning with the initial delivery of the Licensed Software. Such license fees shall not include any fees for services or Maintenance.

6.3 The defense, indemnification, and other obligations of 3-GIS pursuant to this Article entitled "Indemnification By 3-GIS" do not apply to the extent that: (i) Customer modifies the Licensed Software and such modification causes such infringement; (ii) Customer uses the Licensed Software in a manner not permitted or contemplated under this Agreement and such use causes the alleged infringement; (iii) Customer is violating the license terms applicable to the Licensed Software; or (iv) the alleged infringement arises from events or circumstances outside of 3-GIS' commercially reasonable control (including any third-party hardware, data, or software).

6.4 3-GIS shall have no liability of any kind to Customer with respect to intellectual property infringement in connection with Third Party software or intellectual property provided to Customer pursuant to this Agreement.

6.5 This article entitled "Indemnification By 3-GIS" sets forth 3-GIS' entire liability with respect to intellectual property infringement.

7. LIMITED WARRANTIES AND DISCLAIMER OF WARRANTIES

7.1 Licensed Software Warranties.

7.1.1 3-GIS warrants that the first instance of a Licensed Software product delivered to Customer will operate in substantial conformance with the Documentation for ninety (90) days after delivery or installation by 3-GIS. If a breach of the foregoing warranty occurs, Customer's sole and exclusive remedy shall be, at 3-GIS' option, (a) replacement of the nonconforming Licensed Software within a commercially reasonable time, or (b) treatment of the Defect in accordance with the procedures set forth in Attachment C, provided Customer notifies 3-GIS in writing of the non-conformance within ninety (90) days of the date of shipment. The foregoing warranty is void if the Licensed Software has been modified by other than 3-GIS or its Affiliates and such modification causes or contributes to the nonconformance.

7.1.2 3-GIS warrants that the media for the Licensed Software as delivered to Customer is free from defects in materials and workmanship. If a breach of the foregoing warranty occurs, Customer's sole and exclusive remedy and 3-GIS' sole and exclusive obligation will be to replace the media for the Licensed Software within a commercially reasonable time and without charge to Customer, provided Customer notifies 3-GIS in writing of the defect in the media within thirty (30) days of the date of shipment.

7.2 Third Party Software. THIRD PARTY SOFTWARE, INCLUDING, BUT NOT LIMITED TO, OPEN SOURCE SOFTWARE, IS PROVIDED ON AN "AS IS" BASIS.

8. DISCLAIMER OF WARRANTIES. THE FOREGOING WARRANTIES AND, IF APPLICABLE, THE SERVICES WARRANTY SET FORTH IN ATTACHMENT D BELOW, ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS. ALL OTHER CONDITIONS, WARRANTIES, OR OTHER TERMS WHICH MIGHT HAVE EFFECT BETWEEN THE PARTIES OR BE IMPLIED OR

INCORPORATED INTO THIS AGREEMENT OR ANY COLLATERAL CONTRACT, WHETHER BY STATUTE, COMMON LAW, OR OTHERWISE, ARE HEREBY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF 3-GIS HAS BEEN AWARE OF SUCH PURPOSE, AND, THE WARRANTY AGAINST INFRINGEMENT OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

9. TERMINATION/CANCELLATION.

9.1 If either Party defaults in any material obligation in this Agreement ("Default"), including Licensee's failure to pay non-disputed fees, the non-defaulting Party shall give written notice of such default. If the Party in default has not cured the default to the reasonable satisfaction of the non-defaulting Party within thirty (30) days of receipt of the notice (or such other time agreed to in writing by the Parties), the non-defaulting Party may terminate this Agreement.

9.2 Upon termination/cancellation of the license and rights granted hereunder, Customer shall cease using the Licensed Software and destroy or return all Licensed Software furnished hereunder, including any copies, and certify such destruction or return in writing to 3-GIS. Such termination/cancellation shall not affect any obligations of Customer incurred prior to such termination/cancellation, nor shall 3-GIS have any obligation to refund any monies paid to it hereunder. The termination/cancellation rights of 3-GIS provided herein are in addition to all other rights and remedies available to 3-GIS. Upon any such termination/cancellation, any 3-GIS obligation hereunder shall terminate/cancel automatically.

