

Bill No. 663
2017

By-law No. A.-_____

A by-law to authorize and approve a Service Agreement between The Corporation of the City of London and Esri Canada Limited and to authorize the Mayor and the City Clerk to execute the Service Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into a Service Agreement with Esri Canada Limited;

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Service Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Service Agreement attached hereto as Schedule "A", being a Service Agreement between the City and Esri Canada Limited, is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Service Agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on November 28, 2017.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – November 28, 2017
Second Reading – November 28, 2017
Third Reading – November 28, 2017

PROFESSIONAL SERVICES AGREEMENT

Customer Name		The Corporation of the City of London
Customer Address		300 Dufferin Avenue, London, Ontario, N6A 4L9
Contact Person		Gary Stronghill, Manager, Infrastructure Systems, Geomatics Division
Telephone Number		519-661-2489 Ext. 5172
Fax Number		
E-mail Address		gstronghill@london.ca
Deliverables/Services Description		Statement of Work: Cityworks Computerized Maintenance Management System (CMMS) Implementation and Professional Services - Phase 1, September 5, 2017 attached as Schedule "A"

This Professional Services Agreement ("Agreement") is effective as of the [REDACTED] day of [REDACTED], 2017 between **Esri Canada Limited ("Esri Canada")** with its principal office at 12 Concorde Place, Suite 900, Toronto, Ontario M3C 3R8 and **The Corporation of the City of London ("Customer")** with an office at 300 Dufferin Avenue, London, Ontario, N6A 4L9.

Customer desires to retain Esri Canada to perform the Deliverables described in the Statement of Work: Cityworks Computerized Maintenance Management System (CMMS) Implementation and Professional Services - Phase 1, September 5, 2017 (the "**SOW**") in accordance with the terms and conditions of this Agreement.

In consideration of the mutual benefits and obligations contemplated in this Agreement, (the sufficiency of which is acknowledged by each party), Esri Canada and Customer agree as follows:

1. Definitions

"COTS Products" means any standard use or commercial- off- the-shelf (COTS) products including but not limited to third party COTS software or other Geographic Information Systems (GIS) products that Esri Canada markets, distributes or resells in its ordinary course of business.

"COTS Products Maintenance" means any applicable maintenance and technical support for COTS Products.

"Deliverables" means the professional services and deliverables outlined in the SOW that are to be provided by Esri Canada to Customer, including any other services or deliverables that Esri

Canada and Customer may agree upon as extras to or amendments of this Agreement. For the avoidance of doubt, the definition of Deliverables does not include COTS Products.

2. Professional Services

2.1 Customer retains Esri Canada to perform the Deliverables upon the terms and conditions contained in this Agreement. The performance of the Deliverables shall commence on the commencement date specified in the SOW. This Agreement shall remain in effect until terminated in accordance with Section 10.

2.2 This Agreement is solely for the provision of the Deliverables and excludes the supply of all COTS Products and COTS Products Maintenance which if required must be procured separately.

2.3 As part of the Deliverables, Esri Canada will provide to Customer such user needs consulting as indicated in the SOW. The SOW sets out the time schedule and specifications for the provision of the Deliverables.

2.4 Esri Canada's performance of the Deliverables is dependent in part on Customer's actions. Any dates or time periods relevant to the performance of the Deliverables by Esri Canada shall be appropriately extended to account for any delays caused or occasioned by Customer or any Customer representative, including delays resulting from Customer's failure to perform any of its obligations pursuant to this Agreement. Furthermore, if any delay continues after notification to Customer, Esri Canada shall be entitled to issue a Change Request (as defined in Section 9) for all reasonable costs and charges sustained or incurred as a result of the delay including additional time and materials (at Esri Canada's then current per diem rates) expended by Esri Canada.

2.5 Customer will confirm the schedule of date(s) for any workshop or analysis ("**Event**") at least 6 weeks in advance. Requests for any change or revision to the date received by Esri Canada less than 3 weeks prior to the Event shall entitle Esri Canada to issue a Change Request for any additional rescheduling costs.

