



HOLISTIC TESTING AGREEMENT

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

Esri Contract Number 336436

This Holistic Testing Agreement (Agreement) between **Environmental Systems Research Institute, Inc. (Esri)**, and **County of Tulare, CA (Company)** provides the terms under which Company's employees may work with Esri Software to test interoperability with Company Software, workflows, and datasets and provide Feedback to Esri.

The parties intend that, at an agreed time, employees of Company will go to Esri facilities to test Esri Software with Company Software, workflows, and dataset, and provide Feedback to Esri regarding the functionality of Esri Software and interoperability between Esri Software and Company Software, workflows, and datasets. The parties agree that the testing and Feedback as contemplated in this Holistic Testing Agreement are mutually beneficial, and the parties hereby further agree as stated herein.

1. DEFINITIONS

1.1 Company is defined above and includes all employees and agents.

1.2 Company Software means software or components thereof identified in Attachment A, owned or licensed by Company, whether publicly released or not, on any media with which testing with Esri Software will be conducted.

1.3 Esri Testing Program means the Esri facilities, processes, information, and documentation associated with permitting Company's employees to test Company Software, workflows, and datasets with Esri Software and provide Feedback to Esri.

1.4 Esri Software means alpha, beta, or other prerelease versions of software or components thereof identified in Attachment A, inclusive of backups, updates, or merged copies; documentation; or Related Materials owned or licensed by Esri, whether publicly released or not, on any media, with which Company will test Company Software, workflows, and datasets and provide Feedback to Esri.

1.5 Feedback means all suggestions, comments, input, ideas, or know-how (whether in written, oral, or electronic format) provided by Company to Esri in conjunction with the testing, functionality, or interoperability of the Esri Software.

1.6 Related Materials means all printed or online materials, user documentation, training documentation, sample data, activation codes, other collateral information, and other materials related to the Esri Software, testing instructions, or Esri Testing Program materials made available to Company.

1.7 Testing Location means the specific Esri lab area provided by Esri for testing and evaluation activities associated with the Esri Testing Program and Feedback.

2. RESERVATION OF OWNERSHIP, GRANT OF LICENSE, AND RESTRICTIONS

2.1 Reservation of Ownership and Grant of License. All rights, title, and ownership in patents, trademarks, copyrights, trade secrets, know-how, derivative works, or any other proprietary rights in the Esri Software and Related Materials remain exclusively with Esri.

Esri hereby grants to Company a personal, nonexclusive, nontransferable, royalty-free license to use the Esri Software and Related Materials at the authorized Testing Location(s) solely for the purpose of testing and evaluating the functionality of the Esri Software and Related Materials as delivered and providing Feedback to Esri.

During the term of this Agreement, Esri reserves the right to supplement and/or addend additional license provisions for new software releases as they become available. Any rights not specifically granted to Company in regard to the Esri Testing Program in this Holistic Testing Agreement are specifically reserved to Esri.

2.2 Restrictions on Use. Company shall not decompile, disassemble, or reverse engineer the Esri Software or Related Materials. Unless the Esri Software is intended for intranet or Internet use as described in the Related Materials, Company shall not install the Esri Software on any computer network or communication network (including any intranet or Internet server) without the express written consent of Esri.

3. SCOPE OF TESTING

Participants will attend an initial orientation meeting to review testing administration and receive information from the Esri development team related to the weeklong testing. Participants use Company Software and will process their workflows using their Company-provided Software, datasets, and Esri Software. Participants will log and document all issues and bugs found during testing. Participants will attend daily wrap-up meetings with the development team to discuss issues and concerns encountered throughout the day.

4. FEEDBACK

Participants are expected to log issues into the provided issue management system. If possible, participants are asked to leave test datasets with Esri to reproduce any and all issues found. In addition to documenting issues, testers will converse with Esri staff individually and in a group setting regarding issues and concerns with the Esri Software.

4.1 Use of Feedback. Company agrees that Esri may freely use, disclose, reproduce, license, distribute, and otherwise commercialize any documentation or Feedback, whether oral or written, provided to Esri by Company with respect to the Esri Software and participants' testing and Feedback.

4.2 Grant of License. Company grants to Esri a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid-up rights:

- a. To make, use, copy, modify, and create derivative works of the Feedback as part of any Esri Software and Related Materials;
- b. To publicly perform or display, import, broadcast, transmit, distribute, license, sell or offer to sell, rent, lease, license, or lend copies of the Feedback (and derivative works thereof) as part of any Esri Software;
- c. Solely with respect to Company's copyright and trade secret rights, to sublicense to third parties the foregoing rights including the right to sublicense to further third parties; and
- d. To sublicense to third parties any claims of any patents owned or licensable by Company that are necessarily infringed by a third-party product, technology, or service that uses, interfaces, interoperates, or communicates with the Feedback or portion thereof incorporated into Esri Software.