9.3 Termination Services. Notwithstanding the preceding paragraph, upon the termination of this Agreement for any reason, 3-GIS may provide to Customer, at 3-GIS's standard professional rates, reasonable termination assistance as may be requested by Customer. If Customer elects to engage a third-party to provide related or substitute services or software after termination of this Agreement, then Customer shall include in its contract with such third party that such third party shall execute a confidentiality agreement reasonably acceptable to 3-GIS to protect 3-GIS's proprietary and confidential information.

10. THIRD PARTY BENEFICIARY. Owners of any Third-Party Software embedded into the Licensed Software or bundled with a Licensed Software solution are third party beneficiaries of this Agreement.

11. THIRD PARTY COMPONENTS. In the event the Oracle JDBC Driver is included in the Licensed Software solution, Customer shall not redistribute the Oracle JDBC Driver or its documentation.

END OF SOFTWARE LICENSING TERMS AND CONDITIONS

ATTACHMENT B - ADDENDUM FOR GOOGLE STREET VIEW TILE ACCESS

Only in the event that Customer orders Google Street View licensed tile access as indicated in an Order, the following additional terms and conditions apply to Customer's Licensed Tile Access (as such term is defined below).

1. LICENSE GRANT.

1.1 In accordance with the Customer's order as set forth in an Order, and upon payment of the associated fee set forth in an Order, Customer is hereby granted a personal, limited duration, nontransferable, and nonexclusive license to access Google Street View Tiles exclusively through the 3-GIS Web application ("Licensed Tile Access").

2. **DURATION OF THE LICENSE.** The fixed duration of the Licensed Tile Access runs concurrently with the fixed license duration of for Google Street View Tiles as set forth in the applicable Order.

3. **TITLE.** Title to the Google Maps Tile API Service and the Google Street View Tiles remains at all times with Google.

4. **SPECIAL TERMS AND CONDITIONS.** Notwithstanding anything in the Agreement to the contrary:

4.1 The following terms and conditions applicable to Licensed Tile Access, Google Maps, Google Street View, and Google Earth (each a "Google Service" and collectively the "Google Services") are incorporated by reference as if they were fully set out herein, and are listed in order of precedence if there is a conflict between such terms:

(i) the Google Services' Acceptable Use Policy at <https://cloud.google.com/maps-platform/terms/other/universal-aup/>;

(ii) the Google Services' Legal Notices at https://maps.google.com/help/legalnotices_maps/; and

(iii) the Google Services' Additional Terms of Service at https://maps.google.com/help/terms_maps.html.

Customer shall use the Google Services in a manner that is consistent with these above-referenced terms and conditions and shall compel all of its users to do the same.

4.2 Use of Licensed Tile Access shall be limited strictly to obtaining access of Google Services through the 3-GIS Web application.

4.3 The base fee for the Licensed Tile Access is set forth in an Order.

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END OF ADDENDUM FOR GOOGLE STREET VIEW TILE ACCESS

ATTACHMENT C – BASE MAINTENANCE TERMS AND CONDITIONS

The following are 3-GIS' additional terms and conditions for Base Maintenance. Customer purchases the Base Maintenance defined herein for the fee specified in an Order. Base Maintenance is defined as and limited to the following services: (1) correction of material Defects in accordance with this Attachment C and (2) providing Base Maintenance Releases. Under Base Maintenance, and strictly with regard to the Licensed Software, Customer is entitled to the services set forth hereunder.

1. DEFINITIONS

1.1 "Acknowledgment" or "Acknowledge" means a response to Customer by an employee of 3-GIS that he or she is gathering Problem Determination information in response to a Problem reported by Customer.

1.2 "Base Maintenance Period" means a period beginning at the conclusion of the Warranty Period or the conclusion of the previous Base Maintenance Period for Base Maintenance renewals and continuing for the period set forth in an Order of this Agreement or, if no period is set forth, for one calendar year.