3. Acceptance Testing

3.1 Esri Canada shall use reasonable commercial efforts to develop and deliver the Deliverables as set out in the SOW. Esri Canada shall deliver to Customer the accompanying documentation and any other additional instructions pertaining to the Deliverables as applicable. Esri Canada shall notify Customer in writing when the Deliverables or any portion thereof, is ready for acceptance testing or Customer approval. Customer shall have the period(s) of time as specified in the SOW or any other time period mutually agreed in writing (the "**Acceptance Testing Period**") to inspect and evaluate the Deliverables or any portion thereof delivered to Customer. Esri Canada shall meet the commercially reasonable requests of Customer for telephone advice and assistance in connection with Customer's acceptance testing of the Deliverables.

3.2 If prior to the end of the Acceptance Testing Period, Customer completes the acceptance testing of the Deliverables, it shall provide immediate written notice of such completion to Esri Canada. However, if during the Acceptance Testing Period, Customer notifies Esri Canada in writing of any significant functional or technical deficiency or deficiencies in the Deliverables or any portion thereof (a "**Deficiency Notice**"), Esri Canada shall use commercially reasonable efforts to correct such deficiency or deficiencies within a reasonable period of time except as otherwise specified in the SOW. A "significant functional or technical deficiency" refers to any deficiency that renders the Deliverables or any portion thereof inoperable or otherwise materially

non-complying as provided for in the SOW. In such event, the Acceptance Testing Period shall be extended for the applicable period of time and the provisions of this subsection 3.2 shall re-apply.

3.3 Customer shall be deemed to have accepted the Deliverables or any portion thereof on the earlier of the following (the “**Acceptance Date**”): (a) the date Customer provides a written notice to Esri Canada specifying that Customer has reviewed and accepted the Deliverables; or (b) the expiry date of the applicable Acceptance Testing Period; or (c) the date that any portion of the Deliverables delivered by Esri Canada is put into production or operation use or any commercial exploitation use by Customer or under the authority of Customer whether or not Customer has certified its acceptance of such Deliverables.

3.4 Esri Canada will notify Customer in writing when any document Deliverable provided (“**Document Deliverable**”) is ready for Customer’s approval and the following acceptance requirements shall apply:

(a) Customer shall have 5 business days from receipt of the Document Deliverable unless otherwise specified in the SOW or such other time period mutually agreed in writing between the parties (“**Acceptance Review Period**”) to inspect and evaluate the Document Deliverable;

(b) Before the end of the Acceptance Review Period, Customer shall provide written notice of completion of inspection of the Document Deliverable;

(c) If during the Acceptance Review Period, Customer notifies Esri Canada in writing of any deficiencies in the Document Deliverable, Esri Canada will provide a revised Document Deliverable within 5 business days or such other time period mutually agreed in writing between the parties;

(d) Customer shall have 5 business days or such other time period mutually agreed in writing between the parties from receipt of the revised Document Deliverable to re-inspect and re-evaluate the revised Document Deliverables;

(e) If Customer still considers the Document Deliverable to be deficient, the process set out in subsection 3.4 (b), (c) and (d) (a “**Review Cycle**”) may only be repeated one additional time only (thereby resulting in a maximum of 2 Review Cycles) except as otherwise mutually agreed to in writing between the parties. For avoidance of doubt, there shall be no more than 2 Review Cycles to a Document Deliverable unless otherwise mutually agreed in writing between the parties; and

(f) Customer shall be deemed to have accepted the Document Deliverable on the earlier of the following dates: (i) the date of provision of written notice by Customer to Esri Canada that Customer has reviewed and accepted the Document Deliverable; or (ii) the expiry date of the applicable Acceptance Review Period.

4. Ownership of Intellectual Property Rights

4.1 Any and all title and interest in the intellectual property rights to the Deliverables created or supplied by or on behalf of Esri Canada pursuant to this Agreement shall belong to Esri Canada. Esri Canada grants to Customer a personal, non-exclusive and non-transferable license to copy, use and modify such Deliverables for Customer’s internal use.

4.2 All intellectual property and proprietary right, title and interest in and to all copies, modifications and derivatives of the Deliverables, whether or not created by Esri Canada or Customer, shall belong to Esri Canada.

4.3 To the extent Customer acquires any rights in the Deliverables, or in any copies, modifications or derivatives thereof, Customer assigns to Esri Canada all of Customer's right, title and interest, including intellectual property rights in such Deliverables and in any such copies, modifications and derivatives thereof. In addition, Customer shall secure the unconditional waiver in favour of Esri Canada of all moral rights in such Deliverables and in any such copies, modifications and derivatives thereof.

