

RESOLUTION NO. 21

Series 2019

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR PARTICIPATION IN THE ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. REGIONAL GOVERNMENT ENTERPRISE LICENSE AGREEMENT

WHEREAS, Environmental Systems Research Institute, Inc. ("ESRI") is a provider of Geographic Information Software ("GIS"); and

WHEREAS, the Town, and the towns of Frisco and Silverthorne (individually a "Party" or collectively the "Parties"), each currently pay annual licensing fees to ESRI to maintain each Party's software licenses previously purchased from ESRI; and

WHEREAS, each Party would be required to pay substantial costs to acquire new software licenses and extensions on an individual basis; and

WHEREAS, ESRI has created a Regional Government Enterprise License Agreement ("ELA") intended for a group of small towns with a combined population under 25,000, to allow the towns to work together and enter into a single software licensing agreement in order to access more seats and types of software at a reduced annual fee than each town could afford individually; and

WHEREAS, the ELA will allow the Parties access to the ESRI products listed in the ELA, including maintenance; and,

WHEREAS, pursuant to Title 29, Article 1, Part 2, Colorado Revised Statutes, as amended, and Article XIV, Section 18 of the State Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units and any such contract may provide for the joint exercise of the function, service or facility; and

WHEREAS, a proposed "Intergovernmental Agreement For Participation In The Environmental Systems Research Institute, Inc. Regional Government Enterprise License Agreement" between the Town and the towns of Frisco and Silverthorne has been prepared, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed intergovernmental agreement, and finds and determines that it would be in the best interest of the Town to enter into such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The "Intergovernmental Agreement For Participation In The Environmental Systems Research Institute, Inc. Regional Government Enterprise License Agreement" with the towns of Frisco and Silverthorne" (Exhibit "A" hereto) is approved, and the Mayor is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this 27th day of August, 2019.

TOWN OF BRECKENRIDGE

By: 

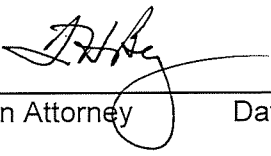
Eric S. Mamula, Mayor

ATTEST:



Helen Cospolich, CMC, Town Clerk

APPROVED IN FORM

 8/27/19
Town Attorney Date

**INTERGOVERNMENTAL AGREEMENT
FOR PARTICIPATION IN
THE ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
REGIONAL GOVERNMENT ENTERPRISE LICENSE AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), is entered into as of the 27th day of August, 2019 by and among the Town of Silverthorne, Colorado ("Silverthorne"), the Town of Breckenridge, Colorado ("Breckenridge"), and the Town of Frisco, Colorado ("Frisco"), referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Environmental Systems Research Institute, Inc. ("ESRI") is a provider of Geographic Information Software ("GIS");

WHEREAS, each of the Parties currently pays annual licensing fees to ESRI to maintain each Party's software licenses previously purchased from ESRI prior to this Agreement;

WHEREAS, each Party would be required to pay substantial costs to acquire new software licenses and extensions on an individual basis;

WHEREAS, ESRI has created a Regional Government Enterprise License Agreement ("ELA") intended for a group of small towns with a combined population under 25,000, to allow the towns to work together and enter into a single software licensing agreement in order to access more seats and types of software at a reduced annual fee than each town could afford individually;

WHEREAS, the ELA will allow the Parties access to the ESRI products listed in the ELA, including maintenance; and,

WHEREAS, the Parties have the authority to enter into this Agreement pursuant to Article XIV Section 18 of the Colorado Constitution and C.R.S. § 29-1-201, *et seq.*

NOW, THEREFORE, in consideration of the premises, the mutual promises, covenants and considerations contained herein, the sufficiency of which are acknowledged and confessed, the Parties agree as follows:

1. Authorized Entities. The entities authorized to use the ESRI products pursuant to the ELA are: Silverthorne, Breckenridge, and Frisco (the "Authorized Entities"). Silverthorne shall enter into ELA with ESRI, and shall act as the lead agency for the Authorized Entities in dealings with ESRI under the ELA. Breckenridge, and Frisco shall each execute an "Authorized Entity Acknowledgement Statement" which is included as an exhibit to the ELA. A copy of the ELA is attached to this Agreement, marked Exhibit A, and incorporated herein by this reference.