1.3 "Base Maintenance Releases" means new or supplemental releases of the Licensed Software that are provided at no additional charge to purchasers of Base Maintenance and which include only limited additional functionality and/or contain corrections to the License Software provided as part of Base Maintenance. Base Maintenance Releases are not Enhancement Releases. 3-GIS and its licensors have sole discretion in determining whether a Release is an Enhancement Release or a Base Maintenance Release and the schedule for and content of any such release.

1.4 "Defect" means a condition in the Licensed Software that causes the Licensed Software to substantially fail to conform to Documentation in effect on the date of delivery of the Licensed Software. An error in the Documentation is not a Defect of the License Software. If the Documentation is determined to be in error, it will be corrected and provided to the Customer.

1.5 "Documentation" shall have the meaning set forth in Attachment A, "Licensed Software Terms and Conditions."

1.6 "Enhancement Release" means a release of the Licensed Software that includes new features or functionality beyond that provided in the release of the 3-GIS Licensed Software product initially delivered to Customer pursuant to an Order. 3-GIS and its licensors have sole discretion in determining whether a release is an Enhancement Release or a Base Maintenance Release. Enhancement Releases and maintenance for such Enhancement Releases are not included in Base Maintenance but may be licensed separately for an additional fee.

1.7 "Problem" means a condition reported by Customer to 3-GIS or identified by 3-GIS in which the Licensed Software appears to not be functioning in substantial conformance with the Documentation.

1.8 "Problem Determination" means 3-GIS' isolation of a Problem as either (a) a Defect or (b) a problem of another nature which has adversely affected the performance of the Licensed Software, (e.g., operational errors, database, hardware, or firmware issues, interfacing products, Third Party Software, etc.).

1.9 "Severity 1 Problem" means the Licensed Software is completely inoperable.

1.10 "Severity 2 Problem" means the Licensed Software is usable, but an essential component of the Licensed Software is inoperable or malfunctioning.

1.11 "Severity 3 Problem" means the Licensed Software is usable, but a nonessential component is inoperable or malfunctioning.

2. PROBLEM REPORTING INFORMATION.

2.1 Reporting Information. Customer is responsible for reporting all Problems through JIRA (support ticket system) and providing the following information in the Problem report:

- a) Reporter's name, location, and company;
- b) call-back telephone number (with voicemail, if available);
- c) Licensed Software name and release level;
- d) processor location and type;
- e) nature of the situation;
- f) assessment of Severity level as described above;
- g) description/history of the Problem and Customer's efforts to resolve it (if any);
- h) Software access and diagnostic reports (if applicable); and
- i) any other information reasonably required by 3-GIS to diagnose the Problem.

2.2 Problem Identification. Prior to reporting Customer shall:

- a) identify the Problem and the part(s) of the Licensed Software believed to be the source of the Problem
- b) determine that all known corrections or workarounds provided through Customer Services Bulletins or contained in prior Base Maintenance Releases which pertain to the Problem have been applied; and
- c) collect necessary and available supporting documentation for use by 3-GIS in diagnosing the Problem.

2.3 Problem Diagnosis Coordination. If Customer reports a Problem, Customer will be responsible for providing necessary materials (e.g., remote dial-in access, database access, printouts) required by 3-GIS to diagnose the Problem in an efficient manner.

2.4 Acknowledgement of Severity Level. 3-GIS will respond to the Customer to Acknowledge the severity level of the Problem within the time frames set forth below. After investigation, 3-GIS may change the severity level for that Problem. After Acknowledgement, 3-GIS will make a Problem Determination. If 3-GIS determines that the Problem is not a Defect, 3-GIS will inform Customer that the Problem is outside the scope of Base Maintenance. 3-GIS will then inform Customer that any further services related to the Problem, if offered and provided by 3-GIS, shall be charged at 3-GIS' then current rates for time and materials services.

2.5 Severity 1 Problem

- (i) 3-GIS will Acknowledge a Severity 1 Problem within one (1) Business Day, on average.
- (ii) If 3-GIS makes a Problem Determination that the Severity 1 Problem is due to a Defect, 3-GIS will use commercially reasonable efforts to electronically or telephonically provide or communicate a correction or workaround for the Defect within 3 Business Days, on average, of such Problem Determination. Customer must have knowledgeable staff available to aid in the investigation and must apply the Licensed Software correction or workaround as soon as it is provided by 3-GIS.

