

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) 3000007396
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Dept of Information Technology	DATE: 4/24/2014
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SUBJECT: Third Amendment to Enterprise License Agreement with Environmental Science Research Institute (ESRI) in Support of Geospatial Software

PRIMARY CONTACT (NAME, PHONE): Scott Daeschner, (619) 533-6417 MS 51SD	SECONDARY CONTACT (NAME, PHONE): Michelle Villa, (619) 236-6610 MS 51SD
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**COMPLETE FOR ACCOUNTING PURPOSES**

FUND	200448				
FUNCTIONAL AREA					
COST CENTER	1314110017				
GENERAL LEDGER ACCT	513002				
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	\$670,834.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE): Total: \$670,834.00**

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Liaison Office	ORIG DEPT.	Behnke, Jonathan	11/06/2014
Environmental Analysis	CFO		
Financial Management	DEPUTY CHIEF		
Equal Opportunity Contracting	COO		
Comptroller	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:  RESOLUTIONS  ORDINANCE(S)  AGREEMENT(S)  DEED(S)

1. Approve the Resolution to authorize the Mayor or his Designee to execute Amendment No. 3 between the City of San Diego and ESRI, Inc. for Geographic Information Systems (GIS) software licensing and maintenance services pursuant to the terms and conditions contained in the amended agreement, on file with the City Clerk as Document No. RR \_\_\_\_\_, with a not to exceed amount of \$670,834 for the first year of the two year amendment.
2. Authorize the Chief Financial Officer to expend an amount not to exceed \$670,834 under the current

agreement with ESRI, Inc. for Geographic Information Systems (GIS) software licensing and maintenance services, contingent upon the Chief Financial Officer first furnishing one or more certificates demonstrating that the funds are, or will be, on deposit with the City Treasurer.

**STAFF RECOMMENDATIONS:**

Approve requested actions

**SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)**

**COUNCIL DISTRICT(S):** NA

**COMMUNITY AREA(S):** NA

**ENVIRONMENTAL IMPACT:** The activity proposed is not a “project” as defined by CEQA Section §15378(b)(2) and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section §15060(c)(3).

**CITY CLERK INSTRUCTIONS:** NA

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 4/24/2014

ORIGINATING DEPARTMENT: Dept of Information Technology

SUBJECT: Third Amendment to Enterprise License Agreement with Environmental Science Research Institute (ESRI) in Support of Geospatial Software

COUNCIL DISTRICT(S): NA

CONTACT/PHONE NUMBER: Scott Daeschner/(619) 533-6417 MS 51SD

**DESCRIPTIVE SUMMARY OF ITEM:**

This action is to approve the Third Amendment to the Enterprise License Agreement with Environmental Science Research Institute (ESRI) in the amount of \$670,834 for the first year of the two-year amendment. This amendment will provide for support of Citywide geospatial software.

**STAFF RECOMMENDATION:**

Approve requested actions

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

In 2004, San Diego Data Processing Corporation (SDDPC) entered into an Enterprise License Agreement, 2003ESL6557, with ESRI supporting Geographic Information System (GIS) software. The ELA was amended four times under SDDPC. On October 14, 2011, the City's portion of the ESRI licenses were separated from SDDPC's ESRI licenses, although both agreements stayed at SDDPC. The agreement which included the licenses which the City used had the identifying number of 2011EKA6557. On November 28, 2011 ESRI signed a letter assigning to the City, effective as of January 1, 2012, the ELA numbered 2011ELA6557. Amendment No. 2 to the ELA was entered into on June 12, 2012.

Amendment No. 3 is for two years of licensing and maintenance from July 1, 2014 through August 31, 2016. The Amendment includes unlimited licensing for basic products and software extensions. In addition, it includes participation in the Enterprise Advantage Program which provides training credits and advanced support. These services will be leveraged across departments and in support of the Citywide SAP EAM project which will integrate GIS functionality.

**FISCAL CONSIDERATIONS:**

The entirety of this first year cost is budgeted by the Department of Information Technology. The cost of the contract to date, since assignment from SDDPC to the City November 28, 2011, is \$1,100,000. Amendment No. 3 will have a total cost of \$1,245,834 for the two-year term. The first year cost is \$670,834 and is included in the Fiscal Year 2015 Budget.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):**

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

None

Behnke, Jonathan

Originating Department

\_\_\_\_\_  
Deputy Chief/Chief Operating Officer



Amendment No. 3  
to  
Enterprise License Agreement No. 2011ELA6557("ELA")  
between  
City of San Diego (City)  
and  
Environmental Systems Research Institute, Inc. ("Esri")

This Amendment No. 3 changes the ELA to extend the period of performance from July 1, 2014 to August 31, 2016, update pricing and product list, and add Enterprise Advantage Program ("EAP"),as follows:

**1. Enterprise License Terms and Conditions, E512.**

**A. Period of Performance.** The period of performance for this ELA shall be extended from July 1, 2014 to August 31, 2016, except that performance of the EAP will begin on September 1, 2014 and expire on August 31, 2016. During the extended period the purchase order anniversary date will change from July 1 to September 1.

**B. Appendices.** For the extended period July 1, 2014 to August 31, 2016, the following appendices are update with new appendices, both attached hereto and incorporated herein by reference:

- Appendix A, Software and Deployment Schedule
- Appendix B, Enterprise License Fee Schedule

**C. Enterprise Advantage Program.** Appendix H, Enterprise Advantage Program is added to the list of Appendices found under item number 2 (located on page 1 of 1 of the Enterprise License Terms and Conditions, E512). A copy of Appendix H is attached hereto and incorporated into the ELA by this reference. The effective date of the EAP shall be September 1, 2014 and shall continue until August 31, 2016.

**2. Professional Services**

**A. Enterprise License Terms and Conditions, E512, Article 13.4 Professional Services.** This article is deleted and replaced by the following:

“13.4 Professional Services. Esri Professional Services are available on a time and materials or firm fixed price basis via a mutually executed task order issued subject to the terms and conditions of the Custom Software, Technical Data, and Assistance License Addendum, which is incorporated in this ELA as Appendix F.”

**B. Time and Materials Rate Schedule.** The Time and Materials Rate Schedule included in Appendix F Custom Software, Technical Data, and Assistance License Addendum, Attachment B Time and Materials Rate Schedule expired. It is deleted and replaced by the updated Time and Materials Rate Schedule effective 1 July 2014 to 30 June 2015, attached hereto as Attachment B Time and Materials Rate Schedule.

All other terms and conditions of the ELA as previously amended shall remain the same. Accepted and agreed:

CITY OF SAN DIEGO (Licensee)	ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (Esri)
Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**APPENDIX A  
PRODUCTS AND DEPLOYMENT SCHEDULE**

During the extended period beginning July 1, 2014 to August 31, 2016, City may Deploy the following ELA Products up to the total quantity of licenses indicated below to Licensees.

**Table A-1  
ELA Products—Unlimited Quantities**

Product	Total Qty./Seats to Be Deployed
<b>ArcGIS for Desktop:</b> ArcGIS for Desktop Advanced (formerly ArcInfo), Standard (formerly ArcEditor), and Basic (formerly ArcView) (single and concurrent use)	Unlimited
<b>ArcGIS for Desktop extensions:</b> ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Publisher, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager (single and concurrent use)	Unlimited
<b>ArcGIS for Server:</b> ArcGIS for Server Enterprise and Workgroup (Advanced, Standard, and Basic)	Unlimited
<b>ArcGIS for Server extensions:</b> ArcGIS 3D Analyst, ArcGIS Geostatistical Analyst, ArcGIS Image Extension, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager	Unlimited
<b>ArcGIS Engine:</b> ArcGIS Engine development tools for deploying custom applications	Unlimited
<b>ArcGIS Engine extensions:</b> ArcGIS 3D Analyst, ArcGIS Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics, and ArcGIS Spatial Analyst (single and concurrent use)	Unlimited
<b>ArcGIS Runtime:</b> Standard deployment licenses for custom applications	Unlimited
<b>ArcGIS Runtime extensions:</b> ArcGIS 3D Analyst, ArcGIS Network Analyst, and ArcGIS Spatial Analyst (single use)	Unlimited
<b>Mapping and Charting solutions:</b> Esri Production Mapping	Unlimited

**Table A-2  
ELA Products—Limited Quantities**

Product	Rolled-In Qty. (if applicable)	Qty./Seats to Be Deployed	Total
<b>Esri Developer Network (EDN) Standard</b>	N/A	5	5

Product	Number of Subscriptions	Named Users per Subscription	Annual Credits per Subscription
ArcGIS Online Subscription	1	Unlimited	38,000

**APPENDIX B  
ELA FEE SCHEDULE**

For the extended period beginning July 1, 2014 and expiring on August 31, 2016, the ELA Fee is \$1,245,834. The ELA Fee is in consideration of the ELA Products, ELA Maintenance, Enterprise Advantage Program, and Esri International User Conference registrations.

	<b>Year 4 2014</b>	<b>Year 5 2015</b>	<b>ELA Fee</b>
<b>Payments</b>	<b>\$670,834*</b>	<b>\$575,000</b>	<b>\$1,245,834</b>

\*Year 4 (2014) payment includes additional two months prorated to move anniversary date from July 1<sup>st</sup> to September 1<sup>st</sup> so that anniversary date does not fall on the first day of the City's new fiscal year. Purchase orders are due 30 days prior to anniversary date of September 1<sup>st</sup>.

<b>**Esri Enterprise Advantage Program ("EAP"):</b> • 100 technical advisory hours, • 100 learning services credits.	<b>One subscription per year</b>
<b>Number of Esri International User Conference Registrations per Year</b>	<b>25</b>
<b>Number of Tier 1 Help Desk Individuals</b>	<b>9</b>
<b>Number of Sets of Backup Media, if Requested</b>	<b>5</b>
<b>Term of ELA pursuant to Section 7.1</b>	<b>Two years from July 1, 2014 to August 31, 2016</b>

\*\*Unused learning and services credits expire six months after the expiration of the ELA.

Customer Software, Technical Data, and Assistance License Addendum, described in Appendix F of the ELA is not included in the ELA Fee.



**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

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**EAP Agreement No. 2014EAP6557**

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 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.

"MapData" 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](http://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.

**10.3 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](mailto: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.** Licensee shall not solicit for hire any Esri 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, Licensee shall pay Esri 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.

**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.

## ATTACHMENT B TIME AND MATERIALS RATE SCHEDULE

*Effective 1 July 2014 to 30 June 2015*

Hourly time and materials labor rates have been provided for each labor category for the time frame from **1 July 2014 to 30 June 2015**. The hourly labor rates for services that are performed after 30 June 2015 may be escalated in an amount not to exceed five percent (5%) each year. Other direct costs, such as travel, reproduction, subcontractor, telecommunication/freight, or materials, will be charged a material handling fee and invoiced.