4.4 Title to and ownership of all computer code, scripts, utilities, materials and documentation owned by a third party or developed outside the scope of this Agreement by any third party (collectively "**Third-Party Materials**") and used by Esri Canada in connection with this Agreement, together with all intellectual property rights in such Third-Party Materials shall remain with such third party, whether or not they are specifically adapted by Esri Canada for use by Customer. To the extent any Third-Party Materials are incorporated in any Deliverables delivered to Customer pursuant to this Agreement, Esri Canada shall secure for Customer an applicable license to use such Third-Party Materials.

5. Charges and Payment

5.1 The charges for the Deliverables are fixed as indicated in the payment schedule attached as Schedule "B". Customer shall pay all applicable sales, use and excise taxes, and any other assessments in the nature of taxes however designated on or resulting from this Agreement, not including taxes based on Esri Canada's net income.

5.2 If requested, Esri Canada may provide fee estimates initially or during the course of the project (including those provided pursuant to a Change Request). Customer acknowledges that in many cases rendering meaningful fee estimates is difficult except for routine procedures and that all such estimates should be viewed solely as estimates, subject to reasonable adjustment as the facts and circumstances of the project requires.

5.3 In addition to the service charges payable hereunder for the provision of Deliverables, Customer shall reimburse Esri Canada for all cost of materials and reasonable out-of-pocket expenses incurred by Esri Canada in connection with the Deliverables, provided that such cost and expenses have been authorized in advance in writing by Customer.

5.4 Esri Canada will invoice Customer in accordance with the SOW and Schedule "B". Unless otherwise indicated, Esri Canada invoices will be paid within 30 calendar days of the date of the invoice. Overdue invoices shall bear interest at 1 percent per month (equivalent to 12.56% per annum).

6. Access to System

6.1 Subject to the security requirements of Customer, Esri Canada or its designated representative shall have reasonable access to Customer's system to enable Esri Canada or its designated representative to perform the Deliverables. Customer shall provide, at no cost to Esri Canada:

(a) sufficient working space required by Esri Canada to perform the Deliverables;

- (b) office supplies and services such as photocopying, facsimile and telephone (except long distance); and
- (c) remote access to Customer's system, if required, in order to facilitate the performance of the Deliverables, including the remote diagnosis and correction of any errors in the Deliverables.

Customer shall bear the agreed-upon cost, including all out-of-pocket expenses of the above items.

7. Warranties, Disclaimers and Limitation of Liability

7.1 Limited Warranty on Deliverables: Esri Canada warrants that:

- (a) all services shall be performed in full conformity with this Agreement with the degree of skill and care expected of persons who perform similar services and in accordance with accepted industry practices; and
- (b) that for a period of 30 calendar days from the Acceptance Date of: (i) the Deliverable, or (ii) of the final Deliverable where the project encompasses more than one Deliverable and more than one delivery date (the "**Warranty Period**"), the Deliverable(s) if properly installed on the hardware and operating system specified therefore, shall operate and function in substantial conformity with the applicable specifications set out in the SOW.

Notwithstanding the foregoing, the services to be performed by Esri Canada are of a complicated and technical nature and may have minor or inherent deficiencies. In the event of a material non-compliance with the applicable specifications set out in the SOW during the Warranty Period, Esri Canada will, at its sole cost, use commercially reasonable efforts to provide all programming and remedial services necessary to correct such non-compliance of Deliverables provided that such non-compliance does not result from modifications to the Deliverables made by any person other than Esri Canada or its authorized agents.

7.2 No Other Warranties: To the extent permitted by applicable law, Esri Canada and its suppliers disclaim all other warranties, representations, conditions or guarantees, either express or implied, including but not limited to, implied warranties of durability, merchantability and fitness for a particular purpose with regard to the Deliverables.

The Deliverables are not fault intolerant and are not intended for use or to be relied upon in connection with critical health and safety or in environments that require fail-safe performance ("**Fault-Intolerant Activities**"). Esri Canada specifically disclaims any express or implied warranty of fitness for use in Fault-Intolerant Activities.

7.3 No Liability for Consequential Damages: In this subsection, "***Special Damages***" means special, incidental, indirect, punitive, exemplary, consequential damages, losses or expenses of any kind or nature whatsoever (including without limitation, damages for loss of business profits, business interruption, loss of business information, loss of records or data or any other pecuniary loss).