2.6 Severity 2 Problem

- (i) 3-GIS will Acknowledge this level Problem within two (2) Business Days on average.
- (ii) If 3-GIS makes a Problem Determination that the Severity 2 Problem is due to a Defect, 3-GIS will use commercially reasonable efforts to electronically provide a correction or workaround for the Defect within 10 Business Days, on average, of such Problem Determination or provide Customer with written notice within that time that the effort will require further research, resources, or analysis. Customer must have knowledgeable staff available to aid in the investigation and must apply an agreed upon Licensed Software correction or workaround as soon as it is provided by 3-GIS.

2.7 Severity 3 Problem

(i) 3-GIS will Acknowledge this level Problem within three (3) Business Days on average.

(ii) If 3-GIS makes a Problem Determination that the Severity 3 Problem is due to a Defect, 3-GIS will evaluate the Defect for possible inclusion of a correction or workaround in a future Base Maintenance Release.

2.8 All Base Maintenance-related communications will be conducted in English.

3. THIRD PARTY SOFTWARE MAINTENANCE

In the event that 3-GIS determines that a Problem is caused by Third Party Software bundled or embedded in the Licensed Software, as Customer's sole and exclusive remedy 3-GIS will report such Problem to the licensor of such Third Party Software and supply Customer with any corrections or workarounds that such licensor provides to 3-GIS. Notwithstanding anything else in this Agreement, if a licensor of 3-GIS does not provide support to 3-GIS for the Third-Party Software for any reason, 3-GIS shall have the option to terminate Base Maintenance. In such event, 3-GIS shall refund Customer an amount representing the value of the unused portion of the Base Maintenance. Such value shall be a pro rata portion of the Base Maintenance fees actually paid by Customer to 3-GIS under this Base Maintenance Agreement and shall be determined by depreciating such fees on a monthly basis over the Base Maintenance Period.

4. INSTALLATION AND SUPPORT OF BASE MAINTENANCE RELEASES.

Customer is responsible for installing all Base Maintenance Releases within three (3) months of the issuance date of such release of the Licensed Software. 3-GIS will discontinue support for prior Base Maintenance Releases three (3) months after the issuance date of the current Base Maintenance Release.

5. MODIFICATION OF LICENSED SOFTWARE.

If Customer modifies the Licensed Software outside the prescribed methods outlined in the Documentation, 3-GIS will not continue to provide Base Maintenance for the Licensed Software.

END OF BASE MAINTENANCE TERMS AND CONDITIONS

ATTACHMENT D – 3-GIS SOFTWARE SUPPORT PLAN

The additional terms and conditions set forth in this Attachment E, together with Attachment D, and the General Terms and Conditions of the Agreement shall govern the provision of the 3-GIS Software Support Plan Services (“Support Services”) as described herein. 3-GIS will provide Support Services up to the number of contracted hours in support of Customer’s 3-GIS software solution for the one-year period commencing as set out in the applicable Order (the “Support Services Commencement Date”). Capitalized terms not otherwise defined in this Attachment shall have the meaning assigned to them elsewhere in the Agreement.

1. SUPPORT SERVICES

1.1 3-GIS’ Call Center can be reached directly at +1 256-560-0744 and is available during Business Hours. All Call Center communications will be conducted in English.

1.2 Customer may choose to use the hours provided for Support Services to seek 3-GIS’ assistance with upgrades on major releases. Such assistance shall be comprised of 3-GIS consultation services covering the following topics:

- Backups of data and 3-GIS products
- Uninstall of existing products
- Install of new products
- Configuration changes needed to support the version
- Data schema changes needed to support the version
- Republishing and applying of the Sever Object Extension file
- Base Testing after upgrade

1.3 Customer may also use Support Services for a wide range of additional tasks that will assist in its administration of a 3-GIS software solution. 3-GIS will not complete these tasks for the Customer but will provide a supportive level of assistance to the Customer associated with the types of requests in Table 1, below.