### **GIS Technical Specialist/Engineer (S1)**

**Hourly Rate: \$201**

Staffmembers in this labor category work collaboratively with software designers to perform software coding and the writing of software documentation according to design specifications developed by senior technical staff described below. As a group, these staffmembers are experienced in the coding of software and the creation of digital databases, as well as in software development associated with Esri's commercial off-the-shelf (COTS) software products; web, desktop, or server software development languages; geospatial data formats; and other technologies. These individuals also develop effective database designs, implement data conversion processes and procedures, and perform software and database quality control.

### **GIS System/Software Developer (S2)**

**Hourly Rate: \$259**

Staffmembers in this labor category support the design of technical project specifications for the implementation of application software projects and database development projects. They support the day-to-day technical activities of the project team and ensure that standard system methodologies are employed. They also perform detailed software design and detailed database conversion design and are directly involved in the coding and implementation of complex and strategic portions of application software and database conversion projects. As a group, these staffmembers are proficient in Esri COTS software products; web, desktop, and server software development languages; geospatial data formats; and other technologies. These staffmembers design and develop QA/QC programs and support design and code reviews, database reviews, and other QA/QC activities throughout the project life cycle.

### **Senior GIS System/Software Architect (S3)**

**Hourly Rate: \$318**

Staffmembers in this labor category provide the overall technical vision and system architecture for large, complex systems. They support the application of sound software engineering principles and life cycle methodologies to programs/projects. These individuals are actively involved in systems architecture design, application software design, database process design, and the directing of coding development including the supervision of design and code reviews. These staffmembers may serve as principal investigators in focused studies or research and development projects. Individuals in this labor category have broad technical knowledge of geographic information system (GIS) applications and related information technologies and may also provide specific expertise in areas such as web-based software applications, service-oriented architectures, data warehousing, spatial analysis, and modeling. As a group, these staffmembers are proficient in Esri COTS software products; software and database design methodologies; web, desktop, and server software development languages; geospatial data formats; and other technologies.

### **GIS Consultant/Project Manager (M1)**

**Hourly Rate: \$244**

Staffmembers in this labor category provide day-to-day consulting and management for contracted projects within Esri. These individuals work under the guidance of senior Esri managers described herein and support the design and implementation of project work plans. These staffmembers may provide consulting services and design and management support to software application development projects and database conversion projects. They may also conduct detailed requirements interviews, document application requirements, develop logical and physical database designs using standard engineering diagramming methodologies, design software and database QA/QC programs, and provide management oversight of daily technical activities. These staffmembers work with senior consulting and technical staff to design comprehensive work plans that employ standard system methodologies that define project deliverables, milestones, and realistic schedules. These individuals work with Esri administrative staff to ensure that progress and financial reporting is provided according to contract requirements.

**Senior GIS Consultant/Project Manager (M2)****Hourly Rate: \$307**

Staffmembers in this labor category work as project managers or project advisers, providing strategic consulting and project management activities for GIS and information technology (IT) projects. These staffmembers have market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of a project. Consulting activities may include strategic planning, GIS workshops and seminars development, requirements definition, application and database design, and system integration. Management activities may include defining project requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. These individuals may also design comprehensive work plans that employ standard system methodologies that define project deliverables and milestones and realistic schedules.

**Principal GIS Consultant/Program Manager (M3)****Hourly Rate: \$405**

Staffmembers in this labor category work as program directors or project advisers, providing project vision, strategic consulting, and program management activities for GIS and IT projects. These staffmembers apply market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of the program. Consulting activities may include strategic planning, review and oversight of requirements definitions, application and database design, and system integration. Management activities may include defining program requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. Staffmembers in this labor category work with senior client staff in coordination with Esri senior management to resolve issues and support successful project completion.

**GIS Database Specialist/Analyst (DB)****Hourly Rate: \$170**

Staffmembers in this labor category provide database development support in creating cartographic and digital data products. These staffmembers have expertise that includes the performance of hard copy to digital data conversion tasks, data migration, and translation activities utilizing advanced processing techniques in ArcGIS. These individuals design, develop, and implement efficient production tools and workflows in accordance with approved project plans and design parameters.



## THE CITY OF SAN DIEGO

November 22, 2011

### CERTIFIED MAIL

ESRI, INC.  
MANAGER, CONTRACTS & LEGAL SVCS  
380 NEW YORK STREET  
REDLANDS, CA 92373-8118

Dear Contracts Manager:

RE: Assignment of the following Contract(s)/Agreement(s) from San Diego Data Processing Corporation to the City of San Diego: Enterprise License Agreement No. 2011ELA6557; Maintenance PO 4500050571 Exp 06/30/12

The City of San Diego's (City) Purchasing & Contracting Department is in the process of transitioning to the City all contracts previously executed on its behalf by the San Diego Data Processing Corporation (SDDPC), a nonprofit corporation of which the City is the sole member and which previously provided some information technology procurement services for the City. According to the records that SDDPC provided to the Purchasing & Contracting Department as part of this transition, your firm has been identified as being a party to the above referenced contract(s) or agreement(s).

This letter serves as your official notice that, effective as of January 1, 2012, SDDPC assigns its rights and obligations under this contract or agreement to the City of San Diego. The City agrees that it will assume the rights under this contract or agreement, including all applicable amendments, addenda, attachments, statements of work, change orders and related contractual documents, and will also assume any payment obligations and other contractual obligations that accrue on or after January 1, 2012.

Future notices and billings should be sent to the following address:

**City of San Diego**  
**Attn: Purchasing Agent**  
**1200 3<sup>rd</sup> Avenue, Suite 200**  
**San Diego, CA 92101**

Please indicate, by your signature below, that you, on behalf of your company, acknowledge, agree, and consent to this assignment as requested by San Diego Data Processing Corporation and the City of San Diego. Please sign three originals, retain one, and mail the other two to the address above not later than November 28, 2011. If you have questions, please contact Pam Glover, Procurement Specialist, Purchasing and Contracting, via email at: [MGloverr@sandiego.gov](mailto:MGloverr@sandiego.gov).

Sincerely,

Wally Hill,  
Assistant Chief Operating Officer



**Purchasing & Contracting Department**  
**Business Office & Support Services**

1200 Third Avenue, Suite 200 • San Diego, CA 92101

Tel (619) 236-6000 Fax (619) 236-5904



November 22, 2011  
Assignment of Contracts

The below listed individual is an authorized representative of San Diego Data Processing Corporation and hereby acknowledges and agrees that, subject to the terms and conditions contained in this letter agreement, the above referenced contract or agreement is assigned to the City of San Diego.

San Diego Data Processing Corporation

*Larry Morgan*  
Authorized Signature  
Larry Morgan, Executive Director

11/21/2011  
Date

The undersigned is duly authorized to execute this assignment and hereby acknowledges, agrees, and, subject to the terms and conditions contained in this letter agreement, consents to the assignment to the City of San Diego of the above referenced contract(s) or agreement(s) as requested by San Diego Data Processing Corporation and the City of San Diego.

*William C. Fleming* ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
Company Name

Authorized Signature William C. Fleming  
Managing Business Attorney

Title  
NOV 28 2011  
Date



RECEIVED

JUN 22 2012

Department of IT  
"DoIT"

Outline Agreement  
✓600001340

June 18, 2012

Ms. Lisa Stapleton  
City of San Diego  
Purchasing & Contracting Department  
1200 Third Avenue, Suite 200  
San Diego, CA 92101-4195

***Re: Amendment No. 2 to Enterprise License Agreement  
ESRI Contract No: 2011ELA6557***

Dear Ms. Stapleton:

Please find enclosed one (1) fully-executed original of the above referenced Agreement, which is being returned for your files.

If you should have any questions, please contact me at 909-793-2853, ext. 1-1990, or via email address [jricks@esri.com](mailto:jricks@esri.com).

Sincerely,

*S. Humble*

*For:* Jackie Ricks  
Contracts Education Coordinator

JR:sh

Enclosures: As referenced above



Amendment No. 2  
to  
Enterprise License Agreement (ELA)  
between  
Environmental Systems Research Institute, Inc. (Esri)  
and  
City of San Diego (Licensee)  
Esri Agreement No. 2011ELA6557

This Amendment No. 2 modifies the above referenced Agreement to add ArcGIS Online Subscription as Enterprise License Software as follows:

**APPENDIX A, Table A-2 Enterprise License Software (E512G 03/30/2011)** is hereby modified by adding the following:

**Table A-2  
Enterprise License Software—Limited Quantities**

Product	Named Users	Annual Credits
Online GIS		
One ArcGIS Online Account Subscription	Unlimited	18,000

Unused credits in an ELA year will expire and will not roll-over to the following year.

Terms and conditions for ArcGIS Online (Online Services) use are updated pursuant to the future orders clause of the License Agreement. All other terms and conditions shall remain the same.

The parties have executed this Amendment, and it shall become effective on the last date written below (the "Effective Date").

CITY OF SAN DIEGO  
(Licensee)

By: [Signature]  
Authorized Signature

Printed Name: Jeffrey Baer

Title: Director

Date: 6/11/12

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

By: [Signature]  
Authorized Signature

Printed Name: CHRIS JOHNSON  
MANAGER, DOMESTIC CONTRACTS

Title: \_\_\_\_\_

Date: JUN 18 2012

Approved as to form and legality  
this 11 day of June, 2012

JAN I. GOLDSMITH, City Attorney

By [Signature]  
Deputy City Attorney



## Electronically Delivered Software Declaration

I affirm that the entity identified below ("Licensee") has licensed the following Environmental Systems Research Institute, Inc. ("ESRI") software and/or data (the "Licensed Technology"): ArcGIS® or CityEngine® version 10.1 (or higher/later versions).

I further affirm that Licensee has acquired its copies of the Licensed Technology exclusively via electronic download as authorized by ESRI, and has not received any backups or other copies of the Software on tangible media.

I understand any subsequent delivery of the Licensed Technology to Licensee on tangible media could cause prior and future license fees paid to be taxable. I acknowledge ESRI has a right to bill and Licensee shall pay any sales or use tax on prior and future licenses associated with its receipt of tangible media.

This declaration applies to software licenses electronically delivered to the following states:

- |  |                             |                             |                             |
|--|-----------------------------|-----------------------------|-----------------------------|
| <input checked="" type="checkbox"/> CA | <input type="checkbox"/> GA | <input type="checkbox"/> MO | <input type="checkbox"/> OK |
| <input type="checkbox"/> CO            | <input type="checkbox"/> IA | <input type="checkbox"/> NV | <input type="checkbox"/> SC |
| <input type="checkbox"/> FL            | <input type="checkbox"/> MD | <input type="checkbox"/> NJ | <input type="checkbox"/> VA |

City of San Diego, California

Name of Licensee

1010 Second Ave, Suite 500

Address of Licensee

San Diego, CA 92101

City, State and Zip

( 619 )5333152

Telephone Number

*Lisa Stapleton*

Signature of Licensee's Authorized Representative

07/19/2012

Date

Lisa Stapleton

Printed Name of Person Signing

Internal Srvc Mgr

Title



**Esri/SDDPC  
ENTERPRISE LICENSE AGREEMENT  
(E119G 06/2009)**

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

**Agreement No. 2011ELA6557**

This Enterprise License Agreement including the documents listed below (collectively, "Agreement" or "ELA") is between **San Diego Data Processing Corporation ("SDDPC")** and **Environmental Systems Research Institute, Inc. ("Esri")**, and is effective as of **July 1<sup>st</sup>, 2011** ("Effective Date"). SDDPC is a public entity organized as a California nonprofit public benefit corporation established June 15, 1979, by the City of San Diego, to provide data processing and telecommunications services. SDDPC is a wholly-owned instrumentality of the City of San Diego and is operated by an independent board of Directors appointed by the San Diego City Council and Mayor. This Agreement provides for the licensing and deployment of certain Esri Software, delivery of ELA maintenance, and provision of Esri International User Conference registrations and any additional services as specified herein for the benefit of the City of San Diego.