In no event shall Esri Canada or its suppliers be liable for any Special Damages arising out of the use of or inability to use the Deliverables or in connection with this Agreement, even

if caused by Esri Canada's or its suppliers' negligence or even if Esri Canada has been advised of the possibility of such damages.

7.4 Limits on Liability: If for any reason, Esri Canada becomes liable to Customer or any other person for direct or any other damages, losses or expenses for any cause whatsoever, and regardless of the form of action (in contract, tort, strict liability, or other theory of liability), incurred in connection with this Agreement or the Deliverables, then the aggregate liability of Esri Canada for all damages, injury, and liability incurred by Customer and all other parties in connection with the Deliverables or this Agreement shall be limited to an amount equal to the charges associated with the provision of such Deliverables that gave rise to the claim for damages.

8. Confidentiality and Privacy

8.1 In this Section 8:

"Trade Secret" means any information, including software and hardware configurations and software design and customization, identified or reasonably identifiable as confidential and proprietary information of Customer or Esri Canada which: (a) derives economic value, actual or potential, from not being generally known to other persons who might obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

"Confidential Information" means any information, including software or hardware configuration and software design and customization, identified or reasonably identifiable as confidential and proprietary information of Customer or Esri Canada concerning such party's business interests that is not generally available to third parties including:

- production processes, business plans and other materials or information relating to the business of such party;
- portions of computer software (in source and/or executable code) and related documentation that does not obtain trade secret status in any media, including all modifications, enhancements and versions and all options available with respect thereto; and
- information defined above as a Trade Secret but which is determined by a court of competent jurisdiction not to rise to the level of a trade secret under applicable law.

8.2 The Trade Secrets and Confidential Information shall include all the information one party receives from the other that is designated as confidential or is reasonably regarded as confidential.

8.3 Each party shall:

- maintain the secrecy of the other party's Trade Secrets and Confidential Information; and
- not use any of them except for the performance of the Deliverables or disclose same to anyone with the exception of the minimum number of the receiving party's employees or agents who have a need to know such information, provided all such persons understand and acknowledge in writing their obligation and willingness to preserve and hold such information in the strictest confidence.

8.4 Trade Secrets and Confidential Information shall not include any information which is publicly available at the time of disclosure or subsequently becomes publicly available through no fault of the recipient party or is rightfully acquired by the recipient party from a third party without obligations of confidentiality.

8.5 This Agreement is subject to all applicable Canadian privacy laws including the Municipal Freedom of Information and Protection of Privacy Act. To the extent feasible, Customer shall avoid the disclosure of personal information to Esri Canada unless such disclosure is necessary for Esri Canada's performance of the Deliverables. In the event that personal information disclosure is required, Customer shall provide Esri Canada with written notice of such personal information prior to or at the time of its disclosure.

8.6 Esri Canada provides professional services for businesses other than Customer including other companies in the same industry as Customer. This Agreement shall not prohibit Esri Canada from representing or performing professional services for such other businesses.

9. Change of Scope

9.1 If at any time during the term of this Agreement, Customer desires Esri Canada to provide any additional services or deliverables in the form of an addition, modification or, a change to the scope of the existing Deliverables ("**Change Request**"), the following process will apply:

(a) Customer will provide in writing any request for a change or addition to the Deliverables by completing a Project Change Control Form attached as Schedule "C".

(b) Esri Canada will respond in writing by completing appropriate portions of the Project Change Control Form setting out Esri Canada's personnel and resources necessary to satisfy the Change Request and the impact, if any, on the completion date and changes in costs.

(c) To implement the Change Request, Customer shall authorize Esri Canada to perform the Change Request by returning a signed copy of the Project Change Control Form completed by Esri Canada within 5 business days of its initial receipt. Esri Canada will only provide the Deliverables in the Project Change Control Form once the signed form has been received, not in advance.

(d) If Customer does not deliver a signed copy of the Project Change Control Form within 5 calendar days of Customer's initial receipt, Esri Canada shall consider that Customer does not wish to proceed with such Change Request.

(e) Each duly authorized Change Request signed by Esri Canada shall be deemed incorporated into this Agreement and shall constitute a formal change to this Agreement, adjusting fees, specifications and completion date as agreed in each authorized Project Change Control Form. In no event shall the Deliverables be deemed altered, amended, enhanced or otherwise modified except in accordance with this Section 9.