2. Geographic Information Systems Professional. Each Party shall be responsible for hiring a Geographic Information Systems professional (the "Consultant") to keep track of the types and quantities of software installed within each Party's organization. Each Party shall engage the Consultant, as needed, to answer questions and assist with software setup and installation.

3. Annual Licensing Fee The total annual licensing fee cost of the ELA is Thirty-five Thousand Dollars (\$35,000.00) for each year of the three (3) year initial term of the ELA. Silverthorne shall serve as Fiscal Agent for the Parties and shall be responsible to pay the annual ELA fee directly to ESRI. Silverthorne, acting as the Fiscal Agent, will invoice each Party for it's agreed upon share of the annual licensing fee. Each Party will have sixty (60) days from the date of the invoice to make payment to Silverthorne. The invoice will be issued no later than sixty (60) days before the ELA yearly renewal date.

Each Party hereby agrees to pay the following license fee to Silverthorne on an annual basis, following receipt of an invoice from Silverthorne, as follows:

Silverthorne:	\$12,500	(35.5%)
Breckenridge:	\$12,500	(35.5%)
Frisco:	\$10,000	(29%)

4. ArcGIS Online Subscription. Based on the funding obligations outlined in Paragraph 3, above, the ArcGIS Online Subscription components will be divided among the Parties as follows:

	Funding Percentage	Named Users
Silverthorne	35.5%	18
Breckenridge	35.5%	18
Frisco	29%	14
TOTALS	100%	50

5. Named User. Each Party shall assign one (1) Named User to the Consultant to use and access each Party's ArcGIS online subscription.

6. Virtual Campus Annual User License Allowance. The parties will split the Five Thousand (5,000) units for online training in the same percentages as outlined in the funding obligation, Paragraph 3, of this Agreement.

7. ESRI International User Conference Registrations. The ELA allows two people to attend the annual ESRI users conference each year without paying the conference registration fee. The Parties will decide amongst themselves who to send each year, if anyone. Each Party has the right to have one of its employees attend the conference every other year during the Term (as defined below) of the Agreement.

8. Single Point of Contact. Silverthorne's Public Works Director shall act as the single point of contact between the Parties and ESRI for orders and deliveries and will be responsible for redistribution of License key codes by email to eligible users in the Parties.

9. Individuals Authorized to Call ESRI. The Consultant will act as the authorized Tier 1 support Center to field calls from internal users of ESRI software. The Consultant will name two (2) employees who may directly contact ESRI for Tier 2 technical support.

10. Maintenance of Quantities and Types of Software Licenses. Each Party shall provide an annual report of installed ESRI software to ESRI.

11. Data Privacy. Each Party's data will be kept separate from the data of the other Authorized Entities and each Party will only be allowed to access the data allocated to them, unless otherwise authorized in writing by the Parties.

12. ESRI License. The Parties shall share the License(s) equally as needed. Each Party may use the License for a period of three (4) months during each twelve (12) month License term period. Each Party shall remove the License authorization from its computers/system, when the License is transferred to another Party. Silverthorne shall determine the order of use by the Parties for the License.

13. ESRI Reference Site. Each party shall act as an ESRI reference site and shall permit ESRI to publicize its use of ESRI software and services.

14. Term. This Agreement shall take effect on July 15, 2019 and shall remain in effect for a term of three (3) years to coincide with the ELA ("Term"). At the end of the Term, the Parties will have the option to remain as an Authorized Entity, continue under a renewal of the ELA and enter into a new Intergovernmental Agreement to replace this Agreement.

15. Contingent on Appropriation. Notwithstanding anything to the contrary contained herein, the payment of all direct and indirect obligations by any Party hereunder, in fiscal years subsequent to the current year, are contingent upon funds for this Agreement being duly appropriated and budgeted. If funds for this Agreement are not so appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement, the non-appropriating Party may terminate this Agreement upon written notice to the other Parties. The fiscal year for all Parties is currently the calendar year. In the event a Party terminates the Agreement pursuant to this Paragraph, the remaining parties to the Agreement may elect to form a new agreement to reallocate the funding obligations between the remaining Parties in order to continue with the ELA.