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

1. Enterprise License Agreement signature page(s), E119
2. Enterprise License Terms and Conditions, E512, including:
  - Appendix A, Software and Deployment Schedule
  - Appendix B, Enterprise License Fee Schedule
  - Appendix C, SDDPC Annual Deployment Report
  - Appendix D, ELA Points of Contact
  - Appendix E, Tier 1 Help Desk Authorized Individuals
  - Appendix F, Custom Software, Technical Data, and Assistance License Addendum (E600)
  - Appendix G, Training Terms and Conditions (E207CW)
3. License Agreement—Agreement No. 2011MLA6557
  - General License Terms and Conditions, E200
  - Esri Exhibit 1, Scope of Use, E300

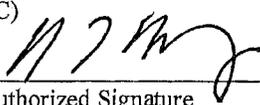
Note: Licensee is defined on first page of item 2 above.

The parties acknowledge that they have read and understand this Agreement and agree to be bound by the terms and conditions contained herein.

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter. Any modifications or amendments to this Agreement must be in writing and signed by an authorized representative of each party.

ACCEPTED AND AGREED:

SAN DIEGO DATA PROCESSING CORPORATION  
(SDDPC)

By:   
Authorized Signature

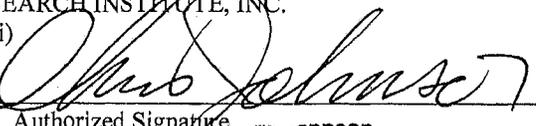
Printed Name: Harry Morgan

Title: Executive Director

Date: October 14, 2011

Approved as to Form:

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

By:   
Authorized Signature

Printed Name: Chris Johnson  
**Manager, Domestic Contracts**

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## ENTERPRISE LICENSE TERMS AND CONDITIONS

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

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### 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 Enterprise License Software (and its related keycodes/registration files), or its having been redistributed, by SDDPC, 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 Enterprise License Software and Rolled-In Software.
- "Enterprise License Software" means the Software (which includes Data, Web Services, and Documentation provided with the particular item as separately licensed) identified in Table A-1 and Table A-2 of Appendix A, Software and Deployment Schedule. Enterprise License Software 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 Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" means the General License Terms and Conditions (E200) and Exhibit 1, Scope of Use (E300), referenced on the signature page of this ELA.
- "Licensee" means SDDPC. For avoidance of doubt, the definition of Licensee will not include consultants or contractors.
- "Rolled-In Software" means Software of the same type as Enterprise License Software 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 Software, Data, or Documentation corrections or modifications specified in the most current applicable Esri U.S. Software Maintenance Program.
- "Tier 1 Help Desk" means SDDPC 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 Enterprise License Software and Rolled-In Software is subject to the License Agreement and any additional terms set forth in this Article 2 and in Article 3 below. For avoidance of doubt, ELA Maintenance and Technical Support applies to Rolled-In Software the same as Deployed Enterprise License Software. As provided in Section 7.3 and 7.4, upon expiration or termination of this ELA, provided termination is not for material breach of the Enterprise License Agreement, Licensee may continue to use Deployed Enterprise License Software and Rolled-In licenses at the current version or, if Licensee elects, may purchase Maintenance for such licenses as Licensee chooses.

**2.2 Beta License.** Beta licenses are not available under this ELA as Enterprise License Software. Beta Software, Beta Data, and Beta Web 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—E200) only. No other benefits, grants, or rights provided in this ELA shall apply or be provided/granted.

**2.3 Consultant Access.** Section 3.4, Consultant Access, of the General License Terms and Conditions—E200 in the License Agreement is modified to add the following restriction: Access to and use of any Enterprise License Software is restricted to use by consultants and contractors for the sole benefit of Licensee while (i) working on-site at Licensee's or City of San Diego facilities; (ii) remotely accessing or using Enterprise License Software from Licensee's or San Diego's on-site computers or machines; or (iii) remotely accessing or using Enterprise License Software from a third party's computers or

machines under contract to Licensee. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise License Software upon completion of work for Licensee.

**2.4 SDDPC Responsibility.** SDDPC shall remain primarily responsible to Esri for compliance by Licensees (including their users) with the terms and conditions of this ELA.

### ARTICLE 3—SCOPE OF USE

There are additional Permitted Uses, Uses Not Permitted, and Restrictions for Licensee 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 SDDPC for the Enterprise License Software:

For the term of the ELA, SDDPC may copy and Deploy the Enterprise License Software to Licensees up to the quantities of licenses granted in Appendix A. No other Licensee has a right to copy (except as permitted in the License Agreement) or Deploy the Enterprise License Software.

**3.2 Uses Not Permitted.** In addition to the restrictions set forth in the License Agreement, the following Uses Not Permitted apply to the Enterprise License Software:

- a. SDDPC shall not transfer, redistribute, or Deploy the Enterprise License Software outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any.
- b. Licensee shall not use the Enterprise License Software 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 U.S. Export Control Regulation requirements of the License Agreement.
- c. Licensee shall not transfer, redistribute, or assign Enterprise License Software to any third party without prior Esri written permission as described in Section 13.3.

### ARTICLE 4—MAINTENANCE

**4.1 ELA Maintenance.** ELA Maintenance is included in the ELA Fee. Rolled-In Software and Enterprise License Software will receive ELA Maintenance, provided that standard maintenance is available for each item. If this ELA Agreement expires the Rolled-In and Enterprise License Software Deployed during the term of this ELA Agreement, shall be eligible for Maintenance at pricing that does not exceed a price level equivalent to the then current Maintenance pricing. ELA Maintenance includes benefits specified in the most current applicable Esri U.S. Software Maintenance Program document (found at [www.esri.com/legal](http://www.esri.com/legal)) as modified by this Section 4.1.

**a. Tier 1 Support Provided by SDDPC**

- (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 Software 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) SDDPC 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 Web site or, if requested, deliver them on media.

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

**5.1 Purchase Orders, Delivery, and Deployment**

- a. SDDPC shall issue a purchase order 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.
- b. Upon receipt of the initial purchase order from SDDPC, Esri shall authorize SDDPC to download Enterprise License Software listed in Appendix A. Delivery of updates/new versions of Enterprise License Software will be made in the same manner. If requested by SDDPC, 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. SDDPC 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. SDDPC acknowledges that Esri has a right to invoice, and SDDPC 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 Enterprise License Software to operate or allow access.
- d. SDDPC shall track the Deployment status of Enterprise License Software.

**5.2 Purchase Order Requirements**

- a. Any purchase orders issued by SDDPC will reference, incorporate, and be subject to the terms and conditions of this ELA. No additional, conflicting, or different terms contained in a purchase order or ordering document will be binding. All orders and deliveries pertaining to this ELA will be processed through SDDPC's centralized point of contact.
- b. The following information will be included in each purchase order:
  - (1) Esri customer number and the ship-to address as identified in Appendix D.
  - (2) Purchase order number.
  - (3) Applicable annual payment due.
  - (4) On the face of the purchase order, print the following statement: "Governed by and subject to Enterprise License Agreement No. 2011ELA6557."

**5.3 Annual Report of Deployments.** At each anniversary date and ninety (90) days prior to the expiration date of this ELA, SDDPC 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 SDDPC annually during the term of this ELA in the quantities set forth in Appendix B. SDDPC is responsible for distributing the registrations to Licensees, including the City of San Diego. Third parties may not represent or attend on behalf of SDDPC or Eligible Agencies 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 Notices.** Except as set forth in Section 6.1, 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 by courier or by registered or certified airmail, properly addressed to the appropriate party at the address set forth above, until changed by notice in writing by either party hereto. If sent by courier or airmail, notice will be effective seven (7) days from the date of deposit with the courier service or post office. If sent by electronic transmission, notice will be effective upon receipt, provided confirmation is given as specified herein. Notices will be given at the following addresses:

To: Esri  
380 New York Street  
Redlands, CA 92373-8100  
Attn.: Manager, Contracts and Legal Services

To: SDDPC  
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.

**7.2 Termination for a Material Breach.** Esri may terminate this ELA for a material breach by Licensee. Licensee will be given a period of thirty (30) days from date of written notice to cure any material breach. Upon termination of this ELA by Esri for a material breach by Licensee, all licenses Deployed will also terminate, and the full amount of unpaid ELA Fees will be due and payable by SDDPC within thirty (30) days from the date of termination. Licensees shall uninstall, remove, and destroy all Enterprise License Software; training materials; and any whole or partial copies, modifications, or merged portions in any form. SDDPC shall deliver evidence of such destruction to Esri (e.g., certification letter). Licensee may continue to use Rolled-In Software, provided Licensee complies with the terms and conditions of the License Agreement. Further, Esri agrees that Licensee is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Licensee orders maintenance at time of ELA termination. Other items that may be included in this ELA such as EAP, Virtual Campus annual user license, access codes, Virtual Campus dollar credits, and Esri International User Conference registrations, will also terminate if this ELA is terminated.

**7.3 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 Enterprise License Software and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. At the end of the term, the parties may negotiate to extend this Agreement or negotiate and execute a follow-on Agreement. Licensee shall notify Esri as to which licenses, the quantity and type it will continue to support under a continuing standard maintenance agreement and which licenses will not be supported under a maintenance agreement. If maintenance is not ordered for Rolled-In Software or Enterprise License Software 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). SDDPC shall not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

**7.4 Termination for Non-Appropriation of Funds or Lack of Funds.** SDDPC's obligation to pay the amounts due for following fiscal years is contingent upon appropriation of funds for this ELA. SDDPC 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 SDDPC 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, SDDPC will document in writing to Esri the total quantity and type (e.g., Product) of Remaining Software and Rolled-In Software for which SDDPC desires to obtain maintenance, if any. Payment of maintenance fees for such Remaining Software and Rolled-In Software for which SDDPC wishes to have maintenance, if any, will be effective from the date of the ELA termination, provided that SDDPC 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, Virtual Campus training access/VC dollar credits, and User Conference Registrations will also terminate if this ELA is terminated for Lack of Funds.