2. EXCLUSIONS

2.1 The following services are not included as part of Support Services:

- Investigation of network issues
- Certificate changes or investigation
- Operating systems
- Esri upgrades, licensing, service packs, or installs
- Database maintenance, troubleshooting, and administration tasks
- Data scrubbing, clean-up, or correction
- Integration with other systems or software
- System configuration changes not essential for an upgrade
- Unsupported or undocumented system configuration changes
- Data Conversion work outside of Drag and Drop tool
- Esri tools not incorporated into 3-GIS’ software
- User and access changes

- Jasper reports
- Automated design support or requests

3. ADDITIONAL TERMS

3.1 Support Services are provided on an annual basis commencing with the Support Services Commencement Date.

3.2 Unused support hours at the end of the annual term shall be deemed consumed at the end of the annual term and no credit or refund shall be provided.

3.3 Support Services will automatically renew for annual terms on the anniversary of the Support Services Commencement Date unless Customer provides written notice to cancel the renewal in advance of the effective renewal date.

TABLE 1 - 3-GIS SOFTWARE SUPPORT PLAN MATRIX

<i>Support Plan Tier</i>	<i>Level 1</i>	<i>Level 2</i>	<i>Level 3</i>
Billing Frequency	Annual	Annual	Annual
Maximum Annual Support Hours	20	60	120
Fee for Additional One Hour Blocks of Support Services	\$175	\$150	\$150
Software Upgrade Assistance of Up To 8 Hours	0	1	2
Access to the 3-GIS Support Hotline	Yes	Yes	Yes
Limited 3-GIS-related Esri functionality support (includes: Add Features; MXD changes/Publish; Server Configuration)	Yes	Yes	Yes

END OF 3-GIS SOFTWARE SUPPORT PLAN

ATTACHMENT E - API LICENSE TERMS AND CONDITIONS

This API License Attachment (“**Attachment**”) to that certain Licensed Software and Professional Services Master Agreement sets forth the additional terms and conditions which, along with the terms and conditions set forth in the Agreement, shall govern the licensing and use of the 3-GIS API.

1. Definitions.

(a) “**API**” means the application programming interface and any API Documentation or other API materials made available to Customer by 3-GIS.

(b) “**API Documentation**” means the API documentation made available to Customer by 3-GIS from time to time.

(c) “**API Key**” means the security key 3-GIS makes available for Customer to access the API.

(d) “**3-GIS Products**” means the Licensed Software as such term is defined in the Agreement.

(e) “**Customer Applications**” means any software, firmware, or hardware Customer causes to interact with the API.

2. License Grant. Subject to and conditioned on its compliance with all terms and conditions set forth in this Attachment, 3-GIS hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the term and for the usage tier set forth in the applicable API Order to: (a) use the API solely for its internal business purposes solely in conjunction with the 3-GIS Products. Customer acknowledges that there are no implied licenses granted under this Attachment. 3-GIS reserves all rights that are not expressly granted. Customer may not use the API for any other purpose without its prior written consent. Customer must obtain an API Key from 3-GIS’ support team. Customer may not share its API Key with any third party, must keep its API Key and all log-in information secure, and must use the API Key as its sole means of accessing the API.

3. Use Restrictions. In addition to all usage restrictions set forth in the Agreement, except as expressly authorized under this Attachment, Customer may not:

(a) copy, modify, or create derivative works of the API, in whole or in part;

(b) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the API;

(c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the API, in whole or in part;

(d) remove any proprietary notices from the API or API Key; or

(e) use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

Customer will comply with all terms and conditions of this Attachment, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be included in the Documentation from time to time.

4. Customer Applications. Customer agrees to monitor the use of the API for any activity that violates applicable laws, rules, and regulations or any terms and conditions of this Attachment or the Agreement. As between Customer and 3-GIS, Customer is responsible for all acts and omissions of its end users in connection with Customer Application and their use of the API, if any. Customer agrees that

Customer is solely responsible for posting any privacy notices and obtaining any consents from its end users required under applicable laws, rules, and regulations for their use of Customer Applications.