16. ELA Incorporated Herein; Indemnification. The terms and requirements of the ELA are incorporated herein and made a part of this Agreement. Each of the Parties agrees to abide by all of the terms of the ELA. To the extent permitted by the Colorado constitution and statutes, each Party indemnifies the other from and against all claims, cases of action, damages, awards and attorney fees arising out of each Party's performance of its duties pursuant to this Agreement and the ELA. No Party waives any of the protections afforded it by the Colorado Governmental Immunity Act, § 24-10-101, et seq. C.R.S., or any other statutory or Common Law immunity.

17. Violation of Terms of ELA. In the event one of the Parties violates the terms of the ELA, and such violation causes the entire ELA to be terminated because of such Party's actions, the violating Party shall reimburse the other Parties for the pro-rated unused portion of the ELA term for which the non-violating Parties have paid.

18. Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid; or, as of 12:00 noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt; or, if sent via e-mail, as of the date and time received as evidenced by a e-mail transmission receipt, addressed as follows:

Silverthorne:

Town of Silverthorne
Attn: Tom Daugherty
P.O. Box 1309
601 Center Cir.
Silverthorne, Colorado 80435
Phone: (970) 262-7353
E-mail: tdaughterty@silverthorne.org

Breckenridge:
Town of Breckenridge
Attn: Mark Johnston
P.O. Box 168
Breckenridge, CO 80424
Phone: (970) 547-3179
E-mail: markj@townofbreckenridge.com

Frisco:
Town of Frisco
Attn: Jeff Goble
P.O. Box 4100
Frisco, Colorado 80443
Phone: (970) 668-0836
E-mail: jeffg@townoffrisco.com

Any Party, by notice given as provided above, may change the address to which future notices shall be sent.

19. Severability. In case one or more of the provisions contained in this Agreement, or any application hereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement and the application thereof shall not in any way be affected or impaired thereby.

20. Modification. This Agreement may be modified only by written instrument duly authorized and executed by the Parties hereto.

21. Effective Date. This Agreement shall be effective as of date first set forth above (the "Effective Date").

22. No Third Party Beneficiaries. This Agreement is intended to describe the rights and responsibilities only as between the Parties. It is not intended to, and shall not be deemed to confer rights to any persons or entities not named as Parties to this Agreement.

23. Successors and Assigns. This Agreement shall not be assignable by any Party unless approved in writing by the remaining Parties.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

25. Headings. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

26. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Colorado. Venue for any court proceeding related to this Agreement shall be proper and exclusive in the District Court for Summit County, Colorado.

27. Entire Agreement. This Agreement sets forth the entire understanding of the Parties with respect to the matters set forth herein as of the date hereto; it supersedes all prior oral or written agreements of the Parties as to the matters set forth herein.

28. No Joint Venture; No Agency. This is an Agreement among the Parties for obtaining services. This Agreement does not create a joint venture or partnership between or among the Parties, nor does it constitute any Party as an agent of any other.

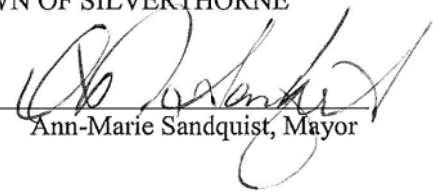
29. Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made. The Parties hereto each represent that they possess the legal ability to enter into this Agreement.

[Signatures on following page]

WHEREFORE, the Parties hereto have executed this Agreement as of the date here first set forth above.

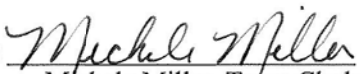
TOWN OF SILVERTHORNE

By:

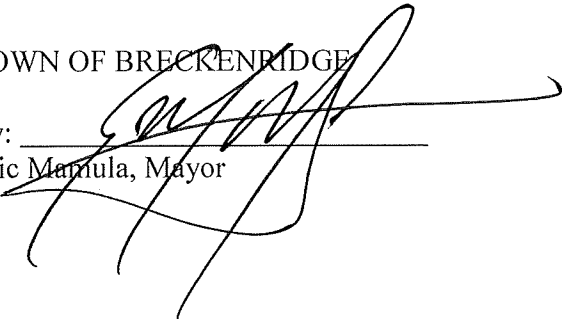

Ann-Marie Sandquist, Mayor

ATTEST:

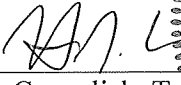
By:

