



**ENTERPRISE LICENSE AGREEMENT
(E512G 08/08/2013)**

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

SECOND AMENDATORY AGREEMENT

This **SECOND AMENDATORY AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.**, (“ESRI”) a California corporation, whose address is 380 New York Street, Redlands, California 92373 (the “Consultant”) collectively, the “Parties”.

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated June 26, 2008 and amended the Agreement on April 7, 2011, Esri contract 2008ELA9 (the “Agreement”), relating to a City wide GIS license agreement; and

WHEREAS, the Parties wish to amend the Agreement to replace the ELA, extend the term and increase the compensation to the Consultant as follows; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. For the extended period beginning March 4, 2014 to March 3, 2017 the following Agreement documents listed on signature document, pages 1, E119G shall not apply:

- Enterprise License Terms and Conditions, E512, including Appendices A through E;
- License Agreement—ESRI No. 2008S9; and
- ESRI Enterprise Advantage Program (EAP) Addendum

In their place a new E512 (with appendices), a new license agreement and a new EAP shall apply, each collectively referred to herein as Esri Contract 2013ELA7961. A copy is attached hereto as Exhibit A-1, which is hereby incorporated herein. . The remainder of the E119G (Enterprise License Agreement signature document, pages 1 and 2) including the City AUP and Agreement General Terms and Conditions are unchanged except as set out below.

2. Paragraph 1 (i) of the Agreement General Terms and Conditions, entitled **MAXIMUM FUNDING & PAYMENT LIABILITY**, is replaced with the following”

“(i) Any other provision of this ELA notwithstanding, in no event shall the City be liable for

payment under the Agreement for any amount in excess of TWO MILLION ONE HUNDRED EIGHTY-NINE THOUSAND THREE HUNDRED AND FIVE DOLLARS (\$2,189,305.00) (“Maximum Contract Amount”) ESRI acknowledges that any work performed by it beyond that specifically authorized by the City is performed at ESRI’s risk and without authorization under this Agreement.”

3. This Second Amendatory Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

4. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

EXHIBIT LIST

EXHIBIT A-1 ENTERPRISE LICENSE TERMS AND CONDITIONS

EXHIBIT A-1
ENTERPRISE LICENSE TERMS AND CONDITIONS

Agreement No. 2013ELA7961

This Enterprise License Agreement including the documents listed below (collectively, "Agreement" or "ELA") is between **City and County of Denver** ("City"), a municipal corporation of the State of Colorado, and **Environmental Systems Research Institute, Inc.** ("Esri"), and is effective as of March 4, 2014 ("Effective Date"). This Agreement provides for the licensing and deployment of certain Esri Software, delivery of ELA maintenance, Enterprise Advantage Program, and provision of Esri International User Conference registrations and any additional services as specified herein.

This Agreement is comprised of the following documents, which are incorporated herein by reference:

Enterprise License Terms and Conditions, E512GM, including

- Appendix A, Software and Deployment Schedule
- Appendix B, Enterprise License Fee Schedule
- Appendix C, City Annual Deployment Report
- Appendix D, ELA Points of Contact
- Appendix E, Tier 1 Help Desk Authorized Individuals

License Agreement—found at <http://www.esri.com/legal/software-license>, including

- General License Terms and Conditions, E204
- Esri Exhibit 1, Scope of Use, E300

Note: Licensee is defined in Article 1-Definitions of the above E512GM .

Esri Source Code License Agreement (G-487)

Access to Source Code is subject to Esri Source Code License Agreement (G487)

Esri US Software Standard Maintenance Program

Enterprise Advantage Program ("EAP") 2013EAP7961

ENTERPRISE LICENSE TERMS AND CONDITIONS (E512GM 08/08/13)

ARTICLE 1—DEFINITIONS

All definitions in other parts of the ELA will have the same meaning in this Enterprise License Terms and Conditions. In addition, the following definitions apply to the ELA:

- "Deploy", "Deployment," or "Deployed" means to redistribute, or the redistribution of, the ELA Products (and its related keycodes/registration files), or its having been redistributed, by City, during the term of this ELA for installation and use by Licensee.
- "ELA Fee" means the fee set forth in Appendix B, ELA Fee Schedule.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri for ELA Products and Rolled-In Software.
- "ELA Products" means the Products identified in Table A-1 and Table A-2 of Appendix A, Products and Deployment Schedule. ELA Products does not include unit-priced item(s) or Esri technology that may be embedded in third-party products purchased by Licensee.
- "Incident" means a failure of the Product to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" means the General License Terms and Conditions (E204) and Exhibit 1, Scope of Use (E300), found at <http://www.esri.com/legal/software-license>.
- "Licensee" means City inclusive of its employee end users. For avoidance of doubt, the definition of Licensee will not include consultants or contractors.
- "Rolled-In Software" means Products of the same type as ELA Products that Licensee acquired for use prior to the Effective Date that is current on paid maintenance (as shown in Esri's customer service records) and that receives ELA Maintenance during the term of the ELA.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction, patches, hot fixes, and workarounds; replacement deliveries; or any other type of Products corrections or modifications specified in the most current applicable Esri US Software Maintenance Program.
- "Tier 1 Help Desk" means City point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in its attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.

ARTICLE 2—GRANT OF LICENSE

2.1 Grant of License. Licensee's use of the ELA Products is subject to the License Agreement and any additional terms set forth in this Article 2 and in Article 3 below. Rolled-In Software will be licensed in accordance with the License Agreement.

2.2 Beta License. Beta licenses are not available under this ELA as ELA Products. Beta Software, Beta Data, and Beta Online Services, if requested and provided, will be licensed separately and individually under the terms of the License Agreement (see Beta License in Section 3.2 of the General License

Terms and Conditions—E204) only. No other benefits, grants, or rights provided in this ELA shall apply or be provided/granted.

2.3 Consultant Access. Esri grants Licensee the right to permit Licensee's consultants or contractors to use the ELA Products exclusively for Licensee's benefit. Licensee shall be solely responsible for compliance by consultants and contractors with this License Agreement and shall ensure that the consultant or contractor discontinues ELA Product use upon completion of work for Licensee. Access to or use of ELA Products by consultants or contractors not exclusively for Licensee's benefit is prohibited. Licensee 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 Customer locations except for the purpose of hosting the Software or Data on contractor servers for the benefit of Licensee.

2.4 Reserved.

ARTICLE 3—SCOPE OF USE

There are additional Permitted Uses, Uses Not Permitted, and Restrictions for City incorporated into this ELA. The Permitted Uses and Uses Not Permitted sections of the General License Terms and Conditions portion of the License Agreement are modified to include the additional term in Sections 3.1 and 3.2 below:

3.1 Additional Permitted Uses. The following additional Permitted Uses are hereby granted to City for the ELA Products:

For the term of the ELA, City (through City's IT department) may copy and Deploy the ELA Products up to the quantities of licenses granted in Appendix A. No other entity has a right to copy (except as permitted in the License Agreement) or Deploy the ELA Products.

3.2 Uses Not Permitted. In addition to the restrictions set forth in the License Agreement, the following Uses Not Permitted apply to the ELA Products:

- a. City shall not transfer, redistribute, assign, or Deploy the ELA Products to any third party or outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any. Any such export will be subject to US Export Control Regulation requirements of the License Agreement.

ARTICLE 4—MAINTENANCE

4.1 ELA Maintenance. ELA Maintenance is included in the ELA Fee. Rolled-In Software and ELA Products will receive ELA Maintenance, provided that standard maintenance is available for each item. ELA Maintenance includes benefits specified in the most current applicable Esri US Software Maintenance Program document ([a current copy of which is attached hereto](#)) as modified by this Section 4.1.

a. Tier 1 Support Provided by City

- (1) Tier 1 Help Desk will provide Tier 1 Support to all Licensees.
- (2) The Tier 1 Help Desk will use analysts fully trained in the Products they are supporting.

- (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) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the Licensee. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact Esri for Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
- (6) City may assign up to the quantity of named Tier 1 Help Desk individuals listed in Appendix B. These individuals will be identified in Appendix E and are the only individuals (callers) authorized to contact Esri directly for Tier 2 Support.

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from the Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri 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) Esri shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals and not the Licensees.
- (5) When the Incident is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee.
- (6) Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website or, if requested, deliver them on media.

ARTICLE 5—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT REPORT

5.1 Purchase Orders, Delivery, and Deployment

- a. City shall not provide Esri with purchase orders. Esri shall invoice the City upon execution of the ELA and annually thereafter in accordance with the fee schedule in Appendix B. These fees will be due and payable within thirty (30) days of the anniversary date of the ELA, with the initial payment due within thirty (30) days of execution of the ELA. The ELA Fee payments shall be paid pursuant to the City's Prompt Payment Ordinance.
- b. Upon execution of this ELA, Esri shall authorize City to download ELA Products listed in Appendix A. Delivery of updates/new versions of ELA Products will be made in the same manner. If requested by City, Esri will deliver a limited number of sets of backup media as provided in Appendix B to the ship-to address identified in Appendix D, ELA Points of Contact, FOB

destination with shipping charges prepaid. City may purchase additional backup media sets at the prices in effect at the time of purchase. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. City acknowledges that Esri has a right to invoice, and City agrees to pay any such sales or use tax associated with receipt of tangible media.