10. Termination

10.1 **Immediate Termination.** Either party shall have the right, but not the obligation, to terminate this Agreement with immediate effect, without liability, cost or penalty, and without prejudice to any other rights or remedies under this Agreement, if the other party:

(a) fails to cure a material breach of its obligations under this Agreement or does not cease any conduct in violation of this Agreement within 30 calendar days following written notice of such breach or violation from the other party; or

(b) ceases to carry on business, becomes or is declared insolvent or bankrupt, is subject to any proceeding relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes a general assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations.

10.2 Termination with Notice. Either party may terminate this Agreement, at its option, on 30 calendar days' written notice to the other party provided that all fees for Deliverables will be paid up to the effective date of termination, notwithstanding such termination.

10.3 Suspension of Obligations. If either party defaults in the performance or observance of any of its material obligations hereunder, then, in addition to all other rights and remedies available to the non-defaulting party, the non-defaulting party may suspend any or all its obligations under this Agreement impacted by such material breach without liability, until the other party's material default is remedied. For clarity, this Section shall not permit Customer to suspend its obligation to make payments accruing due and payable in respect of Deliverables not impacted by such material breach.

11. Non-Solicitation

11.1 During the term of this Agreement and for a period of one year thereafter, in order to maintain a stable workforce and to operate its business, neither party nor any of a party's employees will solicit or encourage or otherwise direct any of the other party's employees or contractors to work elsewhere. Notwithstanding the foregoing, a party shall not be restricted from employing personnel who make unsolicited applications in response to a general advertisement or genuine public recruitment campaigns.

12. General

12.1 Complete Agreement. This is the complete and exclusive statement of the Agreement between the parties and supersedes and merges all prior representations, proposals, understandings and all other agreements, oral or written, express or implied between the parties with respect to the subject matter of this Agreement.

Any amendments to this Agreement must be in writing under a separate agreement created for such purpose and signed by an authorized representative of each party.

For clarity, any additional or superseding terms contained in any purchase order or other standard form documentation issued by Customer during the ordering process, other than non-conflicting product descriptions, quantities and pricing, are void and of no effect. No such terms override the terms of this Agreement irrespective of the date of issuance of such ordering process documentation or any signature, performance or action by Esri Canada.

In the event of any conflict between the body of this Agreement and any Schedules attached to this Agreement, the body of this Agreement shall prevail.

12.2 **Notices.** All notices, demands or requests hereunder shall be in writing and shall be deemed properly delivered when sent to any other party by registered mail, electronically receipted facsimile or other similar means of electronic transmission or receipted commercial courier. Any such document sent by facsimile or other similar means of electronic transmission shall be deemed to have been received on the business day next following its transmission, and, if by registered mail, on the third business day next following its mailing.

12.3 **Governing Law and Jurisdiction.** This Agreement and performance hereunder shall be governed by the laws of the Province of Ontario and the applicable laws of Canada, without regard to conflict of laws provisions thereof. The parties irrevocably consent to the non-exclusive jurisdiction of the courts of competent jurisdiction in the Province of Ontario.

12.4 **Interpretation.** No provision of this Agreement shall be interpreted against any party merely because that party or its legal representative drafted the provision.

12.5 **Severability.** If any part, term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, provincial or local Government having jurisdiction over this Agreement, such part, term or provision shall be enforced to the maximum extent permitted by law and the validity of the remaining portions or provisions shall not be affected thereby.

12.6 **Waiver.** No delay on the part of either party in exercising any right or remedy nor any failure to enforce compliance under this Agreement shall operate as a waiver thereof, unless expressly agreed to in writing by such party. Any such written waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply. The single or partial exercise of any right or remedy under this Agreement by either party shall not preclude any other or further exercise of such right or remedy.

12.7 **Headings.** The headings in this Agreement are inserted for convenience only and shall not be construed to limit, or state the priority of any provision in this Agreement.

12.8 **No Assignment.** This Agreement may not be assigned or otherwise transferred by Customer in whole or in part without the express prior written consent of Esri Canada, which consent may be withheld at its sole discretion. Esri Canada may not assign this Agreement or any rights hereunder without Customer's written consent, which shall not be unreasonably withheld.