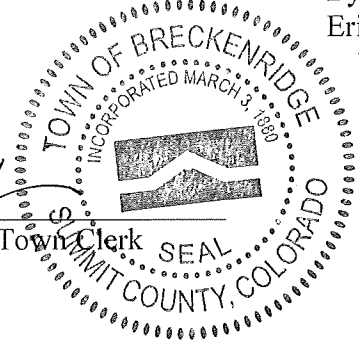

Michele Miller, Town Clerk

TOWN OF BRECKENRIDGE

By: 
Eric Mannula, Mayor

ATTEST:

By: 
Helen Cospolich, Town Clerk



TOWN OF FRISCO

By: 
Gary Wilkinson, Mayor

ATTEST:

By: 
Deborah Wohlmut, Town Clerk

6/10/13

EXHIBIT A

[Regional Government Enterprise License Agreement]

EXHIBIT A



May 29, 2019

Tom Dautherty
Town of Silverthorne
264 Brian Ave
Silverthorne, CO 80498

Dear Tom,

The Esri Small Municipal and County Government Enterprise Agreement (EA) is a three-year agreement that will grant the Town of Silverthorne access to Esri® term license software on an unlimited basis including maintenance on all software offered through the EA for the term of the agreement. The Town of Breckenridge and the Town of Frisco are authorized entities on the agreement. The EA will be effective on the renewal date of July 15, 2019 and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise agreement.

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.

EXHIBIT A

- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.
- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have. To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order: "**THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY.**" Have it signed by an authorized representative of the organization.
2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri
Attn: Customer Service SG-EA
380 New York Street
Redlands, CA 92373-8100

e-mail: service@esri.com fax
documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Lisa Ward

EXHIBIT A



Environmental Systems Research Institute, Inc.
 380 New York St
 Redlands, CA 92373-8100
 Phone: (909) 793-2853 Fax: (909) 307-3049
 DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Quotation # Q-383474

Date: May 31, 2019

Customer # 346105 Contract #

Town of Silverthorne
 Public Works Dept
 264 Brian Ave
 Silverthorne, CO 80498

To expedite your order, please attach a copy of this quotation to your purchase order.
 Quote is valid from: 5/24/2019 To: 8/22/2019

ATTENTION: Tom Dautherty
 PHONE: (970) 262-7353
 EMAIL: tdaugherty@silverthorne.org

Material	Qty	Term	Unit Price	Total
168177	1	Year 1	\$35,000.00	\$35,000.00
Populations of 0 to 25,000 Small Government Term Enterprise License Agreement - Year 1				
168177	1	Year 2	\$35,000.00	\$35,000.00
Populations of 0 to 25,000 Small Government Term Enterprise License Agreement - Year 2				
168177	1	Year 3	\$35,000.00	\$35,000.00
Populations of 0 to 25,000 Small Government Term Enterprise License Agreement - Year 3				

Subtotal:	\$105,000.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$105,000.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Lisa Ward	Email: lward@esri.com	Phone: (909) 793-2853 x8231
<p>The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://assets.esri.com/content/dam/esrisites/media/legal/ma-full/ma-full.pdf apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.</p>		
<p>If sending remittance, please address to: Esri, P.O. Box 741076, Los Angeles, CA 90074-1076</p>		

WARDL

This offer is limited to the terms and conditions incorporated and attached herein.

EXHIBIT A



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853 Fax: (909) 307-3049
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Quotation # Q-383474

Date: May 31, 2019

Customer # 346105 Contract #

Town of Silverthorne
Public Works Dept
264 Brian Ave
Silverthorne, CO 80498

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 5/24/2019 To: 8/22/2019

ATTENTION: Tom Dautherty
PHONE: (970) 262-7353
EMAIL: tdaugherty@silverthorne.org

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

BY SIGNING BELOW, YOU CONFIRM THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION, AND YOU ARE AUTHORIZING ESRI TO ISSUE AN INVOICE FOR THE ITEMS INCLUDED IN THE ABOVE QUOTE IN THE AMOUNT OF \$35,000 PLUS SALES TAXES IF APPLICABLE. DO NOT USE THIS FORM IF YOUR ORGANIZATION WILL NOT HONOR AND PAY ESRI'S INVOICE WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

Please check one of the following:

I agree to pay any applicable sales tax.

I am tax exempt, please contact me if exempt information is not currently on file with Esri.