- c. Esri shall provide registration/authorization numbers or access codes, as applicable, to activate the nondestructive copy protection program that enables the ELA Products to operate or allow access.
- d. City shall track the Deployment status of ELA Products.

5.2 Reserved.

5.3 Annual Report of Deployments. At each anniversary date and ninety (90) days prior to the expiration date of this ELA, City shall provide a written report, as set forth in Appendix C, to Esri detailing all Deployments made. The report will be subject to audit by an authorized representative of Esri.

5.4 Esri International User Conference Registration. Esri shall provide Esri International User Conference registrations to City annually during the term of this ELA in the quantities set forth in Appendix B. City is responsible for distributing the registrations to its internal end users. Third parties may not represent or attend on behalf of City at any Esri International User Conference.

ARTICLE 6—POINTS OF CONTACT; NOTICES

6.1 Points of Contact. Each party shall identify points of contact for administrative and technical issues in Appendix D.

6.2 Legal Notices. Except as otherwise set forth in this ELA, any notice, report, demand, or other communication will be properly given when made in writing in English and sent by courier, registered or certified airmail, or facsimile or other electronic transmission and confirmed when sent by courier or by registered or certified airmail, properly addressed to the appropriate party at the address set forth below, until changed by notice in writing by either party hereto. If sent by courier or airmail, notice will be effective upon the earlier of confirmed receipt or seven (7) days from the date of deposit with the courier service or post office. If sent by electronic transmission, notice will be effective one (1) business day from the date of transmission, provided confirmation of receipt is made. Notices will be given at the following addresses:

To: Esri
380 New York Street
Redlands, CA 92373-8100
Attn.: Manager, Contracts and Legal
Fax: 909-307-3020
E-mail: legalnotices@esri.com

To: City
as listed in Appendix D

ARTICLE 7—TERM, TERMINATION, AND EXPIRATION

7.1 Term. The term of the ELA will be for the period listed in Appendix B, commencing on the Effective Date unless this ELA is terminated earlier as provided herein.

7.3 Termination. Either party may terminate this ELA for an uncured material breach by the other party. The breaching party shall be given a period of thirty (30) days from date of written notice to cure any material breach.

In the event of a termination for breach the following shall apply:

- a. Within 10 days of termination pursuant to this Section 7.3, Licensee shall report the quantity and types of Deployed ELA Products to Esri. Within 5 days of receipt of such report, Esri shall determine the quantity and type of ELA Products that Licensee may continue to use under the License Agreement, based on the value of the ELA Products Deployed versus the amount paid for licenses (a portion of ELA Fee paid). Esri shall consult with Licensee on the mix/type of licenses Licensee desires to be authorized to use provided the total value of the licenses is equal to or less than the amount paid (portion of the ELA Fee related to licenses) for licenses. Licensee shall uninstall, remove, and destroy the Deployed ELA Products in excess of the authorized quantities and types. The remaining authorized quantities and types of software ("Remaining Software") shall be licensed in accordance with the License Agreement.
- b. Rolled-In Software licenses shall not terminate and may be used at the version level they have been upgraded to at the time of termination. Use and licensing of Rolled-In Software licenses shall be in accordance with the License Agreement.
- c. Maintenance on Remaining Software and Rolled-In Software may be acquired at then current standard commercial rates.
- d. Either party may pursue other remedies available at law.

7.3 Reserved.

7.4 License Term and Use upon Expiration of ELA Term. Upon full payment of the ELA Fee and expiration of this ELA, the License Agreement will survive, and Licensee may continue to use the Deployed ELA Products and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. Licensee shall notify Esri of the quantity and type of licenses for which Licensee elects to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or ELA Products upon expiration of the ELA, it lapses. If, at a later date, Licensee decides to reinstate maintenance, Licensee must pay maintenance reinstatement fees from the date of ELA expiration (e.g., back maintenance fees). City shall not Deploy additional copies of the ELA Products beyond the quantities in use upon termination or as of the date of expiration.

7.5 Termination for Non-Appropriation of Funds or Lack of Funds. City's obligation to pay the amounts due for following fiscal years is contingent upon appropriation of funds for this ELA. City or Esri may terminate this ELA in the event such funding is not made available ("Lack of Funds"). If either

party terminates for Lack of Funds, it will give the other party written notice of termination prior to the ELA anniversary date. In all cases, the effective date of the termination will be the last day of that payment period immediately prior to the annual anniversary date for the next payment.

Under no circumstances may City deploy additional copies of the Software, Data, or Documentation upon termination of the ELA for Lack of Funds.

In the event that the ELA is terminated for Lack of Funds the following conditions will apply:

- a. Licensee must uninstall, remove, and destroy all Deployed Software, Data, or Documentation and any whole or partial copies identified in Appendix A, Table A-2, however Licensee(s) may continue to use Rolled-In Software, subject to its compliance with the License Agreement;
- b. Licensee may continue to use Deployed Enterprise License Software, Data, or Documentation identified in Appendix A, Table A-1, provided:
 - i. Licensee shall report the quantity and types of Deployed Enterprise License Software identified in Appendix A, Table A-1, and Esri shall determine the quantity and type of Software, Data, or Documentation that Licensee may continue to use under the License Agreement terms. This determination will be based on multiplying the commercial list price of the Deployed Enterprise License Software identified in Table A-1 by the reported quantity and types and subtracting that amount from a portion of the ELA Fee amounts paid (portion of ELA Fee applicable to Enterprise License Software licenses identified in Table A-1 hereinafter referred to as "Offset Amount"). Licensee shall uninstall, remove, and destroy Deployed Enterprise License Software valued in excess of the Offset Amount to reach an authorized quantity and type level. The remaining authorized quantities and types of software ("Remaining Software") will be licensed in accordance with the License Agreement; and
 - ii. Rolled-In Software licenses of the type identified in Table A-1 will not terminate and may be used at the version level they have been upgraded to at the time of termination. Use and licensing of Rolled-In Software licenses will be in accordance with the License Agreement.
- c. No refund will be provided to Licensee for payments made prior to termination.

Within thirty (30) days of termination of the ELA for Lack of Funds, City will document in writing to Esri the total quantity and type (e.g., Product) of Remaining Software and Rolled-In Software for which City desires to obtain maintenance, if any. Payment of maintenance fees for such Remaining Software and Rolled-In Software for which City wishes to have maintenance, if any, will be effective from the date of the ELA termination, provided that City allocates appropriate funds. Maintenance reinstatement fees will not be required for maintenance on Rolled-In Software that lapsed during the term of the ELA. Other items that may be included in this ELA such as EAP and User Conference Registrations will also terminate if this ELA is terminated for Lack of Funds.

ARTICLE 8—CONFIDENTIALITY

8.1 Esri Confidential Information. The ELA may be subject to City's open/public records regulations or laws. Certain terms and conditions of this ELA are confidential and proprietary information of Esri.

Except as provided herein, City shall not publish or disclose the ELA (or contents) to any third party without Esri's prior written consent. Disclosure may be made only to those City employees and advisers of City (e.g., outside counsel or accountants) who have a need to know to perform their duties and have an obligation of confidentiality. City may only disclose the License Agreement and restrictions contained in the ELA to a contractor or consultant who has a need to know such information to perform work on behalf of City. No other portions of the ELA may be disclosed to a contractor or consultant. To the extent that any such disclosures may be required by law (such as an open/public records request), City shall inform Esri of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requestor, in sufficient time for Esri to assert any objection Esri may have to such disclosure with the appropriate administrative or judicial body.

ARTICLE 9—RESERVED

The ELA does not constitute a partnership, joint venture, or agency between Esri and City. Neither Esri nor City will hold itself out as such, nor shall Esri or City be bound or become liable because of any representation, action, or omission of the other.

ARTICLE 10—RESERVED

ARTICLE 11—GIS STANDARD

City shall officially name Esri as its GIS standard and act as a reference for other Esri customers and potential customers as long as the ELA remains in effect. This ELA will not be construed or interpreted as an exclusive dealings agreement, and City reserves the right to purchase from third parties any of their requirements for GIS software, or related services. City agrees that Esri may publicize the existence of the ELA.

ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

12.1 Esri Partner Original Equipment Manufacturer (OEM) Bundled or Embedded Items/Services. Certain Esri partners are authorized to either embed limited portions of Esri technology or bundle Esri products or services with the partner's application or service under Esri's OEM or Solution OEM programs. Partner pricing and product bundling is independent of this ELA, and each partner markets under its own business model and pricing. Licensee shall not be entitled to or seek any discount from the OEM business partner or Esri, directly or indirectly, as a result of or based upon the availability of such Products as ELA Products under this ELA. Licensee shall not be entitled to or seek to decouple Esri's technology or products/services from the partner's bundle or solution. In addition, such Products, or any component thereof included in the OEM software program or product, will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

12.2 ELA Products—Limited Quantity or Unit-Priced Items. Esri reserves the right to exclude new Products from unlimited Deployment. New Products may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site or enterprise license. Such items can be made available to City on a limited quantity basis or as unit-priced items.