## ARTICLE 8—CONFIDENTIALITY

**8.1 Esri Confidential Information.** Certain terms and conditions of this ELA are confidential and proprietary information of Esri. Except as provided herein, SDDPC 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 SDDPC employees and advisers of SDDPC (e.g., outside counsel or accountants) who have a need to know to perform their duties and have an obligation of confidentiality. SDDPC 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 SDDPC. 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), SDDPC 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—RELATIONSHIP OF THE PARTIES

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

## ARTICLE 10—FORCE MAJEURE

If the performance of any obligation under this ELA is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any government agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a

temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

## ARTICLE 11—GIS STANDARD

SDDPC shall name Esri as a 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 SDDPC reserve the right to purchase from third parties any of their requirements for GIS software, or related services.

SDDPC 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 Software, Data, Web Services, or Documentation as Enterprise License Software 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 Software, Data, Web Services, Documentation, 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 Conversion of Enterprise License Software—Limited Quantity or Unit-Priced Item.** Newer or updated Enterprise License Software 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. Esri reserves the right to exclude such newer or updated versions of the Enterprise License Software from the list of items eligible to be Deployed in unlimited quantities. Such items can be made available to SDDPC on a limited quantity basis or as unit-priced item(s). In such event, Licensee may continue to use the older (previous) version Deployed, and Esri will provide Technical Support in accordance with the Esri Product Life Cycle Support Policy.

**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 Enterprise License Software that has been Deployed, but support and upgrades for older items may not be available. ELA Maintenance and maintenance and availability of Enterprise License Software 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.

## ARTICLE 13—GENERAL PROVISIONS

**13.1** The General Provisions and Limitations of Liability of the License Agreement will apply to the entire ELA. If there is a conflict among any of the other terms and conditions in the various documents, the order of descending precedence will be as follows: (1) E119 Signature Page, (2) E512 ELA Terms and Conditions, (3) E300 Scope of Use, and (4) E200 General License Terms and Conditions. The E600 Custom Software, Technical Data, and Assistance License Addendum terms and conditions shall take precedence with regards to Custom Software, Technical Data, and Assistance License. Likewise, E207CW Training Terms and Conditions shall take precedence for Training. In the event this ELA includes Enterprise Advantage Program, the terms and conditions of the Enterprise Advantage Program Addendum will take precedence over the provision of the ELA with respect to the Enterprise Advantage Program. Except as otherwise expressly provided herein, any amendment or Addendum to this ELA must be in writing and signed by an authorized representative of each party.

**13.2 Survival of Certain ELA Clauses.** The provisions of Section 7.3 and Article 8 of this Enterprise License Terms and Conditions document (E512) will survive the expiration or termination of this ELA.

**13.3 Assignment of Enterprise License Agreement.** In the event that the authority of SDDPC to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, SDDPC may, by mutually signed written amendment only, assign its rights, responsibilities and licenses under this Agreement; provided that such assignee is bound by the terms of this Agreement and has the authority to enter into an Agreement on behalf of the City of San Diego. Esri may directly pursue remedies against SDDPC or assignee for noncompliance with the terms of the License Agreement.

**13.4 Professional Services.** Esri Professional Services are available on a time and materials or firm fixed price basis via a mutually executed task order. The E600 Addendum, attached hereto as Appendix F, comprises the applicable terms, staffing, and hourly labor rates (hourly rates applicable only for time and materials projects) for any such work to be performed under this Agreement. Labor rates are subject to annual escalation in January of each year, but not to exceed three percent (3%) in the first year and four percent (4%) in years 2 and 3. The scope of work and any additional terms are subject to mutual agreement in the task order.

**APPENDIX A  
SOFTWARE AND DEPLOYMENT SCHEDULE**

SDDPC may Deploy the Enterprise License Software up to the total quantity of licenses indicated below to Licensees during the term of this ELA.

**Table A-1  
Enterprise License Software—Unlimited Quantities**

Item	Total Qty./Seats to Be Deployed	Rolled-In Deployments
<b>Desktop Software</b>		
ArcInfo (Single and Concurrent Use)	<i>unlimited</i>	43cu
ArcEditor (Single and Concurrent Use)	<i>unlimited</i>	5cu
ArcView (Single and Concurrent Use)	<i>unlimited</i>	44su, 176cu
<b>Desktop Extension Software</b>		
Spatial Analyst	<i>unlimited</i>	2su, 9cu
3D Analyst	<i>unlimited</i>	9cu
Network Analyst	<i>unlimited</i>	20cu
ArcGIS Publisher	<i>unlimited</i>	4cu
ArcGIS Data Reviewer	<i>unlimited</i>	-
Geostatistical Analyst	<i>unlimited</i>	9cu
ArcScan	<i>unlimited</i>	9cu
ArcGIS Schematics	<i>unlimited</i>	-
ArcGIS Workflow Manager	<i>unlimited</i>	-
Maplex	<i>unlimited</i>	22cu
<b>Server Software</b>		
ArcGIS Server Enterprise Basic/Standard/Advanced	<i>unlimited</i>	3basic, 5standard
ArcGIS Server Workgroup Basic/Standard/Advanced	<i>unlimited</i>	-
ArcGIS Server Enterprise Staging	-	4
<b>Server Extensions</b>		
3D Analyst	<i>unlimited</i>	-
Network Analyst	<i>unlimited</i>	-
Spatial Analyst	<i>unlimited</i>	-
Workflow Manager	<i>unlimited</i>	-
Geostatistical	<i>unlimited</i>	-
ArcGIS Schematics	<i>unlimited</i>	-
Image	<i>unlimited</i>	-
<b>ArcGIS Mobile Deployments</b>		
	<i>unlimited</i>	-
<b>ArcGIS Engine Developer Kit</b>		
	<i>unlimited</i>	-
<b>ArcGIS Engine Runtime</b>		
	<i>unlimited</i>	154

<b>ArcGIS Engine Runtime Extensions</b>		
3D Analyst	<i>unlimited</i>	-
Geodatabase Update	<i>unlimited</i>	-
Maplex	<i>unlimited</i>	-
Network Analyst	<i>unlimited</i>	-
ArcGIS Schematics	<i>unlimited</i>	-
Spatial Analyst	<i>unlimited</i>	-
<b>ArcIMS</b>	-	4

**Table A-2**  
Enterprise License Software—Limited Quantities

Item	Rolled-In Qty. (if applicable)	Qty./Seats to Be Deployed	Total
Esri Developer Network (EDN)	-	5	5

**APPENDIX B  
ELA FEE SCHEDULE**

The ELA Fee is \$725,000\*\*. The ELA Fee is in consideration of the Enterprise License Software, ELA Maintenance, and Esri International User Conference registrations.

	<b>Year 1 2011-2012</b>	<b>Year 2 2012-2013</b>	<b>Year 3 (Optional)* 2013-2014</b>	<b>ELA Fee</b>
<b>Payments for two (2) years</b>	<i>\$325,000</i>	<i>\$400,000**</i>	-	<i>\$725,000</i>
<b>Payments with 3<sup>rd</sup> Year Option Exercised</b>	<i>\$325,000</i>	<i>\$375,000</i>	<i>\$400,000</i>	<i>\$1,100,000</i>

\*Year 3 is optional but must be exercised by the end of Year 1 (June 30, 2012)

\*\*If the option for Year 3 is not exercised, then the Year 2 payment shall be increased by \$25,000 (as shown above)

<b>Number of Esri International User Conference Registrations per Year</b>	<b>25</b>
<b>Number of Tier 1 Help Desk Individuals</b>	<b>9</b>
<b>Number of Sets of Backup Media, if Requested</b>	<b>5</b>
<b>Term of ELA pursuant to Section 7.1</b>	<b>two (2) years from Effective Date with an optional third year*</b>
<b>Support Incidents for EDN</b>	<b>One 10-Pack/Year</b>



**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](mailto:service@esri.com)  
Phone: 888-377-4575  
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

E-mail: [support@esri.com](mailto:support@esri.com)  
Phone: 909-793-3774 (domestic U.S. only)  
Fax: 909-792-0960  
Web: [support@esri.com](mailto:support@esri.com)

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

Name: Darlene Montijo  
E-mail: [dmontijo@sddpc.org](mailto:dmontijo@sddpc.org)  
Phone: 858-581-9815  
Fax: 858-581-9689

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

SDDPC Office:  
Name: Darlene Montijo  
Address: 5975 Santa Fe Street  
San Diego, Ca 92109

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

SDDPC Office:  
Name: Darlene Montijo  
Address: 5975 Santa Fe Street  
San Diego, Ca 92109

**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.

1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

6. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

2. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

7. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

3. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

8. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

4. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

9. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

5. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_



**APPENDIX F  
CUSTOM SOFTWARE, TECHNICAL DATA, AND  
ASSISTANCE LICENSE ADDENDUM  
(E600 02/18/2011)**

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

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**ARTICLE 1—DEFINITIONS**

All words, phrases, or terms defined in other parts of this Agreement shall have the same meaning in this Addendum. The following additional words, phrases, or terms shall have the following meaning:

- i. "Commercial off-the-Shelf Software" or "COTS Software" means all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri Web site or delivered on any media in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies, available under license to the general public.
- ii. "Custom Software" means all or any portion of the computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under any Task Order, exclusive of Commercial off-the-Shelf Software, or COTS Software.
- iii. "Deliverables" means Custom Software or Technical Data specified for delivery or use by Licensee under a firm fixed price Task Order.
- iv. "Map Data" means any digital dataset(s) including geographic, vector data coordinates, raster, or associated tabular attributes supplied by either party for use in the performance of any Task Order, which must be separately licensed from the vendor.
- v. "Services" means consulting support being performed by Esri on a time and materials hourly basis in exchange for compensation from the Licensee.
- vi. "Services Output" means any tangible output produced as a result of the Services provided by Esri under this Addendum. Services Output can include, but is not limited to, reports, training materials, and Custom Software.
- vii. "Task Order" means an order for professional services issued under this Addendum in substantially the same format as the sample task order form attached as Attachment A.
- viii. "Technical Data" means, without limitation, all technical materials including formula, compilations, software code or programs, methods, techniques, know-how, technical assistance, processes, algorithms, designs, data dictionaries and models, schematics, user documentation, training documentation, specifications, drawings, flowcharts, briefings, test or quality control procedures, or other similar information supplied or disclosed by Esri under any Task Order. Technical Data does not include COTS Software, COTS data, or COTS documentation, which must be separately licensed by Licensee under Esri's commercial Software license, or Map Data.

**ARTICLE 2—TASK ORDERS AND PROJECT SCHEDULE**

Esri shall provide Deliverables and/or Services as specified in a specific Task Order relating to the COTS Software identified in the Task Order.

Unless otherwise provided by Esri in writing, Esri's Contracts Manager for the Professional Services Division, John Perry, is authorized to agree to Task Orders. Licensee shall provide advanced written notification of the name and title of the representative authorized to sign Task Orders and bind Licensee. Each party may enter into Task Orders at its sole discretion and shall not have any obligation under a Task Order until it is signed by both parties.

Each party shall identify in writing the project manager who is responsible for the Services or Deliverables specified in Task Orders. By written notice, either party may replace the project manager at any time with a similarly qualified person.

The period of performance of each Task Order shall be specified in each Task Order.