Signature of Authorized Representative
Tom Dautherty

Name (Please Print)
PW Director

Title

7-18-19

Date

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax reflected on this quote has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state tax directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:
Lisa Ward

Email:
lward@esri.com

Phone:
(909) 793-2853 x8231

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://assets.esri.com/content/dam/esrisites/media/legal/ma-full/ma-full.pdf> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

If sending remittance, please address to: Esri, P.O. Box 741076, Los Angeles, CA 90074-1076

WARDL

This offer is limited to the terms and conditions incorporated and attached herein.

EXHIBIT A

Esri Use Only:
 Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____



**REGIONAL GOVERNMENT
 ENTERPRISE AGREEMENT
 (RG1)**

This Agreement is by and between _____ Town of Silverthorne _____ ("Managing Customer") and Environmental Systems Research Institute, Inc. ("Esri").

This Agreement sets forth the terms for Managing Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Managing Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
 List of Products**

Uncapped Quantities

Desktop Software and Extensions (Single Use)

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise and Workgroup (Advanced and Standard)
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Engine
 Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime (Standard)
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer*
 Two (2) Esri CityEngine Advanced Single Use Licenses
 50 ArcGIS Online Viewers
 50 ArcGIS Online Creators
 10,000 ArcGIS Online Service Credits
 50 ArcGIS Enterprise Creators
 2 Insights for ArcGIS for use with ArcGIS Enterprise
 2 Insights for ArcGIS for use with ArcGIS Online

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	2
Number of Tier 1 Help Desk individuals authorized to call Esri	2
Maximum number of sets of backup media, if requested**	2
Self-Paced e-Learning	Uncapped
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside of this Agreement (Discount does not apply to Small Enterprise Training Package)	

*Maintenance is not provided for these items

**Additional sets of backup media may be purchased for a fee

EXHIBIT A

Managing Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("Ordering Document"). **ADDITIONAL OR CONFLICTING TERMS IN MANAGING CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("Effective Date").

This Agreement authorizes the entities listed in Attachment 1 (each an "Authorized Entity") to use Products listed in Table A, provided Authorized Entity signs and returns an executed Authorized Entity Acknowledgment Statement and agrees to be bound by the terms and conditions of this Agreement. Managing Customer may not Deploy any Products to an Authorized Entity until Managing Customer has received and sent to Esri the executed Authorized Entity Acknowledgment Statement.

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

Town of Silverthorne
(Managing Customer)

By: [Signature]
Authorized Signature

Printed Name: Tom Daugherty

Title: PW Director

Date: 7-18-19

MANAGING CUSTOMER CONTACT INFORMATION

Contact: Tom Daugherty

Telephone: 970-262-7353

Address: PO Box 827

Fax: _____

City, State, Postal Code: Silverthorne, CO 80448

E-mail: tdaugherty@silverthorne.org

Country: USA

Quotation Number (if applicable): Q-383474

EXHIBIT A

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"**Case**" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"**Customer**" means Managing Customer and Authorized Entity.

"**Deploy**", "**Deployed**" and "**Deployment**" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"**Fee**" means the fee set forth in the Quotation.

"**Maintenance**" means Tier 2 Support, Product updates, and Product patches provided to Managing Customer during the Term of Agreement.

"**Master Agreement**" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <http://www.esri.com/legal/software-license> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"**Product(s)**" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"**Quotation**" means the offer letter and quotation provided separately to Managing Customer.

"**Technical Support**" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"**Tier 1 Help Desk**" means Managing Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"**Tier 1 Support**" means the Technical Support provided by the Tier 1 Help Desk.

"**Tier 2 Support**" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement. Additionally, Esri grants to Managing Customer the right to Deploy for Customer's internal use, provided prior to Deploying to an Authorized Entity, Esri receives a signed copy of the Authorized Entity Acknowledgment Statement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Managing Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party

EXHIBIT A

will have thirty (30) days from the date of written notice to cure any material breach.

- 3.4 Termination for Lack of Funds.** For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if Managing Customer is unable to secure funding through the legislative or governing body's approval process.
- 3.5 Follow-on Term.** If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.
- 3.6 Termination of an Individual Authorized Entity.** Esri may terminate the license rights of a particular Authorized Entity for material breach without terminating this Agreement with Managing Customer. The breaching Authorized Entity will be given a period of thirty (30) days from the date of written notice to cure any material breach. Upon the termination of an Authorized Entity, all Products Deployed to the Authorized Entity will also terminate. Managing Customer shall reasonably cooperate with Esri in termination of an Authorized Entity for material breach of this Agreement, including enforcement of the Agreement with respect to such Authorized Entity. There will be no reduction in the Fee if an Authorized Entity's rights are terminated. The terminated Authorized Entity will have no further access to any benefits, entitlements, rights, or other items included in or otherwise related to this Agreement.
- 3.7 Termination by Authorized Entity.** If an Authorized Entity no longer desires to participate in this Agreement, the Authorized Entity may terminate; however, there will be no decrease in the Fee as a result.