12.3 Obsolescence. During the term of this Agreement, some of the items listed in Appendix A may become obsolete or will no longer be commercially offered or may no longer be available for Deployment. Licensee may continue to use ELA Products that has been Deployed, but support and upgrades for older items may not be available. ELA Maintenance and maintenance and availability of ELA Products identified in Appendix A will be subject to each item's Product Life Cycle Support Status, which can be found at <http://resources.arcgis.com/content/product-life-cycles> by selecting the product type and clicking the Product Life Cycle link for specific product plans. Esri's Product Life Cycle Support Policy, available at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf>, covers the support phases and overall support plans.

**APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

City may Deploy the ELA Products up to the total quantity of licenses indicated below to Licensees during the term of this ELA.

Table A-1, ELA Products—Unlimited Quantities

Item	Total Qty./Seats to Be Deployed
ArcGIS for Desktop Products – ArcGIS for Desktop Advanced, Standard and Basic (Single and Concurrent Use)	Unlimited
ArcGIS for Desktop Extensions - 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcGIS Publisher, ArcGIS Schematics, and ArcGIS Workflow Manager and ArcGIS Data Reviewer (Single and Concurrent Use)	Unlimited
ArcGIS for Server-based Products – ArcGIS Server Workgroup and Enterprise (Advanced, Standard and Basic)	Unlimited
ArcGIS for Server Extensions - 3D, Network, Spatial, ArcGIS Workflow Manager, Geostatistical, Schematics, and Image ArcGIS Engine Deployments	Unlimited
ArcGIS Engine extensions –Spatial, 3D, Network, Geodatabase Update, and Schematics	Unlimited
Esri Mapping and Charting – ESRI Production Mapping	Unlimited

Table A-2, ELA Products—Limited Quantities

Item	Rolled-In Qty. (if applicable)	Qty./Seats to Be Deployed	Total
Esri Developer Network (EDN) annual subscriptions	N/A	10	10
Esri CityEngine – Advanced Single Use or Concurrent Use license	N/A	1	1
ArcGIS for Server Extension – Data Reviewer	N/A	1	1
Esri Business Analyst Standard for Desktop State – Single Use License	N/A	1	1
Data Interoperability Desktop Extension - Concurrent Use	3	N/A	3
ArcPad	16	N/A	16
Business Analyst Online, Premium Subscription	1	N/A	1
Roads and Highways Desktop licenses	2	N/A	2
Esri Roads and Highways for Server Extension	1	N/A	1
Esri Roads and Highways for Staging Server	1	N/A	1

Product	Number of	Named Users	Annual Credits
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	Subscriptions	per Subscription	per Subscription
ArcGIS Online for Organizations, Level 2 annual subscription for Year 1 only	1	50	10,000
ArcGIS Online for Organizations, Level 3 annual subscription for Year 2 and Year 3 only	1	100	17,500

* Licensee can procure additional ArcGIS Online account subscriptions during the term of the Agreement. At the time of purchase, Licensee will transfer or procure new credits for additional ArcGIS Online accounts.

**APPENDIX B
ELA FEE SCHEDULE**

The ELA Fee is \$832,005. The ELA Fee is in consideration of the ELA Products, ELA Maintenance, Enterprise Advantage Program and Esri International User Conference registrations.

	Year 1 2014	Year 2 2015	Year 3 2016	ELA Fee
Payments	\$273,565	\$279,220	\$279,220	\$832,005
*Enterprise Advantage Program annual subscription includes: -100 Technical Advisory hours; -100 Learning and Services Credits; -One day planning session	One subscription	One subscription	One subscription	
Number of Esri International User Conference Registrations per Year	10	10	10	
Number of Tier 1 Help Desk Individuals	4	4	4	
Number of Sets of Backup Media, if Requested	5	5	5	
Support Incidents for EDN	One 10- Pack/Year	One 10- Pack/Year	One 10- Pack/Year	
Term of ELA pursuant to Section 7.1	Three years from Effective Date			

*Unused Learning and Services Credits expire six months after the expiration of the ELA. Unused Technical Advisor hours terminate upon expiration of the ELA.

APPENDIX D
ELA POINTS OF CONTACT

Either party may change its point of contact by written notice to the other party.

1. Esri point of contact for order processing issues:

Name: Customer Service
Esri Redlands
380 New York Street
Redlands, CA 92373-8100
E-mail:service@esri.com
Phone: 888-377-4575
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

E-mail:support@esri.com
Phone: 909-793-3774 (domestic US only)
Fax: 909-792-0960
Web: support@esri.com

3. City centralized point of contact for order release and administrative issues:

Name: Cindy Zec
E-mail: Cindy.Zec@denvergov.org
Phone: PH:720-913-4958
Fax: 720-913-5237

. All deliverables to City will be shipped to the address listed below:

- City Office: Technology Services
- c/o Cindy Zec
- 201 West Colfax Av/ Dept 310, Denver, CO 80202

5. All notices to City will be mailed to the address listed below:

- Technology Services
- c/o Cindy Zec
- 201 West Colfax Av/ Dept 310, Denver, CO 80202

APPENDIX E TIER 1 HELP DESK AUTHORIZED INDIVIDUALS

Below are named Tier 1 Help Desk individuals authorized to seek Tier 2 Support from Esri. Substitutes/Changes to Tier 1 Help Desk authorized individuals may be made by written notice to Esri.

- **Bruce Reagan**
 - 201 West Colfax Av/ Dept 310, Denver, CO 80202
 - PH: 720-913-5883
 - Fax: 720-913-5237
 - Bruce.Reagan@denvergov.org
- **Heather Stanton**
 - 201 West Colfax Av/ Dept 310, Denver, CO 80202
 - PH: 720-913-4890
 - Fax: 720-913-5237
 - Heather.Stanton@denvergov.org
- **Ajay Sisodia**
 - 201 West Colfax Av/ Dept 310, Denver, CO 80202
 - PH: 720-913-4860
 - Fax: 720-913-5237
 - Ajay.Sisodia@denvergov.org
- **Doug Genzer**
 - 201 West Colfax Av/ Dept 310, Denver, CO 80202
 - PH: 720-913-4839
 - Fax: 720-913-5237
 - Douglas.Genzer@denvergov.org

ESRI SOURCE CODE LICENSE AGREEMENT

This Source Code License Agreement ("SCLA") is subject to and part of Esri License Agreement between City and County of Denver ("Licensee") and Environmental Systems Research Institute, Inc. ("Esri"), a California corporation with its principal place of business at 380 New York Street, Redlands, California 92373-8100.

ARTICLE 1—DEFINITIONS

For purposes of this SCLA the following definitions shall be used:

“**Source Code**” shall mean Software commentary, compilation instructions, tools, explanations, documentation, object code libraries, any third party or open source software in the form Esri receives it including any changes made by Esri, and other related materials code provided to Licensee pursuant to this SCLA as set forth in the License Agreement.

“**License Agreement**” shall mean the Esri License Agreement between Esri and Licensee, identified in Esri Contract No. 2013ELA7961, which contains the terms and conditions for licensing of the Esri Software to Licensee.

“**Release Condition**” shall have the meaning set forth in Article 3—Release Condition and Process of this SCLA.

ARTICLE 2—GRANTS; RIGHTS

2.1 Grant of License—Subject to this SCLA, and provided a Release Condition exists, Esri grants to Licensee a limited term (as described in ARTICLE 4—Term), personal, nonexclusive, nontransferable, fully paid up license to use Source Code (only for providing technical support for Licensee’s internal use of the Software delivered under the License Agreement.

2.2 Reservation of Rights—This is a license agreement and not an agreement for sale. The copyright to the Source Code is owned by Esri and its licensor(s) and is protected by United States copyright laws and applicable international laws, treaties, and conventions regarding intellectual property rights. Esri and its licensor(s) retain all rights, title, and ownership. All rights not specifically granted in this SCLA are reserved by Esri and its licensor(s). Except as stated herein, Esri is under no obligation to provide Source Code owned by Esri's third party licensors, or license the use of the Source Code owned by Esri's third party licensors.

ARTICLE 3—RELEASE CONDITION AND PROCESS

3.1 Release Condition—A “Release Condition” exists if, while the Software license is in effect and Licensee is current on applicable maintenance fees for the Software, Esri (i) is liquidated or dissolved or otherwise ceases all business operations, and the

liquidation, dissolution or cessation is not in connection with the sale of all or substantially all of the related software assets or stock of Esri to a successor entity in a merger or acquisition; or (ii) is finally adjudged bankrupt under Chapter 7 of the U.S. Bankruptcy Code; or (iii) generally discontinues support for the Software, provided such support is not continued by another entity and that ESRI does not provide a replacement product that substantially performs the same functions;

3.2 Release Process—Licensee shall provide written notification to Esri when it believes a Release Condition exists, including a detailed description sufficient to support its claim that a Release Condition exists and a list of the Software to which the Release Condition applies. Within ten (10) business days after such notification, Esri shall either (i) provide confirmation that a Release Condition exists and a date by which Esri shall provide the Source Code to Licensee not to exceed thirty (30) days from the date of Licensee's notice, or (ii) notify Licensee that a Release Condition does not exist including a detailed explanation supporting its conclusion.