12.9 **Force Majeure.** With the exception of any amounts payable hereunder by Customer to Esri Canada, each party shall be excused from performance under this Agreement for any period of time and to the extent that it is prevented from performing any of its obligations under this Agreement, in whole or in part, as a result of delays caused by any event or circumstance beyond its reasonable control including without limitation by classification to delays resulting from an act of God, natural disaster, major power outage, cyber-attack, act of government or court order. Such non-performance will not be a default under this Agreement nor a ground for termination of this Agreement so long as the excused party makes reasonable efforts to mitigate the effects of any such delay.

12.10 **Survival.** In the event of any expiration or termination of this Agreement, for any reason whatsoever, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied, including without limitation Sections 4, 7, 8 and 11.

12.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other agreed upon electronic form. The parties adopt any signatures received by a receiving fax machine or other agreed upon electronic form as original signatures of the parties. Any party providing its signature in such manner will upon request promptly forward to the other party an original of the signed copy of this Agreement.

13. **Dispute Resolution**

13.1 **Disputes.** Any dispute, controversy or claim (a “**Dispute**”) arising out of or in connection with this Agreement or in respect of any defined legal relationship associated therewith or derived therefrom, shall be resolved in accordance with the provisions of this Section 13.

13.2 **Escalation of Dispute.** Any Dispute will be initially referred by the parties to each party’s representative for negotiation. If the representatives are unable to resolve the dispute within 5 business days after such referral, the Dispute shall be promptly referred to John Kitchen, Vice President and General Manager on behalf of Esri Canada and to the Chief Operating Officer (or substantial equivalent) of Customer for resolution. If such persons are unable to resolve the Dispute within 5 business days after such referral, the Dispute shall be submitted for resolution in accordance with subsection 13.3.

13.3 **Mediation.** The parties shall attempt to resolve any Dispute that has not been resolved by the procedures set forth in subsection 13.2 by structured negotiation with the assistance of a mediator appointed by the ADR Chambers, Toronto. If the Dispute cannot be settled within a period of 30 calendar days after the mediator is appointed (or such longer period as agreed to by the parties), the Dispute will be referred to, and conclusively settled by arbitration in accordance with subsection 13.4.

13.4 **Arbitration.** Any Dispute that has not been resolved by the procedures set forth in subsection 13.3 shall be referred to and settled by arbitration in accordance with the applicable provincial legislation for Ontario. The place of the arbitration shall be in Toronto, Ontario or as otherwise agreed in writing by the parties. If the arbitrator fails to render a decision within 30 calendar days following the final hearing of the arbitration, any party to the arbitration may terminate the appointment of the arbitrator and a new arbitrator shall be appointed in accordance with these provisions.

If the parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then any party to this Agreement shall be entitled to apply to any applicable judge within the justice system of Ontario to appoint an arbitrator and the arbitrator so appointed shall proceed to settle the Dispute in accordance with the provisions of this Section 13. Any award or decision made by an arbitrator appointed under this Section 13 is final and binding upon the parties to this Agreement and may be enforced in the same manner as a judgment or order to the same effect in Ontario and no appeal shall lie therefrom.

13.5 **Injunctive Relief.** Notwithstanding the provisions of this Section 13, each party shall retain the right to seek immediate injunctive relief if, in its reasonable business judgment, such relief is necessary to protect its interests prior to utilizing or completing the dispute resolution processes described in this Section 13, such as, for example, a claim by a party based on a breach of the confidentiality obligations under this Agreement.

14. Choice of Language (only applicable in Quebec).

14.1 It is the express wish of the parties that this document and any related documents be drawn up and executed in English. Les parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés et signés en anglais.

IN WITNESS WHEREOF the parties have signed this Agreement through their authorized respective officers as of the date first indicated above.

Esri Canada Limited

By:

Signature

Name and Position

The Corporation of the City of London

By:

Signature

Matt Brown
Mayor
City of London

Signature

Cathy Saunders
City Clerk
City of London

SCHEDULE "A"

**Statement of Work: Cityworks Computerized Maintenance Management System (CMMS)
Implementation and Professional Services - Phase 1, September 5, 2017 (attached)**

SCHEDULE "B"

Payment Schedule

Fees

This is a fixed fee project based upon the scope defined in the Statement of Work for the City of London CMMS – Phase 1. The City shall pay to Esri Canada fees in the amount of \$974,700 in accordance with the milestone payment schedule below.