5. CONFIDENTIALITY OF ESRI SOFTWARE AND FEEDBACK

Notwithstanding the forgoing subsections 5(a), 5(b), and 5(c), the parties acknowledge that Company is a municipal government subject to statutory state and local public records laws that may require Company to provide access to Company's records and information related to this Agreement which may be considered a public record. Esri Software and Feedback are proprietary to Esri and contain trade secrets, inclusive of unpublished specifications, and computer code. In consideration of the rights granted herein, Company agrees to use and retain all Esri Software, Related Materials, Feedback, and information delivered or provided to it in strict confidence. Company will use the same precautions against disclosure or use other than as set forth herein as Company does its own trade secrets and proprietary information, but in no event less than a reasonable standard of care, which must include at least the following:

- a. Company shall not sell, transfer, lease, lend, assign, time-share, sublicense, publish, disclose, display, or otherwise make available the Feedback, Esri Software, and Related Materials in any form, including, but not limited to, flowcharts, logic diagrams, executable code, object code, source code, or technical documentation, to any other person or entity without the written permission of an authorized Esri representative.
- b. Company shall secure and protect the Feedback, Esri Software, and Related Materials and shall allow access to the Feedback, Esri Software, and Related Materials only to those employees within its organization who have a need to know for purposes of performing the obligations under this Agreement. Company agrees to instruct the employees of their obligations hereunder.

- c. Company will maintain all results of testing and all Feedback, including notes and observations, in confidence and agrees not to disclose to any third party details pertaining to the Esri Testing Program, Esri Software, Related Materials, test results, Esri Software errors encountered, or access to password-protected online Esri Testing Program resources and discussion forums.
- d. Company will not install Esri Software onto any computer or media not specifically authorized by Esri.
- e. Company will not remove the Esri Software from the Testing Location.
- f. While on Esri premises, Company's employees will comply with all instructions from Esri employees regarding
 - 1. Areas they may not enter without being accompanied by an Esri employee,
 - 2. Wearing an Esri-provided identification tag,
 - 3. Access to the Esri local network or World Wide Web, and
 - 4. Other reasonable instructions from Esri employees.

6. WARRANTIES AND LIMITATIONS OF LIABILITY

6.1 Warranties

6.1.1 Company warrants it shall not provide any Feedback

- a. In violation of any patent, copyright, or other intellectual property claim or rights of any third party,
- b. Subject to license terms that seek to require any Esri Software or Related Materials incorporating or derived from such Feedback or other Esri intellectual property to be licensed to or otherwise shared with any third party or to be licensed under any third-party terms.

6.1.2 Company warrants to Esri that Company has the right to grant the license in Section 4.2 (Grant of License) and that Esri's use of Feedback will not infringe any third party's intellectual property right(s).

6.2 Disclaimer of Warranty

6.2.1 Esri disclaims any warranty that the commercial release of Esri Software and Related Materials will contain the same or similar functionality. Esri reserves the right to make any change it deems necessary or desirable to Esri Software and Related Materials.

6.2.2 Company disclaims any warranty regarding the accuracy of the Feedback, which is provided on an as-is basis (other than the license rights granted herein) for Esri to use or not use as it sees fit.

6.2.3 Except as otherwise provided in this agreement, both Esri and Company disclaim all other warranties, express or implied, including, but not limited to, warranties of fitness for intended purpose, merchantability, and noninfringement.

6.3 Limitation of Liability. Except for a violation of the warranties, confidentiality terms, or the Grant of License stated herein, neither party will be liable to the other for indirect, consequential, special, or exemplary damages as a result of this Holistic Testing Agreement.

7. TERM AND TERMINATION

This Agreement is valid for a term of one (1) year from the date last signed and can be terminated by either party on thirty (30) days' written notice. In the event of termination, the rights under sections 2, 4, 6, and 8.5 shall survive.

8. GENERAL

8.1 Assignment and Successors in Interest. Company may not delegate or assign this Agreement or any of the rights, interests, or obligations of Company to any third party without the prior written consent of Esri. Any unauthorized delegation or assignment shall be null and void.

8.2 Choice of Law. This Agreement is governed by the laws of the United States of America and the State of California without reference to conflict of laws principles.

8.3 Waivers. No failure or delay by Esri or its licensor(s) in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Esri or its licensor(s).

8.4 Export. Company expressly acknowledges and agrees that Esri Software will not be exported, reexported, transferred, or released, in whole or in part, to (i) any U.S. embargoed country or to a national or resident of any U.S. embargoed country (currently Iran, Syria, Sudan, North Korea, and Cuba); (ii) any person or entity on the Denied Persons List, Entity List, Unverified List, BIS General Orders, or the Specially Designated Nationals List; or (iii) any person or entity where such export or reexport would violate any U.S. export control law or regulation, including, but not limited to, any amendment or supplemental additions to the U.S. export control laws, unless an export license from the appropriate U.S. government agency is obtained.

8.5 Equitable Relief. Company agrees that any breach of this Holistic Testing Agreement by Company may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Esri shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

9. ENTIRE AGREEMENT AND AMENDMENTS

This constitutes the sole and entire Holistic Testing Agreement of the parties as to the matters set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto. Except as otherwise expressly provided herein, any amendments to this Agreement must be in writing and signed by an authorized representative of each party.

ACCEPTED AND AGREED:

COUNTY OF TULARE
(Company)

Signature: _____

Name: _____

Title: _____

Date: _____

Address: _____

City/State/ZIP: _____

Telephone: _____

Fax: _____

E-mail: _____

Customer No.: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: *T-B*

Name: Timothy Brazeal
Manager, Commercial & Government Contracts

Title: _____

Date: OCTOBER 22, 2018

ATTACHMENT A
TO
HOLISTIC TESTING AGREEMENT
Esri Contract Number 336436

Company Software is identified as N/A

Esri Software is identified as ArcGIS Enterprise 10.7 and ArcGIS Pro 2.3