ARTICLE 4—TERM

4.1 The Source Code License shall commence upon Licensee's receipt of the Source Code and shall continue until (1) the Release Condition no longer exists, (2) any expiration or termination of Licensee's license in the Software in accordance with the terms of the License Agreement, or (3) upon the insolvency of Licensee (the placing in receivership, filing of a petition in bankruptcy, or assignment for the benefit of creditors, whether known or designated by some other name or term), whichever first occurs.

4.2 Upon the expiration or earlier termination of the license granted under this SCLA, the Licensee shall return to Esri the Source Code, and any whole or partial copies, codes, modifications, derivatives, and merged portions in any form, fully sealed and marked "Confidential" and addressed "Attention: Contracts Manager."

ARTICLE 5—CONFIDENTIALITY

5.1 Licensee acknowledges that the Source Code contains trade secret technology and other information proprietary to Esri or Esri's third party licensor(s). Licensee agrees to take all reasonable steps to protect the secrecy of, and avoid the unauthorized use of, the Source Code in the same manner and with the same degree of care it uses to protect its own trade secrets or proprietary information being not less than a reasonable degree of care.

5.2 Disclosure of the Source Code is restricted to those employees of Licensee having a need to know who are directly providing internal support for the Software, each of whom agrees in writing to be bound by the nondisclosure provisions of this SCLA provided that in no event may the Licensee disclose Source Code to Esri competitors.

5.3 Licensee shall not disclose any Source Code to any other person or entity and shall not reproduce or use the Source Code in any manner, except as specifically authorized in this SCLA. Licensee agrees to immediately notify Esri in writing of any misuse, misappropriation, or unauthorized disclosure that may come to its attention.

5.4 Any breach of the terms and conditions of this Section 5 shall constitute a material breach of this SCLA. Licensee acknowledges that any breach of this Section 5 by Licensee shall cause Esri and its licensor(s) irreparable harm; accordingly, in addition to any legal remedies available to Esri for losses or damages resulting from such breach, Esri shall have the right to seek a restraining order, injunction, specific performance or other equitable relief (or the equivalent of any such relief, though known or designated by some other name or term) from any court of competent jurisdiction and without the requirement of posting a bond or undertaking or proving injury as a condition of relief.

ARTICLE 6—WARRANTY AND LIMITATION OF LIABILITY

6.1 Warranties—THE SOURCE CODE IS PROVIDED "AS IS" WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

6.2 Limitation of Liability—IN NO EVENT SHALL ESRI OR ITS LICENSOR(S) BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS SCLA OR USE OF THE SOFTWARE, DATA, OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 7—SCOPE OF USE

7.1 Permitted Uses

- (a) Licensee may make backup copies of the Source Code only as part of Licensee's routine backup procedure for the purpose of preventing loss or inadvertent destruction of Licensee's data. Backup copies may not be used to create additional working copies of the Source Code.

- (b) Licensee may use the Source Code only for the purpose of providing technical support for the internal use of the Software and for no other purpose.

7.2 Uses Not Permitted

- (a) Licensee may not create any derivative work derived from or using the Esri Source Code and is expressly prohibited from creating any commercial application that is derived from, based upon, or uses or incorporates all or any portion of the Esri Source Code or compiled from it.
- (b) Licensee may not make additional copies of the Esri Source Code except as necessary for the support of the Software and for the backup copies expressly permitted above.
- (c) Licensee may not remove or obscure any patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Esri Source Code or the media containing the Esri Source Code.

ARTICLE 8—ASSIGNMENT

Licensee may not transfer or assign all or any portion of its rights under this SCLA. Any attempt by Licensee to do so shall be a material breach of this SCLA and shall have no legal effect.

ARTICLE 9—EXPORT REGULATION

Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, or provide Source Code, in whole or in part, to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation. Licensee shall not export the Source Code or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Licensee represents and warrants that it is not a national, resident, located in or under the control of, or acting on behalf of any person, entity, or country subject to such U.S. export controls.

ARTICLE 10—GENERAL PROVISIONS

10.1 Reserved.

10.2 Severability—If any provision of this SCLA is finally held to be unenforceable, that provision will be deleted from this SCLA but will not affect the validity of the remainder of this SCLA. Licensee expressly agrees that every limitation of liability, disclaimer of warranties, and exclusion of damages in this SCLA is severable and

independent of any other such provision, may be enforced as such, and will remain in effect even if a remedy Licensee has is held to have failed of its essential purpose.

10.3 Headings—The headings in this SCLA are only for the convenience of the parties.

ARTICLE 11—ENTIRE AGREEMENT

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

Esri US Software

Standard Maintenance Program

Last edited: July 2, 2012
(J10044 0702/2012)

ARTICLE 1—INTRODUCTION

1.1 Purpose. The purpose of this Esri US Software Standard Maintenance Program ("Program") document is to

- Describe the Program for US customers.
- Provide definitions of Maintenance and support-related terminology used by Esri.
- Describe Maintenance subscription quoting and invoicing procedures.
- Describe the services provided by Esri Support Services.
- List general procedures and conditions including contact information and requirements.

1.2 Program Overview. The Program, also referred to as "Standard Maintenance," or "Maintenance," is the support Esri makes available for unmodified Software to the Software license holder ("Licensee"), including Incident tracking, attempts to correct reported problems, new releases, and enhancements. Maintenance for the first year is automatically included when qualifying Software is licensed. To determine which Software includes first-year Standard Maintenance, consult Esri's Product Qualification web page at <http://www.esri.com/apps/products/maintenance/qualifying.cfm>.

The Program is composed of the following:

- Software Updates
- Esri Support Services
- Registration (where applicable) to the annual Esri International User Conference
- Priority consideration for Esri's Software Beta Program, which allows Licensee to preview and test Software prior to general release
- Subscriptions to *ArcNews* and *ArcUser*
- Notification of Software promotions, when offered

ARTICLE 2—DEFINITIONS AND DESCRIPTIONS

Capitalized terms used in this Program document shall have the following definitions:

2.1 Authorized Caller(s) or Point(s) of Contact. An Authorized Caller or Point of Contact is an individual designated by Licensee who may contact Esri to request technical support (e.g., to report Software Incidents or request assistance with Software use).

2.2 Customer Number. Customer Number means a unique number created and provided by Esri that identifies each Esri customer site. The number is between one (1) and six (6) digits and may also be referred to as an *end user* or *client ID* number on the invoice and/or packing list that is shipped with Esri Software.

2.3 Hot Fix(es). A Hot Fix is a single fix in one of the specific functional areas deemed critical for a specific site (e.g., when production has stopped). When a business justification review is completed and a complete technical feasibility assessment results in approval, the fix is delivered directly to the customer or to a local distributor, usually via FTP. The documentation delivered

with the Hot Fix clearly identifies the Software problems that are addressed by a Hot Fix and any limitations. Hot Fixes are tested by the affected team(s) in a focused manner. Hot Fixes are incorporated into subsequent service packs. Hot Fixes do not add new functionality. Hot Fixes are not functional unless the end user already has the required product release installed.

2.4 Incident. An Incident is the record of a customer request for technical assistance made by phone, web form, or chat. It contains technical notes and documentation of all interactions between the customer and support representative related to the request. Depending on how the request was initiated, an Incident or tracking number is provided by a support representative verbally, by e-mail or chat, confirming the creation of the Incident. The Incident number is used for referencing the request.

2.5 Maintenance Renewal Quote(s). The Maintenance Renewal Quote is the non-invoice notification, issued ninety (90) days before the expiration of a Maintenance term, to all customers that have current Maintenance subscriptions that are nearing the Maintenance Term expiration date. The quote is sent to the Point of Contact who has been designated to receive all Maintenance-related correspondence from Esri. The quote is sent via e-mail or fax and contains information about the forthcoming Software Maintenance Term, which includes the type of Software licensed and quantity of licenses, the type of Maintenance subscription (Primary or Secondary), the start and end dates of the Maintenance Term, and the anticipated Maintenance renewal fees due for each type of Maintenance subscription. Maintenance Renewal Quotes are valid for ninety (90) days from the date of issuance.

2.6 Maintenance Term. The Maintenance Term is the Maintenance subscription duration as defined by the Maintenance start and end dates, during which customers that have licensed products and have purchased Maintenance are entitled to receive applicable Maintenance benefits.