**ARTICLE 3—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE**

Except as specifically granted in this Article 3, Esri or its licensors own and retain all right, title, and interest in the Deliverables and Services Output. This Addendum does not transfer ownership rights of any description in the Deliverables

or Services Output to Licensee or any third party. Subject to the terms and conditions set forth in this Addendum and effective upon the transfer, by any means, of the Deliverables or Services Output to the Licensee, Esri hereby grants to Licensee a nonexclusive, worldwide license in the Deliverables or Services Output to use, modify, and reproduce the Deliverables or Services Output in connection with Licensee's authorized use of COTS Software. The license grant in the immediately preceding sentence does not apply to Map Data, which Licensee must separately and directly license from the vendor.

Licensee shall retain any patent, copyright, or trademark or proprietary notices on all items licensed under this Addendum and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights.

#### **ARTICLE 4—PATENTS AND INVENTIONS**

During the performance of Task Orders, the parties anticipate that inventions, innovations, and improvements ("Inventions") relating to the subject matter of such Task Orders may be conceived solely or jointly by principals, employees, consultants, or independent contractors (hereinafter called "Inventors") of the parties hereto.

The parties agree that, as of the effective date of this Agreement, Esri or its licensors own all intellectual property rights in the COTS Software. During the term of this Agreement, Licensee shall promptly notify Esri if Licensee becomes aware of any known or suspected infringement or violation of these rights.

Each party shall retain title to any Inventions made or conceived solely by its Inventors during the term of this Addendum, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Addendum. The parties shall jointly own any Inventions made or conceived jointly by Inventors from both parties.

Where only one party has title to an Invention, that party, at its sole discretion, shall have the right, but not the obligation, at its expense to: (i) decide on whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on such Invention; (ii) decide the extent and scope of such protection; and (iii) protect and enforce in any country any patents issued on such Invention.

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.

The acquisition or maintenance of protection shall not be abandoned by a joint owner (the "Assigning Owner") without giving the other joint owner (the "Beneficial Owner") an opportunity to intervene and acquire or maintain protection at the Beneficial Owner's expense. The Assigning Owner electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the 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.

All Inventions made by Inventors during performance of tasks and activities defined by Task Orders during the term of this Addendum will be presumed, absent clear and convincing evidence to the contrary, to have resulted from the Inventors' activities under the Task Orders.

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 shall not be unreasonably withheld by either party. However, either party may transfer such Inventions to its Affiliates for their internal use only. "Affiliate" shall mean the parent or subsidiary companies of a party or subsidiary companies to a party's parent provided there is more than fifty percent (50%) ownership of the subsidiary by the parent or party.

## ARTICLE 5—CONFIDENTIALITY OF DELIVERABLES AND SERVICES OUTPUT

Unless otherwise agreed in writing, the Deliverables and Services Output are Esri confidential information, and Licensee shall preserve and protect the confidentiality of said Deliverables and Services Output to the extent permitted by law. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Deliverables or Services Output delivered only in object code, executable code, or formats subject to similar or greater means of access control (collectively, "Secure Formats"). For Deliverables or Services Output delivered in source code or other human-readable formats, Licensee shall have met its obligations under this Article if its disclosure of Deliverables or Services Output is limited to Deliverables or Services Output in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling such Deliverables or Services Output is withheld from such disclosure, and the person or entity in receipt of such Deliverables or Services Output similarly agrees not to perform such acts or allow others to do so.

Except as provided in the preceding paragraph, Licensee shall not disclose any Deliverables or Services Output to employees or third parties without the advanced written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees as are reasonably required for the Licensee's authorized use of the COTS Software, provided that such disclosure is strictly limited to the portions of the Deliverables or Services Output needed for that purpose. The disclosures permitted under this paragraph shall not relieve Licensee of its obligation to maintain the Deliverables or Services Output in confidence and comply with all applicable laws and regulations of the United States.

Licensee shall not have any obligation to protect any part of a Deliverable or Services Output that it can prove: (i) was in Licensee's possession before receipt from Esri; (ii) is or becomes a matter of public knowledge through no fault of Licensee; (iii) is rightfully disclosed by a third party without a duty of confidentiality; (iv) is disclosed by Esri to a third party without a duty of confidentiality; (v) is independently developed by Licensee; or (vi) is required to be disclosed by operation of law.

## ARTICLE 6—ACCEPTANCE

**A. For Time and Materials Task Orders.** Services are provided strictly on a time and materials basis subject to the task order not-to-exceed funding limit. The Services delivered will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Esri is notified otherwise by Licensee within ten (10) days after delivery.

**B. For Firm Fixed Price Task Orders.** Deliverables for fixed price Task Orders shall be categorized as follows:

- i. "DELIVERABLE ACCEPTED" means a Deliverable conforming to applicable Task Order(s) with no more than minor nonconformities. Licensee shall complete its acceptance review within ten (10) working days of receiving each Deliverable.
- ii. "DELIVERABLE ACCEPTED WITH REWORK" means a deliverable substantially conforming to applicable Task Order(s), but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri shall rework the Deliverable for the identified nonconformities and resubmit it within thirty (30) days. Licensee will rerun its acceptance review for the nonconformities detected in the initial review within ten (10) working days of such resubmission and will reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
- iii. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri shall rework the Deliverable and resubmit it to Licensee within thirty (30) days, at which time Licensee shall have ten (10) working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Licensee agrees it shall not use any Deliverable in its business operations before acceptance as described in B.i. or B.ii. If Esri does not receive within ten (10) working days after delivery written notice that the Deliverable is "ACCEPTED WITH REWORK" or "REJECTED" in accordance with B.ii. or B.iii., or if Licensee uses the Deliverable in its business operations, the Deliverable shall be deemed, as of the first to occur of either of these events, to have been accepted.

## ARTICLE 7—CHANGES TO SCOPE OF WORK

Licensee may, at any time, request changes within the general scope of an open Task Order. If the parties agree to such changes and such changes cause an increase or decrease in the cost or time required to provide a Deliverable under any Task Order (regardless of whether the Deliverable itself is changed), an equitable adjustment in the price or schedule, or both, shall be made, and the Task Order shall be modified accordingly in writing and signed by both parties.

## ARTICLE 8—COMPENSATION; INVOICES

- A. For Time and Materials Task Orders.** Esri shall prepare and submit to Licensee written monthly invoices showing the compensation due for work performed, including travel time, under Task Orders to the Licensee address listed on the Task Order. The amount invoiced will be equal to the number of hours expended during the previous month multiplied by the rates for labor categories set forth in Attachment B, plus other burdened direct costs (ODCs), such as travel-related expenses. Meals and incidental expenses will be invoiced on a "per diem" basis in accordance with the limits stated in the most current Federal Travel Regulations.

Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. In the event Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Licensee may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

- B. For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri shall prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- C. Payment.** Licensee shall pay each invoice no later than thirty (30) days after receipt thereof. Payment shall be made to the Esri address identified on original Esri invoices.

## ARTICLE 9—LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

### A. For Time and Materials Task Orders

- i. **Limited Warranty.** Esri warrants that for a period of thirty (30) days from the date of acceptance that the Services will conform to the professional and technical standards in the software industry. During the limited warranty period, Licensee may require Esri to re-perform the Services, at no additional cost to the Licensee, which do not substantially conform to such standards. Services Output is provided "AS IS" without warranty of any kind.

ii. **Disclaimer of Warranties**

- (a) WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SECTION A.i. OF THIS ARTICLE 9, ESRI DISCLAIMS, AND THIS ADDENDUM EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### B. For Firm Fixed Price Task Orders

- i. **Limited Warranty.** Esri warrants that for a period of thirty (30) days after acceptance of a Deliverable that the Deliverable will conform, in a manner consistent with professional and technical standards in the software industry, with the applicable written specifications that are included in, or delivered by Esri pursuant to, the corresponding Task Order.

ii. **Disclaimer of Warranties**

- (a) WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SECTION B.i. OF THIS ARTICLE 9, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER OBLIGATIONS TO CORRECT OR REPLACE DELIVERABLES AND OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION: (i) ANY WARRANTY THAT DELIVERABLES ARE ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; WILL OPERATE WITHOUT INTERRUPTION; ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED; (ii) ANY WARRANTY THAT THE DELIVERABLES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY,

OR PHYSICAL PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE (ANY SUCH USE BY LICENSEE SHALL BE AT LICENSEE'S OWN RISK AND COST); (iii) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

- C. Map Data Disclaimer.** ESRI DOES NOT WARRANT IN ANY WAY THE MAP DATA, WHETHER SUPPLIED BY LICENSEE OR ESRI, OR THE VENDORS OF EITHER OF THEM. IF SUPPLIED BY ESRI OR ITS VENDORS, ESRI BELIEVES SUCH MAP DATA IS RELIABLE, BUT IT MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET LICENSEE'S NEEDS OR EXPECTATIONS. ESRI IS NOT INVITING RELIANCE ON MAP DATA, AND LICENSEE SHOULD ALWAYS VERIFY ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

#### ARTICLE 10—LIMITATION OF LIABILITY

- A. Disclaimer of Certain Types 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 AGREEMENT OR USE OF THE DELIVERABLES OR SERVICES OUTPUT, 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 REMEDY.
- B. General Limitation of Liability.** IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES OR SERVICES OUTPUT, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, EXCEED THE AMOUNTS PAID TO ESRI BY LICENSEE FOR THE DELIVERABLES OR SERVICES OUTPUT FROM WHICH THE LIABILITY DIRECTLY AROSE.
- C. Applicability of Disclaimers and Limitations.** Licensee agrees that the limitations of liability and disclaimers set forth in this Addendum will apply regardless of whether Licensee has accepted the Deliverables, or any other product or service delivered by Esri. The parties agree that Esri has set its prices and entered into this Addendum in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose or cause consequential loss), and that the same form an essential basis of the bargain between the parties.

#### ARTICLE 11—EXPORT CONTROL REGULATIONS

Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release COTS Software, Services Output, or Deliverables in whole or in part, to (i) any U.S. embargoed country (or to a national or resident of any U.S. embargoed country); (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 laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to U.S. export laws as they may occur from time to time.

#### ARTICLE 12—TERM AND TERMINATION

- A. Term.** Unless terminated earlier pursuant to Sections B, C, or D of this Article, this Addendum shall terminate simultaneously with the Agreement.
- B. Termination for Convenience by Licensee.** Licensee may terminate this Addendum or any Task Order at any time on thirty (30) days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Addendum, including reasonable termination expenses and the pro rata contract price for the Task Orders affected.