5. No Support Services; Updates. This Attachment does not entitle Customer to any Support Services for the API. Customer acknowledges that 3-GIS may update or modify the API from time to time and at its sole discretion (in each instance, an “**Update**”), and may require Customer to obtain and use the most recent version of the API. Updates may adversely affect how Customer Applications communicate with the 3-GIS Products. Customer is required to make any changes to Customer Applications that are required for integration as a result of such Update at its sole cost and expense. Customer continued use of the API following an Update constitutes binding acceptance of the Update.

6. Intellectual Property Ownership; Feedback. Customer acknowledges that 3-GIS and/or its licensors own all right, title, and interest, including all intellectual property rights, in and to the API and the 3-GIS. Customer will use commercially reasonable efforts to safeguard the API (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Customer will promptly notify 3-GIS if Customer becomes aware of any infringement of any intellectual property rights in the API. If Customer or any of its employees, contractors, and agents sends or transmits any communications or materials to 3-GIS by mail, email, telephone, trouble ticket, or otherwise, suggesting or recommending changes to the API and/or the 3-GIS Products, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“**Feedback**”), all such Feedback is and will be treated as non-confidential. Customer hereby assigns to 3-GIS on its behalf, and on behalf of its employees, contractors, and agents, all right, title, and interest in, and 3-GIS is free to use, without any attribution or compensation to Customer or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although 3-GIS is not required to use any Feedback.

7. Disclaimer of Warranties. Notwithstanding anything in the Agreement or this Attachment to the contrary, THE API IS PROVIDED “AS IS” AND 3-GIS SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. 3-GIS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. 3-GIS MAKES NO WARRANTY OF ANY KIND THAT THE API, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY THIRD PARTY’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY CUSTOMER APPLICATIONS, SYSTEM, OR OTHER SERVICES, OR ANY THIRD PARTY’S SOFTWARE, HARDWARE, FIRMWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

8. Indemnification. Customer agrees to indemnify, defend, and hold harmless 3-GIS and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, arising from or relating to (a) its (or its officers, directors, employees, agents, affiliates) use or misuse of the API, (b) its breach of this Attachment, and (c) Customer Applications. In the event 3-GIS seeks indemnification or defense from Customer under this provision, 3-GIS will promptly notify Customer in writing of the claim(s) brought against 3-GIS for which 3-GIS seeks indemnification or defense. 3-GIS reserves the right, at its option and in its sole discretion, to assume full control of the defense of claims with legal counsel of its choice. Customer may not enter into any third-party agreement that would, in any manner whatsoever, constitute an admission of fault by 3-GIS or bind 3-GIS in any manner, without its prior written consent. In the event 3-GIS assumes control of the defense of such claim, 3-GIS will not settle any such claim requiring payment from Customer without its prior written approval.

9. Limitations of Liability. SOLELY AS IT RELATES TO OR ARISES OUT OF THE GRANT OF API USAGE RIGHTS UNDER THIS ADDENDUM, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL 3-GIS, ITS SUCCESSORS, OR ASSIGNS, BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (a) ANY LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE API; OR (b) ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIVE HUNDRED DOLLARS EVEN IF 3-GIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR 3-GIS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Term and Termination. The term of this Attachment commences when Customer executes the applicable Order for the API and will continue in effect until terminated as set forth in this Section or upon the expiration of the limited duration for API usage granted in the applicable Order for the API. Customer's right to use the API will terminate immediately and automatically if Customer violates any of the terms and conditions of this Attachment. Upon termination of this Attachment for any reason, all licenses and rights granted to Customer under this Attachment will also terminate and Customer must cease using, destroy, and permanently erase from all devices and systems Customer directly or indirectly control all copies of the API. Any terms that by their nature are intended to continue beyond the termination or expiration of this Attachment will survive termination. Termination will not limit any of 3-GIS's rights or remedies at law or in equity.

11. Export Regulation. In addition to the export obligations set forth in the Agreement, Customer will not make the API accessible from or to any jurisdiction or country to which export, re-export, or release is prohibited by applicable law, rule, or regulation.

END OF API LICENSE TERMS AND CONDITIONS