2.7 Patch(es). A Patch is a single fix (see Hot Fix) or a set of related fixes in a specific functional area of the software that will affect a large number of customers and needs to be posted on the web for general availability. Once a Patch is released, it will be incorporated into a subsequent service pack release. Patches are tested by the affected teams. Patches do not add new functionality. Patches are not functional unless the end user already has the required product release installed.

2.8 Primary Maintenance. Primary Maintenance subscriptions include twelve (12) months of technical support for one (1) authorized caller and updates for one (1) license. Primary Maintenance is applicable to the first Software license. For example, the first of every ten (10) ArcInfo licenses and/or any of its extensions acquired is considered a primary license (i.e., copies 1, 11, 21, 31, and so on).

2.9 Secondary Maintenance. Secondary Maintenance subscriptions provide software updates, but technical support is covered under Primary Maintenance and is typically applied to the additional nine (9) software licenses of every ten (10) licenses. However, Licensee may choose to have any combination of Primary and Secondary Maintenance subscriptions as long as a minimum ratio of one (1) primary to nine (9) secondary licenses is maintained. For example, Licensee may choose to have additional Primary Maintenance subscriptions to acquire additional

Primary Maintenance benefits such as additional complimentary Esri User Conference registrations or added authorized callers.

2.10 Software License. A Software License is the limited grant of rights to use a Software program or component as defined by the terms and conditions in the Esri software license agreement.

2.11 Software Updates. Software Updates are a collection of files that correct a problem with a Software program or improve the Software through enhancements. Customers current on Maintenance will be notified of software updates. The updates may be downloaded from the Customer Care portal. Optionally, backup media may be requested for a fee.

2.12 Support Services. Support Services is Software technical support or technical assistance provided by Esri to Licensee and the Esri user community. See Article 3—Support Services for a more detailed description.

ARTICLE 3—SUPPORT SERVICES

3.1 Support Services. Esri Support Services comprises the following:

- a. *Telephone Support and Incident Reporting/Logging.* If a technical issue arises that Licensee needs help with, Licensee can log an Incident with Esri over the phone. Support hours are Monday through Friday, 5:00 a.m. to 5:00 p.m. (Pacific time). Licensee is not limited to a set number of times telephone support can be contacted. Licensee can reach Esri at 888-377-4575, extension 2. Licensee can also log an incident via chat or web form.
- b. *Secure Live Remote Support.* Esri may interact with Licensee's system using Citrix® GoToAssist tool to assist with technical support.
- c. *Esri Online Support Center.* The Esri Online Support Center is an Esri website that authorized callers for the Licensees can use to get self-help and web-based assisted support. Authorized callers can submit support Incidents, chat with Esri's technical support analysts, track Incidents, and review bug status. The website also provides technical articles, updated product documentation, blogs, links to forums, technology announcements, and more. The Esri Online Support Center can be found at <http://support.esri.com>.
- d. *Esri User Advocacy Group.* The User Advocacy Group (UAG) is a group within Support Services created to improve Esri's ability to understand and respond to technical issues impacting Esri licensees. The UAG encourages feedback from the user community by collecting user information that is presented to development teams to help shape the future direction of Software. The UAG may be contacted through Esri Support Services.
- e. *Hot Fix.* A Hot Fix is defined above under Article 2—Definitions and Descriptions.
- f. *Knowledge Base.* Esri's Knowledge Base is a database of technical articles, web-based help, known bugs, and white papers for Esri Software. These resources can be accessed from <http://support.esri.com> under the Knowledge Base section.
- g. *Community.* The community section provides the Esri user community the ability to ask questions, collaborate on ideas, share knowledge about technical details, get

community-based support, and participate in beta testing through forums, *ArcGIS Ideas* and Support blogs, wiki.GIS.com, and ArcGIS Beta Community. These resources can be accessed from <http://support.esri.com> under the Community section.

- h. Web Help.* Web-based help is an up-to-date version of the help system that was shipped with the product; new information is added and existing topics updated as necessary. Web help can be accessed by navigating to <http://support.esri.com> and clicking the Web Based Help link under the Knowledge Base section.
- i. Downloads.* Licensee can download software updates and patches for individual bugs or a compilation of bugs. Data models for various industries are also available for download. These downloads can be accessed from <http://support.esri.com> under the Downloads section.
- j. Customer Care Portal.* The Customer Care portal allows Licensee to track and manage Licensee's support Incidents and reported Software issues online. Licensee can view current status, submission date, last activity, and resolution information for all Licensees' interactions with Esri Support Services through the Customer Care portal. The Customer Care portal can be found at <http://customers.esri.com>.
- k. Support Newsletters.* Licensee and Esri user community can subscribe to *ArcNews*. *ArcNews* articles contain technical and product information designed to enable our customers to work more effectively with Esri Software. To subscribe to *ArcNews*, navigate to <http://www.esri.com/news/arcnews/index.html>.

3.2 Support Services Scope

- Technical assistance provided through Esri Support Services is limited to unmodified Esri Software.
- Sample applications that ship with each product are provided for demonstration purposes and are considered unsupported.
- Patches received outside a product's life cycle deliverables are considered unsupported unless authorized by Esri.
- The technical support resources available during a product's life span are described in the Product Life Cycle Support Policy at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf%20>. The four support phases of Esri's Product Life Cycle are outlined in this document. The life cycle support status for each of the Esri Software products can be found at <http://support.esri.com/en/content/productlifecycles>.
- Technical assistance through Esri Support Services is not available for hardware, graphic cards, monitors, plotters, graphic printers, digitizers, modems, and other similar peripherals that are not provided by Esri, except to answer questions of how standard supported devices interface with Esri Software.
- These terms and conditions are subject to change by Esri with thirty (30) days' written notice.

3.3 Accessing Support Services. Licensees are required to designate Authorized Callers for all direct Support Services-related communications with Esri. Esri's Product Qualification web page identifies the number of Authorized Callers that Licensee may designate for each software product. If Licensee has an enterprise license or site license agreement with Esri, Authorized Callers will be identified by name in the license agreement. Licensee may replace an Authorized Caller at any time by notifying Esri Support Services.

Licensees within the United States may contact Support Services between 5:00 a.m. and 5:00 p.m. (Pacific time), Monday through Friday, except for Esri holidays. International users should contact their local Esri distributor for these services.

All requests for technical support must contain detailed information about Licensee's Incident. To help expedite a solution, technical specialists expect information that includes Licensee's type and version of Esri Software, hardware platform, and peripherals (if applicable); the version of operating system; a description of the problem; and Licensee's Esri customer number. Please refer to Preparing for Contacting Support Services (section 3.5 below) for additional details. Esri's technical specialist will respond by telephone or e-mail.

- a. *By Telephone.* Each reported technical support request is logged as an Incident and given a unique identification number for Licensee's reference and tracking. After an Incident is logged, the caller is connected to a technical specialist who will be dedicated to work on the Incident until it is resolved or determined to be a problem in the Software. If a specialist is unavailable, the call is placed in a dispatch queue. Licensee will then be contacted by the first available technical specialist.
- b. *By Web Form.* Web form support is available to Licensees that do not want to telephone or that cannot reach technical support during normal operating hours. Licensee may request support by completing an online web form available at <http://support.esri.com/en/webform>. Requests through this channel are received twenty-four (24) hours a day, seven (7) days a week, but are logged and assigned to a technical specialist beginning the next business day. Support requests are answered on a first come, first served basis. All Incidents reported by web form are given the same priority and level of attention as those reported by telephone.
- c. *By Chat.* Another method of contacting technical support is to use online chat. Each valid chat interaction is logged as an Incident and given a unique identification number for Licensee's reference and tracking. Licensee is connected to a technical specialist who will be dedicated to work on the Incident until it is resolved or determined to be a problem in the Software. Chat-based requests are received during business hours. To begin a chat, click the Chat with an Analyst button on the Esri Online Support Center website. The URL is <http://support.esri.com/en/webform-chat>.

3.4 Response and Resolution Time. Resolution times are dependent on factors that are often outside the control of Esri. These factors often include but are not limited to operating system limitations, limitations based on user-designated workflow, security issues, integration with third-party applications that have not been provided by Esri, and customer availability. Usually, Esri is able to answer questions and suggest solutions to Incidents according to the table below, but the turnaround time for a response may depend on the complexity of the Incident. While it is Esri's goal to provide an acceptable resolution to all incoming issues, Esri cannot predict resolution time.

Response/Resolution times are during Support hours, Monday through Friday, 5:00 a.m. to 5:00 p.m. (Pacific time), excluding Esri holidays. Response time is defined as the period of time within which Esri will acknowledge receipt of an Incident request from the customer. Resolution time starts after the Incident is logged. To request a severity level change, submit the request to

the technical support analyst. Any request for critical- and high-severity Incidents must be submitted to the technical support analyst via telephone.