- C. Termination for Cause by Licensee.** Licensee shall have the right, in addition and without prejudice to any other rights or remedies, to terminate this Addendum or any Task Order for any material breach of this Addendum by Esri that is not cured within fifteen (15) days of receipt by Esri of a notice specifying the breach and requiring its cure.
- D. Termination for Cause by Esri.** Esri may terminate this Addendum immediately upon written notice to Licensee in the event that one or more of the following occur:

***Insolvency of Licensee***

- i. Licensee becomes insolvent, ceases to pay its debts in the ordinary course of business, is unable to pay its debts as they become due, or makes an assignment for the benefit of creditors;
- ii. A trustee or receiver is appointed for any or all of Licensee's assets;
- iii. Any bankruptcy or insolvency proceeding under any federal or state bankruptcy or insolvency code, or similar law, whether voluntary or involuntary, is commenced by or against Licensee;
- iv. Licensee is dissolved or liquidated;
- v. There is any
  - a. Material change in the management or control of Licensee;
  - b. Transfer of any substantial part of Licensee's business; or
  - c. Bulk transfer by Licensee pursuant to the Uniform Commercial Code or similar law.

***Default or Breach by Licensee***

- vi. Licensee defaults under this Addendum three (3) or more times within any six (6)-month period, regardless of whether such defaults are cured;
- vii. Licensee engages in the unauthorized use of the COTS Software;
- viii. Licensee engages in the unauthorized use, reproduction, or disclosure of Deliverables or Services Output;
- ix. Licensee breaches any provision of this Addendum and there is no possibility of cure;
- x. Licensee fails to pay after ten (10) days' written notice the amounts due to Esri pursuant to the "Compensation; Invoices" Article 8 of this Addendum.

**E. Obligations upon Termination**

- i. Upon termination by Esri, all outstanding Task Orders shall be subject to cancellation, acceptance, or rejection, at the sole discretion of Esri.
- ii. In the event of termination by Esri pursuant to Subsections v–x of Section D of this Article, 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 the termination, regardless of the payment term provisions set forth in this Addendum.
- iii. Upon termination of this Addendum, the parties shall have no further obligations pursuant to its terms, except that Articles 1, 4, 5, 8, 9.A.ii., 9.B.ii., 9.C., 10–14, 17, and 19 shall survive termination. Unless Licensee has materially breached its obligations under this Addendum, Articles 3, 9.A.i., and 9.B.i. shall also survive termination. Except where specifically stated otherwise, any current or future cause of action or claim of one party because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit the complete fulfillment or discharge of the cause of action.

**ARTICLE 13—RESTRICTIONS ON SOLICITATION**

Licensee shall not solicit for hire any Esri employee who is associated with efforts called for under this Addendum during the term of this Addendum and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee shall pay Esri 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. The foregoing shall in no way restrict Licensee from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

**ARTICLE 14—TAXES**

Values specified in Task Orders are exclusive of state, local, and other taxes or charges (including, without limitation, custom duties, tariffs, and value-added taxes, but excluding income taxes payable by Esri). In the event such taxes or charges become

applicable to Deliverables or Services Output, Licensee shall pay any such taxes upon receipt of written notice that they are due.

**ARTICLE 15—INDEPENDENT CONTRACTOR**

Esri is, and at all times will be, an independent contractor. Nothing in this Addendum shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party has the authority to enter into any contracts on behalf of the other party or otherwise act on behalf of the other party.

**ARTICLE 16—FORCE MAJEURE**

If the performance of this Addendum, or any obligation except the making of payments, is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference.

**ARTICLE 17—CLAIMS MUST BE FILED WITHIN ONE (1) YEAR**

Any claim related to this Addendum or the Services or Deliverables may not be brought unless brought within one (1) year. The one (1)-year period begins on the date when a party knew or should have known of the claim. If it is not filed during the one (1)-year period, then that claim is permanently barred. This applies to Licensee and Licensee's successors and/or assigns. It also applies to Esri and/or Esri's successors and assigns.

**ARTICLE 18—NOTICE**

All notice required by this Addendum shall be in writing to the parties at the following respective addresses, or to such other address as a party may subsequently specify in a notice provided in the manner described in this Article, and shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of three (3) days following post by first class registered or certified mail, return receipt requested, with postage prepaid; (iii) upon the passage of two (2) days following post by overnight receipted courier service; or (iv) upon transmittal by confirmed e-mail or facsimile, provided that if sent by e-mail or facsimile, a copy of such notice shall be concurrently sent by U.S. certified mail, return receipt requested and postage prepaid, with an indication that the original was sent by e-mail or facsimile and the date of its transmittal:

Licensee: San Diego Data Processing Corporation  
5975 Santa Fe Street  
San Diego, CA 92109  
Attn.: Legal Department  
Tel.: 858-581-9600  
Fax: 858-581-9689

Esri: Environmental Systems Research Institute, Inc.  
380 New York Street  
Redlands, CA 92373-8100  
USA  
Project/Technical Notice—Attn.: John Perry,  
Contracts Manager – Esri Professional Services  
Tel.: 909-793-2853, extension 1133  
Fax: 909-307-3034  
Legal Notice—Attn.: Contract Manager  
Tel.: 909-793-2853, extension 2248  
Fax: 909-307-3020  
With a copy to John Perry, Contracts Manager – Esri Professional Services

Notice for non-U.S. Licensees shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of seven (7) days following post by international courier service with shipment tracking provisions; or (iii) upon transmittal by confirmed e-mail or facsimile, provided that if sent by e-mail or facsimile, a copy of such notice shall be concurrently sent by receipted international courier service, with an indication that the original was sent by e-mail or facsimile and the date of its transmittal.

#### **ARTICLE 19—ASSIGNMENT AND DELEGATION**

Esri may, in whole or in part, assign any of its rights or delegate any performance under this Addendum, provided that Esri shall remain responsible for the performance it delegates. This Addendum binds and benefits successors or assigns permitted under this Article 18.

#### **ARTICLE 20—INDEMNIFICATION**

Esri will indemnify and hold harmless Licensee and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys fees, arising out of any action or claim for bodily injury, death, or property damage (except for databases not subject to a reasonable backup program) brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri, its subcontractors or their respective directors, officers, employees, or agents.

#### **ARTICLE 21—INSURANCE**

Esri carries, at a minimum, the following coverage:

- a. Comprehensive general liability insurance with minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:
  1. Premises and operations
  2. Contractual liability
  3. Broad form property damage
  4. Subcontractor coverage
  5. Personal injury, with employee exclusion deleted
  6. Complete operations
  
- b. Workers' compensation insurance, , in an amount that complies with statutory limits.

**ATTACHMENT A**  
**SAMPLE TASK ORDER**  
 Esri Agreement No. \_\_\_\_\_  
 Task Order No. \_\_\_\_\_

In accordance with the terms and conditions of the above-referenced Addendum between Environmental Systems Research Institute, Inc. (Esri), and \_\_\_\_\_ (Licensee), \_\_\_\_\_ (Licensee Address), this Task Order authorizes preparation and provision of the Services Output and/or Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work: [As applicable, specifically identify and describe Services Output or Deliverables including Custom Code, Map Data, and Technical Data (including Technical Assistance) and the resources to be provided by Licensee (including Licensee-supplied personnel, software, hardware, and digital or hard-copy data), and place of delivery and location where technical assistance will be provided.]

In addition to the foregoing, Licensee agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Licensee shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Licensee and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type [Firm Fixed-Price (FFP) or Time and Materials (T&M)]:
3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):
4. Licensee Address for the Receipt of Esri Invoices:
5. Delivery Schedule or Start/End Date(s) for Each Deliverable:
6. Special Considerations:
7. Esri Project Manager: (insert name, telephone, fax, and e-mail address)  
 Esri Senior Contract Administrator: (insert name, telephone, fax, and e-mail address)  
 Licensee Project Manager: (insert name, telephone, fax, and e-mail address)  
 Licensee Senior Contract Administrator: (insert name, telephone, fax, and e-mail address)  
 Licensee Accounts Payable Contact: (insert name, telephone, fax, and e-mail address)

ACCEPTED AND AGREED:

\_\_\_\_\_  
 (Licensee)  
 Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

ENVIRONMENTAL SYSTEMS  
 RESEARCH INSTITUTE, INC.  
 (Esri)

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**ATTACHMENT B  
TIME AND MATERIALS RATE SCHEDULE**

*Effective January 1, 2011*

Hourly time and materials labor rates have been provided for each labor category for calendar year 2011. The hourly labor rates for services that are performed after 2011 may be escalated in an amount not to exceed five percent (5%) each year. Other direct costs, such as travel, reproduction, subcontractor, telecommunication/freight, or materials, will be charged a material handling fee and invoiced.

**Environmental Systems Research Institute, Inc. ("Esri")**, reserves the right to provide fixed price quotations for professional services requests that require deliverables other than hours and/or are more than twenty-five thousand dollars (\$25,000). Work performed under fixed price orders will require additional terms and conditions and will be invoiced monthly based on percentage completed.

**GIS Consultant/Project Manager (M1)**

**Hourly Rate: \$220/Hour**

Staff members in this labor category provide day-to-day consulting and management for contracted projects within Esri. These individuals work under the guidance of senior Esri managers described herein and support the design and implementation of project work plans. These staff members may provide consulting services and design and management support to software application development projects and database conversion projects. They may also conduct detailed requirements interviews, document application requirements, develop logical and physical database designs using standard engineering diagramming methodologies, design software and database QA/QC programs, and provide management oversight of daily technical activities. These staff members work with senior consulting and technical staff to design comprehensive work plans that employ standard system methodologies that define project deliverables and milestones and realistic schedules. These individuals work with Esri administrative staff to ensure that progress and financial reporting are provided according to contract requirements.

**Senior GIS Consultant/Project Manager (M2)**

**Hourly Rate: \$277/Hour**

Staff members in this labor category work as project managers or project advisers, providing strategic consulting and project management activities for geographic information system (GIS) and information technology (IT) projects. These staff members have market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of a project. Consulting activities may include strategic planning, GIS workshops and seminars, requirements definition, application and database design, and system integration consulting. Management activities may include defining project requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. These individuals may also design comprehensive work plans that employ standard system methodologies that define project deliverables and milestones and realistic schedules.

**Principal GIS Consultant/Program Manager (M3)**

**Hourly Rate: \$366/Hour**

Staff members in this labor category work as program directors or project advisers, providing project vision, strategic consulting, and program management activities for GIS and IT projects. These staff members apply market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of the program. Consulting activities may include strategic planning, review and oversight of requirements definitions, application and database design, and system integration consulting. Management activities may include defining program requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. Staff members in this labor category work with senior client staff in coordination with Esri senior management to resolve issues and support successful project completion.

**GIS Technical Specialist/Engineer (S1)****Hourly Rate: \$180/Hour**

Staff members in this labor category work collaboratively with software designers to perform software coding and the writing of software documentation according to design specifications developed by senior technical staff described above. As a group, these staff members are experienced in the coding of software and the creation of digital databases, as well as in software development associated with Esri's commercial off-the-shelf (COTS) software products; Web, desktop, or server software development languages; geospatial data formats; and other technologies. These individuals also develop effective database designs, implement data conversion processes and procedures, and perform software and database quality control.