4.0—PRODUCT UPDATES

- 4.1 Future Updates.** Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Managing Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Managing Customer via written notice for incorporation into the Products schedule at no

additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

- 4.2 Product Life Cycle.** During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <http://support.esri.com/en/content/productlifecycles>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Managing Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <http://www.esri.com/legal>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Managing Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk

EXHIBIT A

individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.

6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Managing Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the

availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Managing Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Managing Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Managing Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee before the annual anniversary date for each year.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri's federal ID number is 95-2775-732.
- c. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Managing Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Managing Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Managing Customer to issue a purchase order. Managing Customer may submit a purchase order in accordance with its own process requirements, provided that if Managing Customer issues a purchase order, Managing Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Managing Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

EXHIBIT A

- a. All orders pertaining to this Agreement will be processed through Managing Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Managing Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will uninstall, remove, and destroy or transfer the Products to Customer.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

EXHIBIT A

**ATTACHMENT 1
AUTHORIZED ENTITY LIST**

1. Authorized Entity Name: Town of Breckenridge
Contact Name: Mark Johnston
Address: P.O. Box 168, Breckenridge, CO
80424
Phone: 970-547-3179
E-mail: mjohnston@townofbreckenridge.com

2. Authorized Entity Name: Town of Frisco
Contact Name: Jeff Goble
Address: P.O. Box 4100, Frisco, CO 80443
Phone: 970-668-0836
E-mail: Jeffg@townoffrisco.com

EXHIBIT A

Prior to any Deployment to an Authorized Entity, Managing Customer shall require each such entity to be contractually bound to applicable terms and conditions by executing an Authorized Entity Acknowledgment Statement. Managing Customer shall keep a copy of the signed original acknowledgment for its records and forward a copy of the signed original to Esri. Esri may pursue remedies against Managing Customer or an individual Authorized Entity for material breach. Only Managing Customer has a right to Deploy.

AUTHORIZED ENTITY ACKNOWLEDGMENT STATEMENT

Environmental Systems Research Institute, Inc. ("Esri") and Town of Silverthorne ("Managing Customer"), have entered into an Agreement for licensing certain rights to use and Deploy Products and to receive maintenance for the term of the Agreement, subject to payment of fees and adherence to the terms and conditions of this Agreement. Esri has authorized Managing Customer to Deploy Products to Authorized Entity provided Authorized Entity signs and returns this Authorized Entity Acknowledgment Statement.

Accordingly, Authorized Entity, as a Customer, represents it has received and read the Agreement, and understands and agrees to be bound by the Agreement, for use of Products received from Managing Customer. Authorized Entity agrees that Esri may pursue remedies against Authorized Entity for material breach of the Agreement. All Deployments made by Managing Customer to Authorized Entity shall be made through Managing Customer's centralized point of contact. Tier 1 Help Desk will provide Maintenance to Authorized Entity. Authorized Entity grants Managing Customer the right to unilaterally sign amendments to this Agreement, which shall be binding on Authorized Entity.

No other rights are granted to Authorized Entity under this acknowledgment.

Accepted and Agreed:

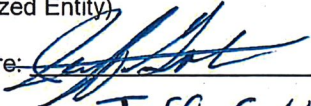
Town of Frisco
(Authorized Entity)
Signature: 
Printed Name: Jeff Goble
Title: Public Works Director
Date: 6/3/2019

EXHIBIT A

ATTACHMENT 1
AUTHORIZED ENTITY LIST

1. Authorized Entity Name: Town of Breckenridge
Contact Name: Mark Johnston
Address: PO Box 168
Breckenridge CO 80496
Phone: 970-54703179 Phone: _____
E-mail: Mark.J@townofBreckenridge.com E-mail: _____
2. Authorized Entity Name: Town of Frisco
Contact Name: _____
Address: _____
4. Authorized Entity Name: _____
Contact Name: _____
Address: _____