Severity	Criteria	Response Time	Resolution Time
Critical	<ul style="list-style-type: none"> ▪ Causes a severe impact to business operations (e.g., critical business processes are disabled) ▪ No workaround available 	Six (6) business hours	Esri will make reasonable efforts to resolve the problem or provide a workaround while keeping Licensee updated at least every one (1) business day until closure of the support Incident.
High	<ul style="list-style-type: none"> ▪ Causes a noncritical impact to business operations (e.g., significant degradation of quality or handling of data) ▪ No stable workaround available 	Eight (8) business hours	Esri will make reasonable efforts to resolve the problem or provide a workaround while keeping Licensee updated at least every one (1) business day until closure of the support Incident.
Medium	<ul style="list-style-type: none"> ▪ Causes a minor impact to business operations 	Two (2) business days	Esri will make reasonable efforts to resolve the problem or provide a workaround while keeping Licensee updated at least every three (3) business days until closure of the support Incident.
Routine	<ul style="list-style-type: none"> ▪ Causes little or no impact to business operations 	Two (2) business days	Esri will make reasonable efforts to resolve the problem or provide a workaround while keeping Licensee updated, at minimum, every five (5) days until closure of the support Incident.

3.5 Preparing for Contacting Support Services. When contacting Esri for technical assistance, Licensee must be prepared to provide as much of the following information as possible:

- Licensee's Esri Customer Number
- Licensee's Esri Global ID
- The phone number and e-mail address where Licensee can be reached
- The version of the Software Licensee is using
- The version of the operating system Licensee is using
- The database Licensee is using, if applicable
- A description of what Licensee was doing when the problem occurred
- The exact wording of any error messages that appear on the screen
- Any steps taken to resolve the problem

ARTICLE 4—MAINTENANCE RENEWAL AND EXPIRATION

4.1 Renewal Notice. Esri will notify Licensee when Maintenance subscriptions are scheduled to

expire. If Licensee wishes to renew Maintenance, a quote is mailed to Licensee.

4.2 Maintenance Expiration. If Esri has not received an order or payment prior to the termination date, Licensee will receive a notification stating that the Maintenance Term has expired. Technical support will be extended for an additional thirty (30) days, and Licensee will no longer be eligible to receive any Software Updates that are released after the Maintenance Term has expired. Any other Maintenance activities that are contingent on a current Maintenance subscription will also be terminated.

If a purchase order or payment is received during the extended thirty (30)-day technical support period, all benefits will be reinstated. However, if no order or payment is received, Licensee will no longer be able to receive technical support, and Licensee's Maintenance subscription will be considered to have expired.

ARTICLE 5—PAYMENT

5.1 Payment. Maintenance program subscriptions can be purchased in advance on an annual basis. Fees are due and payable annually in advance. Payment terms will be net thirty (30) days.

5.2 Prorating Maintenance Terms. If multiple Software products have been licensed throughout the course of a year by one (1) customer, separate Maintenance quotes for each product are not issued. Instead, the Maintenance anniversary date for each license is prorated to the anniversary date of the first product licensed, with Maintenance. All licensed Esri Software products offering a Maintenance subscription are synchronized to reflect a common Maintenance start and end date, regardless of when each was first licensed. These prorated dates will be reflected on the Maintenance Renewal Quote.

5.3 Reinstatement of Lapsed Maintenance Subscriptions. If Maintenance has lapsed, Maintenance reinstatement fees equal to the amount of back maintenance from the date Maintenance lapsed, in addition to the current fees, will need to be paid to reinstate Maintenance.

ARTICLE 6—USER CONFERENCE REGISTRATION

6.1 Registration Guidelines

- a. Maintenance for some Esri Software includes registration at Esri's annual User Conference at no additional charge. Unless otherwise agreed to by Esri and Licensee, Esri's Product Qualification web page establishes which products qualify for User Conference registrations and the number of registrations available for each product.
- b. If Licensee has an enterprise license agreement, partner agreement, or other master agreement with Esri, the agreement may provide a different number of User Conference registrations.
- c. Maintenance for ArcGIS extension Software and secondary Maintenance for any Software (except ArcGIS for Desktop Basic, Standard, and Advanced) do not include any entitlement for User Conference registrations. Only the standard Maintenance programs provide this benefit.
- d. For Software licensed on a concurrent or single use basis, the number of registrations

available may depend on the total number of concurrent or single use licenses currently covered under a Maintenance subscription. In these cases, the total number of Maintenance subscriptions is considered regardless of Maintenance type (e.g., Primary or Secondary). In other words, both primary and secondary licenses count toward the total.

- e. Staging Server Licenses and Software obtained under the Esri Developer Network (EDN) program do not qualify for User Conference registrations.
- f. Esri reserves the right to withhold User Conference registrations from customers that are substantially delinquent in Maintenance payments due to Esri.
- g. User Conference registrations are assigned to customers in the order that registration forms are received. If the customer number listed on the registration form does not meet the above guidelines, or if the number of attendees from each site exceeds the number of User Conference registrations available to the site based on qualifying Maintenance benefits, the customer will be responsible for any additional registration fees.
- h. Presenting a paper, submitting a poster, submitting a Software application, or having other involvement with the conference does not automatically register Licensee or exclude Licensee from User Conference fees. All presenters must register and pay the appropriate fees (or Maintenance) to attend the conference.
- i. A list of Licensee's Software licenses can be found on Licensee's annual Software Maintenance subscription invoice.
- j. User Conference registrations are nontransferable.

ARTICLE 7—CONTACTING ESRI

Esri Support Services (Technical Support) Center

Web: <http://support.esri.com/>

Tel.: 909-793-3774

Toll-Free Phone: 888-377-4575, extension 2

Support Web Form: <http://support.esri.com/en/webform>

E-mail: support@esri.com

Chat: <http://support.esri.com/en/webform-chat>

Hours: 5:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except Esri holidays

Esri Corporate Offices

Tel.: 909-793-2853

Fax: 909-793-5953

E-mail: info@esri.com

Hours: 8:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except Esri holidays

Esri Customer Service

Tel.: 888-377-4575, extension 5

E-mail: service@esri.com

Web: <http://service.esri.com>

Hours: 8:00 a.m. to 5:00 p.m. (Pacific time), Monday through Friday, except Esri holidays

380 New York Street, Redlands, California 92373-8100 USA
Telephone 909-793-2853 • Fax 909-793-5953
Web: <http://www.esri.com>



**ENTERPRISE ADVANTAGE PROGRAM (EAP)
 ENTERPRISE LICENSE AGREEMENT (ELA)
 ADDENDUM (E125-ELA)**

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

EAP Agreement No. 2013EAP7961

This Enterprise Advantage Program (EAP) Enterprise License Agreement (ELA) Addendum is composed of this page and the related Terms and Conditions contained in Articles 1 through 12 below. This EAP ELA Addendum adds additional terms and conditions to the ELA (Esri contract 2013ELA7961) with respect to the EAP.

Esri offers an Enterprise Advantage Program to Licensees that are implementing or have implemented a geographic information system (GIS) enterprise solution based on Esri technology. Licensee agrees to contract with Esri for and Esri agrees to provide Licensee with certain enhanced consulting services, training, and support available under the Enterprise Advantage Program for the authorized Licensee location as described herein. The Enterprise Advantage Program is not designed for Esri to provide project-specific professional services (e.g., application or database development for solutions or applications).

All Licensee contact regarding EAP activities shall be through the point of contact identified below.

**Authorized EAP Contact Information
 (to be completed by Licensee)**

Contact: _____	Telephone: _____
Address: _____	Fax: _____
City, State, ZIP: _____	E-mail: _____

This EAP ELA Addendum supersedes any previous agreements or understandings related to the Enterprise Advantage Program. All other terms and conditions of the ELA and any preceding addenda will remain in full force and effect.

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EAP ELA Addendum shall have the meaning found in the applicable Esri license agreement.

"Incident" means a communication via telephone or e-mail by Licensee to Support Services regarding technical problems with Software, Data, or Documentation.

"Map Data" means any digital dataset(s), including geographic data, vector data coordinates, raster data, or associated tabular attributes supplied or used in the performance of this EAP ELA Addendum.

"PSS" means Premium Support Services.

"Secure Formats" means object code, executable code, or similar formats.

"Term" means the initial term of this EAP ELA Addendum.

"Work Product" means reports, documented analysis, sample code, prototype/unsupported code, or technical memorandums provided under this EAP ELA Addendum.

ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

2.1 Enterprise Advantage Program Description. The Enterprise Advantage Program is a menu of services, training, and support that provides Licensee with the flexibility to select components that best meet its needs. The Enterprise Advantage Program components include the following:

- a. *Technical Advisor.* An Esri Technical Advisor who has expertise in Esri GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Licensee will receive up to the number of ordered Technical Advisor hours. Licensee may elect to retain additional Technical Advisor Services for a supplemental price. Technical Advisors are not substitutes for services provided by Esri Support Services or Professional Services. Licensee will continue to contact Esri Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to enter into an agreement for use of Esri Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The Technical Advisor in coordination with the Account Manager shall
 - (1) Advise Licensee on GIS strategies, architectures, and product selection;
 - (2) Advise Licensee on training needs, available business partner solutions, consulting support requirements, and business case development;
 - (3) Act as Licensee's technical advocate in dealing with Esri;
 - (4) Participate in annual account reviews; and
 - (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through Esri Support Services.

b. *Annual Account Review.* Licensee may attend a one (1)-day annual GIS strategy and account review with Licensee's Account Manager and Technical Advisor at Esri headquarters in Redlands, California. Key Esri technical and industry specialists may also attend the review to answer questions and discuss Licensee's ideas and suggestions regarding Esri software and support strategies. Licensee is responsible for its own travel expenses. As an option to hosting the review in Redlands, Esri may conduct the review at the appropriate Esri regional office as mutually agreed, and Esri's Redlands staff will have the option to participate either by telephone or by webcast.

c. *Learning and Services Credits*

- (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
- (2) Licensee may order, for an additional price, additional Learning and Services Credits either (i) as a block of fifty (50) credits or (ii) as a block of one hundred (100) credits, not to exceed a total of two hundred (200) credits during the Term or each Renewal Period of this EAP ELA Addendum. If Licensee requests additional Learning and Services Credits over and above the initial two hundred (200) credits provided for in this paragraph, Licensee must order Learning and Services Credits along with additional Technical Advisor Services.
- (3) Learning and Services Credit may be exchanged as follows:

Technical Consulting Services Support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities (Any project-related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate agreement.)	1 credit = 2 hours
Annual Premium Support Unlimited	75 credits = Unlimited Incidents
Instructor-Led Training (one [1] person at an Esri Facility) or Virtual Classroom	1 credit = 1 day
Client Site or Private Esri Site Training Event (for up to twelve [12] people)	9 credits = 1 day
Additional Student	0.75 credits = 1 day
Coaching Services (for up to fifteen [15] people)	9 credits = 1 day
Virtual Campus Annual User License	1 credit = 480 Virtual Campus dollars
Related Esri travel and per diem expenses	as quoted

- (4) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an Esri Enterprise Advantage Program member. If this EAP ELA Addendum expires (exclusive of termination for default), any unused credits will

expire six (6) months after the expiration of this EAP ELA Addendum; however, the Technical Advisor Services will not be available during this post-Term period.

(5) Esri will provide EAP Contact with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date.

- d. *Exclusive Enterprise Webcast.* Esri will provide an e-mail invitation to the EAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

- a. *Authorization of Credit Use.* Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Licensee a Learning and Services Credit estimate by e-mail for confirmation and authorization for use of the credits.
- b. *Travel and Per Diem.* Any Esri travel and per diem will be quoted separately. Licensee may direct Esri to use credits for travel and per diem as stated in Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and Esri will invoice Licensee for the travel and per diem expenses as described below in Article 6.
- c. *Notification of Consumed Credits.* Esri will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to discontinue work when the authorized credits are consumed.
- d. *Review of Proposed Activities.* Any activities proposed to be completed under the Enterprise Advantage Program will be subject to review and approval by Esri to ensure alignment with the intent of the program.

2.3 Defense or Military Application. At the time the Learning and Services Credits are requested or before any services are provided by the Technical Advisor, Licensee will inform Esri if any of the requested services, consulting, training, or support provided by Esri is directly related to a defense article or for a military application.

ARTICLE 3—LICENSE GRANT

3.1 Training. The terms of the Esri License Agreement shall be applicable to all Licensee course participants and for all of Esri's Software, Data, Web Services, and Documentation licensed for use in any training course to be conducted. Esri may issue temporary Software licenses when there is an insufficient number of Software licenses available at Licensee's training facility. Upon conclusion of the training event, Licensee shall uninstall the temporary Software licenses and return to Esri any media provided.

3.2 Work Product. Esri hereby grants to Licensee a nonexclusive, royalty-free license in the Work Product to use in connection with Licensee's authorized use of the Software and Data for support of which the Work Product was supplied.

3.3 PSS. The terms and conditions of the License Agreement for the affected Software will govern any updates, patches, hot fixes, or software provided under this EAP ELA Addendum.

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties and Disclaimers

- a. All services, training, and Work Products will be provided in a professional and workerlike manner.
- b. Esri warrants for a period of thirty (30) days after delivery of the services that the services will conform to professional and technical standards of the software industry.
- c. *Map Data Disclaimer.* Map Data may contain some nonconformities, defects, errors, or omissions. MAP DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Esri and its licensors do not warrant that the Map Data will meet Licensee's needs or expectations, that the use of the Map Data will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensors are not inviting reliance on the Map Data, and Licensee should always verify actual Map Data.

4.2 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE ADVANTAGE PROGRAM OR ANY WORK PRODUCT PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. WORK PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

ARTICLE 5—LIMITATION OF LIABILITY

5.1 Disclaimer of Certain Types of Liability. ESRI IS NOT LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EAP ELA ADDENDUM OR USE OF THE WORK PRODUCT, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.2 General Limitation of Liability. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE EAP PROGRAM.

5.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its prices and entered into this EAP ELA Addendum in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 6—COMPENSATION

6.1 The fees for the initial term of the EAP are included in the ELA Fees. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay Esri within thirty (30) calendar days of receipt of invoice.

6.2 Pricing for new or additional Esri service offerings will be in accordance with Esri's most current price schedule at the time of purchase.

6.3 Licensee may elect to use Learning and Services Credits for actual travel expenses of Esri employees plus a standard burden or to be invoiced at the actual cost for travel expenses plus a standard burden. Meals will be charged on a per diem basis.

ARTICLE 7—TERM AND TERMINATION

7.1 The Term of this EAP ELA Addendum shall run concurrent with the term of the ELA.

7.2 Either party may elect not to renew the EAP ELA Addendum for its sole convenience at the end of any term upon thirty (30) days' written notice to the other party, in which event the EAP shall expire.

7.3 Either party may terminate this EAP ELA Addendum for a material breach that is not cured within ten (10) days after written notice to the other party or for bankruptcy or insolvency of the other party.

7.4 Upon termination or expiration of this EAP ELA Addendum

- a. Except when termination results from nonrenewal, all outstanding Learning and Services Credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of Esri.
- b. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to Esri shall be accelerated automatically so that such amounts become due and payable on the effective date of termination, regardless of the payment term provisions set forth in this EAP ELA Addendum.

- c. Except where a provision specifically provides otherwise, any cause of action or claim of one (1) party accrued to or to accrue because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

ARTICLE 8—CONFIDENTIALITY

8.1 Confidential Information. It may be necessary for Esri or Licensee to disclose to the other party certain confidential information under this EAP ELA Addendum. The access code or password for the PSS website, information disclosed at review sessions, and any Work Product are confidential information of Esri. Licensee data contained in the Esri PSS website database is confidential information of Licensee. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EAP ELA Addendum. Within sixty (60) days of termination of this EAP ELA Addendum, each party shall return or destroy and provide a certification of destruction of the confidential information of the other party.

8.2 Work Product

- a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee will have met its obligations under this EAP ELA Addendum if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
- b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advance written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
- c. The disclosures permitted under this section shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP ELA Addendum and obtain their agreement to be bound by them.

8.3 Excluded Confidential Information. Licensee shall not provide to Esri or disclose to the instructor any data or information that is personally identified information (PII), including, but not limited to, GLBA or HIPAA type data or information, or critical infrastructure information (CII) from the US Department of Homeland Security. Notwithstanding anything in this Addendum to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information (NPI) or customer information regardless of the form of disclosure. Esri will only accept receipt of information from Licensee that comports with the exceptions set forth in

Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (PL 106-102) (15 USC Section 6809) and implementing regulations thereof.

8.4 Other Exchange of Confidential Information. Any other exchange of confidential information between the parties shall require execution of a nondisclosure agreement signed between the parties separate from this EAP ELA Addendum.

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

9.1 Premium Support Services. Should the Licensee choose to use Learning and Services Credits for PSS, the terms of this Article 9 shall also apply.

9.2 Premium Support Availability. Licensee may use Learning and Services Credits for PSS (annually) for any product covered under Esri's standard maintenance subscription, provided that Licensee is current on maintenance for applicable Esri Software. Esri shall provide PSS for the Term of the EAP ELA Addendum.

9.3 Premium Support Description. PSS shall provide (1) a designated Premium Support Coordinator ("PSC"); (2) unlimited telephone and e-mail support accessible to Licensee twenty-four hours per day, seven days per week, three hundred sixty-five days per year (24/7/365); (3) Priority Incident Management; and (4) other additional enhanced support and services.

9.4 Premium Support Coordinator. Esri shall assign a PSC to Licensee. The assigned PSC shall work directly with Licensee's Authorized Contact ("LAC") and shall oversee all of Licensee's Premium Support Incidents. Licensee may select up to two (2) individuals to report Premium Support Incidents to Support Services and work directly with PSC regarding all such Incidents.