**GIS System/Software Developer (S2)****Hourly Rate: \$233/Hour**

Staff members in this labor category support the design of technical project specifications for the implementation of application software projects and database development projects. They support the day-to-day technical activities of the project team and ensure that standard system methodologies are employed. They also perform detailed software design and detailed database conversion design and are directly involved in the coding and implementation of complex and strategic portions of application software and database conversion projects. As a group, these staff members are proficient in Esri COTS software products; Web, desktop, and server software development languages; geospatial data formats; and other technologies. These staff members design and develop QA/QC programs and support design and code reviews, database reviews, and other QA/QC activities throughout the project life cycle.

**Senior GIS System/Software Architect (S3)****Hourly Rate: \$286/Hour**

Staff members in this labor category provide the overall technical vision and system architecture for large, complex systems. They support the application of sound software engineering principles and life cycle methodologies to programs/projects. These individuals are actively involved in systems architecture design, application software design, database process design, and the directing of coding development including the supervision of design and code reviews. These staff members may serve as principal investigators in focused studies or research and development projects. Individuals in this labor category have broad technical knowledge of GIS applications and related information technologies and may also provide specific expertise in areas such as Web-based software applications, service-oriented architectures, data warehousing, spatial analysis, and modeling. As a group, these staff members are proficient with Esri COTS software products; software and database design methodologies; Web, desktop, and server software development languages; geospatial data formats; and other technologies.

**GIS Database Specialist/Analyst (DB)****Hourly Rate: \$152/Hour**

Staff members in this labor category provide database development support in creating cartographic and digital data products. These staff members have expertise that includes the performance of hard copy to digital data conversion tasks, data migration, and translation activities utilizing advanced processing techniques in ArcGIS. These individuals design, develop, and implement efficient production tools and workflows in accordance with approved project plans and design parameters.



**APPENDIX G  
TRAINING TERMS AND CONDITIONS**

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

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This Training Agreement ("Agreement") is between Licensee as defined in the Enterprise License Agreement (hereinafter "Client") and **Environmental Systems Research Institute, Inc. ("Esri")**. Client acknowledges that Client has read and understood this Agreement and agrees to be bound by the terms and conditions hereof.

**RECITALS**

Client wishes to arrange for certain training in the use of GIS software. Esri is willing to conduct training courses and provide related services regarding the use of GIS software pursuant to the terms and conditions contained herein. The parties therefore agree as follows:

**ARTICLE 1—TRAINING DESCRIPTION**

Esri offers a set of instructor-led training and client coaching services related to the use of its proprietary GIS software. Instructor-led training events occur at a client's site, at an Esri Learning Center, or via the web in a cloud environment. The Esri software training courses offered, their location, the dates during which the courses are to be conducted, the number of participants, the prices to be paid, and registration requirements are set forth in the *Esri Training* catalog located on Esri's Training website (<http://training.esri.com>). All courses are conducted in substantial conformity with 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. Client coaching services may be provided immediately before or immediately following an Esri training course to familiarize the Student with the software or to review and practice course concepts with an instructor's guidance.

**ARTICLE 2—ESRI'S RESPONSIBILITIES**

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

**ARTICLE 3—CLIENT'S RESPONSIBILITIES**

- Client must ensure the protection of Esri's copyrights. Client shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s).
- Client is not authorized to resell seat(s) to an Esri training event, unless explicitly authorized in writing by Esri.
- Client must ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Students are not permitted to view or participate in an Online Classroom training event. Esri reserves the right to disconnect any Students who permit access to unregistered Students.
- Client must confirm that all registered Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- Client must submit registrations with a confirmed payment commitment at least seven (7) business days before the training event start date. If Client 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.
- 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, etc.). To meet these export requirements, Client must submit to the Esri Training Event Assistant a list of the names of Students that are to attend any training event. Client must submit the list of Student names to Esri at least three (3) business days before the training

event start date. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.

- Client 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 regulation requirements, course scheduling changes, or cancellations.
- Client must provide written notice to Esri's Customer Service department at [service@esri.com](mailto:service@esri.com) of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the training event start date.
- Client must complete and submit an Esri Client Site Training Request Form as well as ensure that it adheres to the course, facility, equipment, and Internet bandwidth and connectivity requirements for Esri Training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- Students may not use audio and/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.
- If the Esri Mobile Lab equipment is utilized at Client's domestic site, then the following terms will apply:
  - Upon receipt, Client must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
  - Client must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
  - Client must ensure that only registered Students use the Mobile Lab equipment.
  - Client is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Client's possession.
  - Client warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement 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 Client by written notice. Client hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
  - Client shall make the Mobile Lab equipment available for freight pickup immediately on conclusion of the Esri course(s).

#### ARTICLE 4—INSURANCE AND INDEMNIFICATION

**4.1 Insurance.** Esri carries, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:
  1. Premises and operations
  2. Blanket contractual liability
  3. Broad form property damage
  4. Independent contractors
  5. Personal injury, with employee exclusion deleted
  6. Completed operations
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

**4.2 Indemnification.** Esri will indemnify and hold harmless Client and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this Agreement while on Client's site.

## **ARTICLE 5—UNIQUE CLIENT COACHING PRIVACY TERMS**

In the event Client coaching services are to be ordered, the following terms shall apply:

Client shall not provide to Esri or disclose to the instructor any personally identified information ("PII") (e.g., GLBA, HIPAA, CII from the US Department of Homeland Security), classified, and so forth, data for use in the coaching session. Notwithstanding anything in this Agreement 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 Client that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (P.L. 106-102) (15 U.S.C. Section 6809) and implementing regulations thereof.

## **ARTICLE 6—SOFTWARE LICENSES**

The terms of the Esri License Agreement are applicable to all Students and cover all of Esri's software, data, and documentation licensed for use in any training course to be conducted. Esri may issue temporary software licenses for Client Site Training where there are an insufficient number of software licenses available at the Client's training facility. Upon conclusion of the training course or event, the Client must uninstall the temporary software licenses and return to Esri any media provided.

## **ARTICLE 7—CANCELLATION AND RESCHEDULING POLICY**

### **7.1 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 department 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, a transfer 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 department 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 department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full class fee.

### **7.2 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 department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without notification three (3) business days in advance, a transfer fee may be assessed.
- A training event may be rescheduled by the client, provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of reschedule is provided, Client is responsible for Esri's reasonable travel expenses and shipping costs incurred.
- A training event may be canceled by the client provided Esri's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Client is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, client is responsible for the full training event fee.

**7.3** If cancellation of a training event is necessary due to Force Majeure as described in Article 11 below, 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.

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

## **ARTICLE 8—PAYMENT**

Accepted payment methods are found at <http://training.esri.com/gateway/index.cfm?fa=catalog.paymentdetails>.

If payment is made in the form of a purchase order, Esri shall invoice Client upon completion of each training course or immediately upon receipt of purchase order, as mutually agreed upon with the Client. Client shall make payment no later than thirty (30) days after receipt of invoice.

If Client is invoiced and pays that invoice prior to the scheduled training event, then Client has one (1) calendar year (twelve [12] consecutive months) from the date of the invoice to consume the training days. For a multiyear order, the training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.

## **ARTICLE 9—CONFIDENTIAL INFORMATION**

Except as provided in Article 5, Unique Client Coaching Privacy Terms, Esri or Client may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the confidential information of the other party.

## **ARTICLE 10—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE**

Except as specifically granted in this Agreement, Esri and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

## **ARTICLE 11—FORCE MAJEURE**

If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, threat of or actual terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

## **ARTICLE 12—WARRANTY**

Esri will provide training in a manner consistent with the technical and professional standards of the industry.

**12.1 Disclaimer of Warranties.** WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

## **ARTICLE 13—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY**

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO CLIENT FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY THE CLIENT FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **ARTICLE 14—EXPORT CONTROL REGULATIONS**

Esri technology is subject to US export control laws and regulations. Esri software, data, documentation, training materials, and any underlying information or technology may not be exported, reexported, or transferred in whole or in part to (i) any US embargoed or sanctioned country (including to a national or resident of a US embargoed or sanctioned country, currently including Cuba, Iran, North Korea, Sudan, and Syria); (ii) any person on the US Department of the Treasury'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 law or regulation.

#### **ARTICLE 15—TAXES**

Training provided is quoted exclusive of all state, local, value-added, or other taxes; customs; or duties or other charges (other than income taxes payable by Esri). In the event such taxes or charges become applicable to Esri's training or deliverables, Client shall pay any such applicable tax upon receipt of written notice that such taxes or charges are due.

#### **ARTICLE 16—UCC INAPPLICABILITY**

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

#### **ARTICLE 17—GOVERNING LAW**

This Agreement is governed by and construed in accordance with the laws of the state in which training is being held or, in the case of training provided over the Internet, the laws of the State of California, without reference to its conflict of laws principles.



## GENERAL LICENSE TERMS AND CONDITIONS (E200 04/19/2010)

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

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### ARTICLE 1—DEFINITIONS

**Definitions.** The terms used are defined as follows:

- a. "Beta" means any alpha, beta, or prerelease Software, Data, Documentation, or Web Services.
- b. "Data" means any Esri or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes, licensed under this License Agreement.
- c. "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- d. "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- e. "Software" means all or any portion of Esri's proprietary software technology accessed or downloaded from an Esri authorized Web site or delivered on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- f. "Term License" means licenses provided for use in a limited time period or on a subscription or transaction basis.
- g. "Web Services" means software services or Esri or third-party data provided by Esri that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet.

### ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Software, Data, Web Services, and Documentation are licensed and not sold. Esri and its licensors own Software, Data, Web Services, Documentation, and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect Software, Data, Web Services, and Documentation from unauthorized use, reproduction, distribution, or publication. Esri and its third-party licensors reserve all rights not specifically granted in this License Agreement including the right to change and improve Web Services.

### ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License.** Subject to the terms of this License Agreement, Esri grants to Licensee a personal, nonexclusive, nontransferable, perpetual (except as provided in Article 3 herein or if a term, subscription or non-perpetual type license or if terminated as provided in this License Agreement) license solely to

- a. Use the type and number of copies of Software, Data, and Documentation and access Web Services (i) for which the applicable license fees have been paid, (ii) for Licensee's or the City of San Diego's own internal use, and (iii) in accordance with Exhibit 1 and the licensed configuration on file as authorized by Esri.
- b. Access and use any secure Esri Web site resources made available to Licensee for Licensee's own internal use, provided that Licensee follows Esri's terms of use policy specified therein. All password or controlled access information provided by Esri shall be treated as Esri confidential information.

**3.2 Beta License.** Licensee may be accepted into a current Beta Testing Program.

- a. If Licensee is accepted into the Beta Testing Program, Esri will provide to Licensee access to Beta and will grant Licensee a personal, nonexclusive, nontransferable, royalty-free Term License to use Beta at the authorized and identified test sites solely for the purpose of testing Beta as delivered, in accordance with the Beta Testing Program guidelines and the terms of this License Agreement. This grant of license is effective from the date Licensee is accepted into the program or date of receipt of any Beta until the date of the commercial release of Software from Esri Customer Service or the date of termination of the Beta Testing Program for the specific Beta, whichever is sooner.
- b. Licensee agrees to provide suggestions or comments regarding performance, usability or effectiveness, bug reports, test reports, or other feedback (collectively, "Feedback") to Esri with respect to Beta.