The following table represents the milestone payment plan for the agreement, which is structured under a fixed fee arrangement. Payment will be made by the City upon its acceptance of the applicable Deliverables. Travel expenses have been estimated at \$63,800 and will be billed as incurred monthly in accordance with the terms and conditions of this Agreement.

Milestone Billing Plan (not including applicable taxes and travel expenses):

City of London – Milestone Billing Plan		
Milestone	Deliverables	Payment Schedule
Project Planning & Initiation #1	<p>Completion of the following deliverables:</p> <ul style="list-style-type: none">• Finalize SOW, Project Plan and Resourcing• Project plan in MS Project format. Deliver project plan in .pdf format for distribution to project team members as required• Cityworks installation on one (1) development environment and on one (1) test environment.• Environments fully tested to ensure they are operational.• Step-by-step installation documents• Kick Off Meeting• Core team overview training	\$35,000

Solution & Technical Design Workshops #2	Completion of the following deliverables: <ul style="list-style-type: none">• Conduct a one (1) day workshop for SAP & PACP CCTV Tool functionality• Deliver Solution/Requirements matrix• Conduct a two (2) day workshop for Solution Design• Conduct a one (1) day workshop for core configuration and mobile solutions• Conduct a one (1) day workshop for AVL Enhancement• Conduct a one (1) day workshop for configuration templates• Conduct seven (7) days of workshops for Interface Strategy, Interface and, CCTV Design	\$72,000
Solution Workshop Notes #3	Completion of the following deliverables: <ul style="list-style-type: none">• Provide workshop notes of the solution design meetings facilitated by Esri Canada staff• One half (1/2) day walkthrough (via WebEx) to review the Solution Design Workshop Notes• One final version of the Solution Design Workshop Notes based on the outcome of the Solution Design workshop notes walkthrough.	\$22,400
Employee Master & GL Master Interface Design #4	Completion of the following deliverables: <ul style="list-style-type: none">• Provide one (1) Interface Design Document for each	\$33,000

	interface that will have two (2) drafts and one final version	
Material Master & Job Code Design #5	Completion of the following deliverables: <ul style="list-style-type: none">• Provide one (1) Interface Design Document for each interface that will have two (2) drafts and one final version	\$24,400
Baseline Workshops #6	Completion of the following deliverables: <ul style="list-style-type: none">• Conduct two (2) days of baseline scenario workshops• Develop up to six (6) baseline test cases for Water and six (6) for Storm & Sewer• Provide two (2) four (4) hour WebEx session in each Phase to review baseline data collection	\$35,000
Employee Master & GL Master Interface Development #7	Completion of the following deliverables: <ul style="list-style-type: none">• Develop the interfaces – Cityworks side• Develop test cases• Complete unit testing and fixes• Update documentation and install in the City's DEV environment	\$44,000
Material Master & Job Code Development #8	Completion of the following deliverables: <ul style="list-style-type: none">• Develop the interfaces – Cityworks side• Develop test cases• Complete unit testing and fixes• Update documentation and install in the City's DEV environment	\$35,000

Equipment Master Interface Design & Development #9	Completion of the following deliverables: <ul style="list-style-type: none">• Provide one (1) Interface Design Document that will have two (2) drafts and one final version• Develop the interfaces – Cityworks side• Develop test cases• Complete unit testing and fixes• Update documentation and install in the City's test DEV environment	\$29,100
Baseline Configuration & Presentations #10	Completion of the following deliverables: <ul style="list-style-type: none">• Complete baseline configuration based on the configuration spreadsheet populated by the City• Provide Baseline Presentations	\$39,600
JDE Work Order Create/Update Interface Design #11	Completion of the following deliverables: <ul style="list-style-type: none">• Provide one (1) Interface Design Document that will have two (2) drafts and one final version	\$42,000
JDE Work Order Create/Status Interface Development #12	Completion of the following deliverables: <ul style="list-style-type: none">• Develop the interfaces – Cityworks side• Develop test cases• Complete unit testing and fixes• Update documentation and install in the City's test DEV environment	\$46,000
JDE Cost Interface Design #13	Completion of the following deliverables: <ul style="list-style-type: none">• Provide one (1) Interface Design Document that will have two (2) drafts	\$42,000