The PSC shall

- a. Be familiar with Licensee's GIS software architecture and infrastructure to perform the scope of support pursuant to this Article 9;
- b. Verify that all open Premium Support Incidents of Licensee are prioritized above Incidents opened pursuant to standard maintenance;
- c. Work closely with Senior Support Analysts toward the resolution of all open Premium Support Incidents; and
- d. Provide LAC with a daily status update on all open Premium Support Incidents or as agreed upon by PSC and Licensee.

Esri may replace PSC during the Term of the EAP ELA Addendum with a written notification to Licensee.

9.5 Telephone and E-mail Support. Esri shall provide support to Licensee for Software by telephone or e-mail and shall include the following:

- a. LAC may open an Incident by calling Support Services or logging the Incidents via the

PSS website. An e-mail acknowledgment shall be sent to LAC for a new Incident logged via the PSS website. The assigned PSC shall use commercially reasonable efforts to call or send an e-mail response within one (1) hour of receipt of a new Incident to notify Licensee that the logged Premium Support Incident is in the initial stage of review;

- b. LAC shall have the ability to log Premium Support Incidents via the telephone. Incidents logged in this manner will receive personalized messaging and Priority Incident Management; and
- c. PSC shall be available to LAC from 5:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, except on Esri holidays. In the event that PSC is not available during such time, LAC's telephone calls and e-mails will be routed to a Senior Support Analyst who can assist LAC. PSC will be notified of the Incident. Telephone calls and e-mails during all other times (after hours, weekends, and Esri holidays) will be routed to Senior Support Analysts.

9.6 Priority Incident Management. Priority Incident Management shall include the following:

- a. Premium Support Incidents reported by LAC will be given priority handling after the initial Premium Support Incident is created and documented;
- b. Software defects affecting Licensee will be a priority for discussion of the User Advocacy Group; and
- c. For identified Software defects that are approved for an out-of-cycle hot fix or patch, PSC shall assist in presenting the hot fix or patch to LAC and verify that the delivered hot fix or patch addresses the reported issue.

9.7 Other Additional Enhanced Support and Services. Esri shall provide additional offerings to Licensee as a part of PSS, which include, but are not limited to, the following:

- a. *Premium Support Website Access.* LAC shall have access to the PSS website. LAC shall have the ability to log and track the status and completion of all identified Premium Support Incidents on this website. LAC may log and view their Incidents and access other PSS-related tools and information through this website.
- b. *System/Environment Profile.* Through the PSS website, Licensee shall have access to an Esri database to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with Esri technology.
- c. *PSS Software Alert Newsletter.* Esri shall provide to Licensee a news bulletin that discusses key current issues in Software being investigated by Esri.
- d. *Quarterly Teleconference Meeting.* Esri and Licensee shall conduct a quarterly teleconference meeting to discuss Licensee's Premium Support Incidents. Esri shall make available the assigned Account Manager, PSC, Premium Support Manager, and other Esri staff as deemed necessary by Esri.

Details of all PSS offerings can be found at www.esri.com/services/pss/components.html.

9.8 PSS Restrictions and Exclusions

- a. *Excluded Software.* PSS is not available for third-party software. Esri is not responsible for

- errors attributable to third-party software used in conjunction with or built upon Software.
- b. *English Language.* All communications will be conducted in the English language except by agreement of both parties.
 - c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.
 - d. *Hardware Support.* Esri does not provide support for hardware, including but not limited to, graphics cards, monitors, plotters, graphics printers, digitizers, and modems, except to answer questions regarding how standard, supported devices interface with Software.
 - e. *Exceptions to PSS.* The following are not covered by PSS:
 - i) Any problem resulting from Licensee's misuse, improper use, unauthorized modification, or damage of the Software or Licensee's combining or merging the Software with any hardware or software not supplied or identified as compatible by Esri;
 - ii) Any problem resulting from third party hardware or software;
 - iii) Errors in any version of the Software other than the officially supported version of Software; and
 - iv) Any on-site support or implementation services on-site or otherwise, including, but not limited to, those provided by Esri Professional Services or any third party.

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

10.1 Consulting Services Support. Should Licensee choose to use Learning and Services Credits for consulting services support, the terms of this Article 10 shall also apply.

10.2 Patents and Inventions

- a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Addendum. The parties shall jointly own any Invention(s) made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to Esri an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.
- b. Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.
- c. A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner

shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.

- d. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to Esri for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party.

11.3 Ownership. Except as specifically granted in this EAP ELA Addendum, Esri or its licensors own and retain all right, title, and interest in the Work Product.

ARTICLE 11—TRAINING TERMS AND CONDITIONS

11.1 Training. Should Licensee choose to use Learning and Services Credits for training or coaching services, the terms of this Article 11 shall also apply.

11.2 Training Location. Training may be conducted at Licensee's site, at an Esri Learning Center or via the web.

11.3 Course Descriptions. The Esri Software training courses to be conducted, their location, the dates during which the courses are to be conducted, the number of participants, and registration requirements are set forth in the *Esri Training* catalog located on the Esri training website (<http://training.esri.com>). All courses shall be conducted in substantial conformity with the course descriptions outlined on the Esri training website. Esri reserves the right to modify course content when necessary due to Software technical capabilities or limitations. Licensee may utilize coaching services immediately before or immediately following an Esri training course to familiarize Licensee's student with the software or to review and practice course concepts with an instructor's guidance.

11.4 Esri's Responsibilities

- a. Esri shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Students") on scheduled dates. Esri will provide each student with a course manual, where applicable.
- b. Esri will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- c. Esri will confirm Licensee Site training events upon receipt of completed Client Site Training Request Form and intended payment method.

11.5 Licensee's Responsibilities

- a. Licensee must ensure the protection of Esri's copyrights. Licensee shall not copy or distribute, or permit a third party to copy or distribute, any of Esri's training material(s).
- b. Licensee is not authorized to resell seats to an Esri training event unless explicitly authorized in writing by Esri.
- c. Licensee must ensure that all Students have received confirmation from Esri to participate in an Esri training event. An unregistered Student is not permitted to view or participate in a

Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.

- d. Licensee must confirm that all registered Students meet the applicable minimum prerequisites for the applicable training event set forth on Esri's training website.
- e. Licensee must submit registration with a confirmed payment commitment at least seven (7) business days before the training event start date. If Licensee submits a registration without a confirmed payment, Esri will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- f. US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List). To meet these export requirements, Licensee must submit to the Esri Training Event Assistant a list of the names of Students who are to attend any training event. Licensee must submit the list of Student names to Esri at least three (3) business days before the training event start date. Any Student whose name is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- g. Licensee is responsible for all Student travel arrangements. Esri assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export licensing requirements, course scheduling changes, or cancellations.
- h. Licensee must provide written notice to Esri's Customer Service at service@esri.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of such change(s) prior to the training event start date.
- i. Students may not use audio or video recording equipment within the classroom without prior written approval from Esri. Esri reserves the right to record a classroom training event for future rebroadcast.
- j. Licensee is responsible to ensure that it adheres to the course, facility, and equipment, as well as Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- k. Where the Esri Mobile Lab equipment is utilized at Licensee's domestic site, the following terms apply:
 - Upon receipt, Licensee must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
 - Licensee must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
 - Licensee must ensure that only registered Students use the Mobile Lab equipment.
 - Licensee is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Licensee's possession.
 - Licensee warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Addendum and by law.
 - The Esri instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Licensee by written notice.

- Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
- Licensee shall make the Mobile Lab equipment available for freight pickup immediately upon conclusion of the Esri training event.

11.6 Cancellation and Rescheduling Policy

Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, an additional, nonrefundable transfer and data processing fee may be assessed.
- A Student may transfer from one (1) scheduled Esri Learning Center training event to another one (1) time at no additional charge provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided Esri's Customer Service is notified three (3) business days in advance. If three (3) business days' notification is not provided, Student may be charged the full Student Seat fee.

Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided Esri's Customer Service is notified three (3) business days in advance of the training event start date.
- A training event may be rescheduled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of rescheduling is provided, Licensee is responsible for reasonable travel expenses and shipping costs.
- A training event may be canceled by the Licensee provided Esri's Customer Service is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Licensee is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, Licensee is responsible for the full training event fee.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled date.

ARTICLE 12—GENERAL PROVISIONS

12.1 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or

trademark notices on all items licensed under this EAP ELA Addendum and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights.

12.2 Nonsolicitation of Contractor Personnel. Neither party shall solicit for hire the other party's employee who is associated with efforts called for under this EAP ELA Addendum during the term and for a period of one (1) year thereafter. In the event the foregoing provision is breached and the breaching party hires an employee of the other party, then the breaching party shall pay liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision. This section will not apply where employees of a party respond to a general solicitation made by the other party to the public through a newspaper advertisement, Internet Web site posting, or other media.

12.3 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release Software, Data, Web Services, or Documentation, in whole or in part, to (i) any US embargoed country (or to a national or resident of any US embargoed country); (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity where such export or reexport violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: TECHS-CE84013-02

Contractor Name: E S R I ENVIRONMENTAL SYSTEMS RES INST

By: 

Name: William C. Fleming
(please print)

Title: Managing Business Attorney
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