- c. Licensee grants to Esri the right to freely use, share, disclose, reproduce, license, distribute and otherwise publicly display and perform any Feedback provided to Esri by Licensee. Licensee will not provide Feedback that Licensee knows or reasonably should have known contains content subject to license or use restrictions.
- d. Beta and Feedback contain confidential information and trade secrets that are proprietary to Esri. Licensee agrees to use commercially reasonable means (at least as great as those used by Licensee for its own confidential information) to maintain the integrity, confidentiality, and Esri proprietary rights in Beta and Feedback. Licensee may not share or release Feedback or results of Beta testing with any third party.
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## ARTICLE 4—SCOPE OF USE

### 4.1 Permitted Uses

- a. Licensee may install and store Software, Data, and Documentation on electronic storage device(s).
- b. Licensee may make one (1) copy of Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in Documentation.
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### 4.2 Uses Not Permitted

- a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share Software, Data, Web Services, or Documentation. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to Software, Data, Web Services, and Documentation. Licensee shall not use Software, Data, Web Services, or Documentation for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service).
- b. Except as provided herein, Licensee shall not redistribute Software, Data, or Web Services to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
- c. Licensee shall not reverse engineer, decompile, or disassemble Software, Data, Web Services, or Documentation except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measure(s) that controls access to or use of Software, Data, Web Services, and Documentation.
- e. Except as provided herein, Licensee shall not redistribute Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
- f. Licensee shall not use Software or Web Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.

- g. Licensee shall not remove or obscure any Esri or its licensors' patent, copyright, trademark, or proprietary rights notices contained in or affixed to Software, Data, Web Services, or Documentation.
- h. Licensee shall not unbundle individual or component parts of Software or Data for independent use.
- i. After a reasonable transition period, Licensee shall not use an older version of the Software that Licensee has updated to a newer version. Licensee shall not use more Software licenses at any given time than the total quantity in Licensee's licensed configuration on file with Esri.

## **ARTICLE 5—TERM AND TERMINATION**

This License Agreement is effective upon acceptance. This License Agreement and any licenses granted hereunder shall continue until (i) such time that Licensee elects in writing to discontinue use of Software, Data, Web Services, or Documentation and terminates the license; (ii) expiration of a Term License; or (iii) either party terminates the license for a material breach that is not cured within ten (10) days of written notice to the other party, except that termination is immediate for a material breach of a nature that is impossible to cure. Upon termination of a license, Licensee shall (i) cease access and use of Web Services and clear Web Services client-side data cache and (ii) cease use, uninstall, remove, and destroy all Software, Data, and Documentation and any whole or partial copies, modifications, or merged portions in any form and execute and deliver evidence of such actions to Esri.

## **ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS**

**6.1 Limited Warranties.** Except as otherwise provided in this Article 6, Esri warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) media on which the Software, Data, and Documentation are provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

**6.2 Data and Web Services Disclaimer.** Data and Web Services may contain some nonconformities, defects, errors, or omissions. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Esri and its licensors do not warrant that Data and Web Services will meet Licensee's needs or expectations, that the use of Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensors are not inviting reliance on Data or Web Services, and Licensee should always verify actual Data or Web Services.

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**EXHIBIT 1  
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(E300 03/29/2011)**

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The scope of use for the Software, Data, Web Services, and Documentation identified below is described in the applicable footnotes identified in parentheses.

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  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iOS (1, 25, and 33)
- ArcGIS Mobile Deployments (1, 15, 16, 25, 33, and 54)
- ArcGIS Server
  - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
  - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45; if licensed as a Term License, 6 will also apply)
    - > Cloud Bundle (6 and 33)
- ArcGIS Server Extensions
  - ArcGIS for INSPIRE (7, 8, 33, and 35)
  - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping (including SharePoint, JavaScript, Adobe Flex, Microsoft Silverlight/WPF, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (1 and 25)
  - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
  - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
  - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- Esri Aeronautical Solution (either 1 or 2)
- Esri Business Analyst (Canadian Edition) (either 1 or 2 and 6, 25, 33, 36, 45, and 48)
- Esri Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- Esri Business Analyst Online API for Adobe Flex, Microsoft Silverlight, SOAP, and REST (6, 16, 25, 33, 35, 55, and 56)

- Esri Business Analyst Server
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- Esri Business Analyst Server Developer (Canadian Edition) (3, 6, 25, 33, 35, 36, and 51)
- Esri Defense Mapping (either 1 or 2)
- Esri Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- Esri Nautical Solution (either 1 or 2)
- Esri Production Mapping (either 1 or 2)
- File Geodatabase API
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

**Web Services**

- ArcGIS Online Services (6, 25, 33, 34, and 35)
- Business Analyst Online (6, 25, 33, 48, 56, 57, and 58)
- Esri Redistricting Online (6, 25, 33, 34, and 35)

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- Data with ArcGIS Data Appliance (6, 23, 25, and 41)
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**WORK FORCE REPORT – Page 2**

NAME OF FIRM: Environmental Systems Research Institute, Inc. DATE: November 10, 2014

OFFICE(S) or BRANCH(ES): 380 New York Street, Redlands, California COUNTY: San Bernardino

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican -American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

**DUE TO THE EXPEDITED REQUEST FROM THE CITY PLEASE SEE THE ATTACHED ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., WORKFORCE DATA WHICH IS INCORPORATED HEREIN BY REFERENCE.**

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees	3101
---------------------------	------

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

**WORK FORCE REPORT – Page 3**

NAME OF FIRM: Environmental Systems Research Institute, Inc. DATE: November 10, 2014

OFFICE(S) or BRANCH(ES): 380 New York Street, Redlands, California COUNTY: San Bernardino

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

**ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., IS A SOFTWARE MANUFACTURER, NOT A BUILDING CONTRACTOR.**

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--



# CITY OF SAN DIEGO WORK FORCE REPORT

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm’s work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

## WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm’s work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

## MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.<sup>1,3</sup> In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.<sup>3</sup>

## TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one <sup>1</sup>, two <sup>2</sup> & three <sup>3</sup>. These numbers coincide with the types of work force report required in the example. See below:

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force \*
- <sup>3</sup> Managing Office Work Force

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

## **Exhibit A: Work Force Report Job categories-Administration**

Refer to this table when completing your firm’s Work Force Report form(s).

### **Management & Financial**

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

### **Professional**

Art and Design Workers
Counselors, Social Workers, and Other Community and

Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

**Architecture & Engineering, Science, Computer**

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

**Technical**

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

**Sales**

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

**Administrative Support**

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

**Services**

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

**Crafts**

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

**Operative Workers**

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

**Transportation**

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

**Laborers**

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

## Exhibit B: Work Force Report Job categories-Trade

### Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

### Carpenters

#### Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

#### Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

### Construction Laborers

#### Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

### Electricians

### Elevator Installers and Repairers

#### First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers
---

### Glaziers

#### Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

### Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

#### Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

#### Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

#### Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

### Plasterers and Stucco Masons

### Roofers

### Security Guards & Surveillance Officers

### Sheet Metal Workers

### Structural Iron and Steel Workers

#### Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

### Workers, Extractive Crafts, Miners

# Entire US

## ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., WORKFORCE DATA

All permanent full-time and part-time employees, including apprentices and on-the-job trainees, are counted. No person is counted in more than one race/ethnic group.

Job Categories	Hispanic or Latino		Race/Ethnicity												Total
			Not-Hispanic or Latino												
	Male						Female								
	Male	Female	White	Black	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	
Executive/Senior Level Officials and Managers	0	0	7	0	0	0	0	0	1	0	0	0	0	0	8
First/Mid-Level Officials and Managers	8	6	162	2	1	9	0	1	66	2	0	7	0	1	265
Professionals	73	36	920	44	2	286	4	15	343	16	1	134	1	6	1881
Technicians	7	3	22	2	0	2	0	1	7	0	0	2	0	0	46
Sales Workers	14	17	366	4	0	14	1	6	148	8	0	11	0	2	591
Administrative Support Workers	9	53	23	1	1	4	1	0	174	14	0	8	2	4	294
Craft Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operatives	2	0	5	0	0	0	0	0	3	2	0	0	0	0	12
Laborers and Helpers	3	0	0	1	0	0	0	0	0	0	0	0	0	0	4
Service Workers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>116</b>	<b>115</b>	<b>1505</b>	<b>54</b>	<b>4</b>	<b>315</b>	<b>6</b>	<b>23</b>	<b>742</b>	<b>42</b>	<b>1</b>	<b>162</b>	<b>3</b>	<b>13</b>	<b>3101</b>

Figures represent employment data up to July 15, 2014. Questions regarding the information on this form should be addressed to Shannon Harbottle, Sr. Compliance Specialist.

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO

DATE:

**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

November 12, 2014

SUBJECT: Third Amendment to Enterprise License Agreement with Environmental Science Research Institute (ESRI) in Support of Geospatial Software.

**GENERAL CONTRACT INFORMATION**

Recommended Contractor: Environmental Science Research Institute (ESRI) (Not Certified)

**Amount of this Action:** \$ 670,834 (FY 2015)

\$ 575,000 (FY 2016)

Cumulative Amount: \$1,245,834 (Not to Exceed)

Funding Source: City of San Diego

Goal: N/A

**SUBCONTRACTOR PARTICIPATION**

There is no subcontractor participation associated with this action; however, subsequent actions must adhere to funding agency requirements.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Environmental Science Research Institute (ESRI) submitted a Work Force Report for their San Diego employees dated, November 10, 2014 indicating 3,101 employees in their Administrative Work Force.

The Administrative Work Force indicates under representation in the following categories:

Black, Latino, Asian, Filipino, and Female in Management & Financial; and Sales  
Latino, American Indian, Filipino and Female in Professional  
Black, Latino, and Filipino in A&E, Science, Computer  
Asia, Filipino and Female in Technical  
Black, Latino, Asian and Filipino in Administrative Support  
Latino, Asian, and Filipino in Operative Workers

Based on the under representations in the workforce noted above, staff has an approved Equal Employment Opportunity (EEO) Plan on file as of November 12, 2014. Staff will continue to monitor the firm's efforts to implement their EEO plan.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

MB

**The City of San Diego  
COMPTROLLER'S CERTIFICATE**

**CERTIFICATE OF UNALLOTTED BALANCE**

ORIGINATING DEPT. 3000007396  
NO.: 1314110017

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_  
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
001									
TOTAL AMOUNT									

FUND OVERRIDE

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \_\_\_\_\_ \$670,834.00

Vendor: Environmental Science Research Institute (ESRI)

Purpose: To authorize the Mayor or his designee to execute Amendment No. 3 between the City of San Diego and ESRI, Inc. for Geographic Information Systems (GIS) software licensing and maintenance services pursuant to the terms and conditions contained in the amended agreement, on file with the City Clerk, with an amount not to exceed \$670,834 for the first year of the two year amendment.

Date: November 12, 2014 By: Luca Gonzales  
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
1	200448				513002	1314	1314110017		\$670,834.00
TOTAL AMOUNT									\$670,834.00