Solution Requirements Document #14	Completion of the following deliverables: <ul style="list-style-type: none">• Develop two (2) drafts and one (1) Final version of the SRD• One half (1/2) day walkthrough (via WebEx) to review the SRD	\$40,200
Configuration #15	Completion of the following deliverables: <ul style="list-style-type: none">• Provide up to three (3) four (4) hour WebEx sessions during final data collection• Complete configuration of work orders, service requests and inspections as listed in the BRD• Complete data loads for contractors• Final configuration walkthrough	\$65,000
Reports & Advanced UI #16	Completion of the following deliverables: <ul style="list-style-type: none">• One (1) day of Cityworks ERD training provided to the City's designated report writer.• Eighty (80) hours of support for report design and development• One (1) day of Cityworks Layout Manager framework training.• One (1) day UI Requirements workshop• Document UI design requirements• Provide up to four (4) hour WebEx to review UI design document• Eighty (80) hours of forms configuration design, development, feedback and	\$51,000

	testing (includes mobile forms configuration)	
JDE Cost Interface Development #17	Completion of the following deliverables: <ul style="list-style-type: none">• Develop the interface – Cityworks side• Develop test cases• Complete unit testing and fixes• Update documentation and install in the City's DEV environment	\$46,000
AVL Interface Implementation & Enhancement/Network Trace Tool #18	Completion of the following deliverables: <ul style="list-style-type: none">• Assist the City of London with the install and configuration of GeoEvent Server;• Design and develop an AVL enhancement;• Configure the Cityworks AVL plugin to consume the GeoEvent stream service;• Install and configure Cityworks AVL plugin;• Complete modifications and test;• Provide AVL plugin training• Install the Network Trace Tool in the DEV environment and assist the City with testing the tool by providing support	\$43,800
Data Broker Design & Development #19	Completion of the following deliverables: <ul style="list-style-type: none">• Provide one (1) Interface Design Document that will have two (2) drafts and final sign off;	\$68,100

	<ul style="list-style-type: none">• Develop the Cityworks side to create the service requests in Cityworks including sending required data back via the data broker interface;• Complete unit testing and fixes;• Update documentation.	
PACP Tool & Data Conversion #20	Completion of the following deliverables: <ul style="list-style-type: none">• Provide one (1) Interface Design Document that will have two (2) drafts and final sign off;• Develop data conversion scripts;• Data conversion unit testing;• Unit test data conversion;• Installation of data conversion scripts in the City's test environment;• Run data conversion against the City's test environment.	\$34,000
Final Preparation #21	Completion of the following deliverables: <ul style="list-style-type: none">• Deliver the final system deployment plan and checklist.• Develop the Solution Test Plan• Develop the User Acceptance Test Plan• Migration scripts from the development environment to the test and production environment;• Internal Testing of the QA/Test Environment to verify the successful migration of	\$62,600

	<p>configuration and integration components;</p> <ul style="list-style-type: none">• Assist in the install and configuration of the Production environment;• Test/QA and Production Environments configured and tested.	
Deployment & Training #22	<p>Completion of the following deliverables:</p> <ul style="list-style-type: none">• Provide train-the-trainer training;<ul style="list-style-type: none">○ Cityworks Server AMS – Two (2) days○ Cityworks Administrator – Two (2) days• Refresh the test environment for end-user and administrator training;• Provide assistance with developing a training plan;• Training support	\$26,500
Go Live & Support #23	<p>Completion of the following deliverables:</p> <ul style="list-style-type: none">• On-site support for the day prior to Go-Live, the day of Go-Live, and two days post Go-Live.• Remote support for 20 business days following the on-site support.• Configuration modifications assistance during the on-site and remote support based on changes determined during the live use of the system.	\$38,000

	<ul style="list-style-type: none">• Project close-out meeting and report to verify the completion of all deliverables in the project• Migration to Esri Canada Technical Support	
	Total:	\$974,700

Rate Table

In the event a change request is submitted, the rates supporting the change request will be based on the following rate table.

Resource	Hourly Rate (\$ CAD)
Project Director	\$200
Project Manager	\$170
Technical Lead	\$180
Senior Consultant/Business Analyst	\$170
Trainer	\$150
System Architect	\$170
Configuration Analyst	\$150

The rates above may be increased by the Vendor annually according to the CPI based pricing formula provided below:

Annual increase in rates will be adjusted by the greater amount of either 3% or CPI for the City of London.