



# City of Grand Island

Tuesday, May 22, 2012

Council Session

## Item G15

**#2012-135 - Approving Renewal of Small Government Enterprise License Agreement with Environmental Systems Research Institute (ESRI)**

Staff Contact: Jaye Monter

# **Council Agenda Memo**

**From:** Jaye Monter, Finance Director

**Meeting:** May 22, 2012

**Subject:** Renewing Small Government Enterprise License Agreement from Environmental Systems Research Institute (ESRI)

**Item #'s:** G-15

**Presenter(s):** Jaye Monter, Finance Director

## **Background**

The City of Grand Island has a comprehensive computerized Geographic Information System (GIS). The GIS consists of hardware, software and methods designed to support the data capture, processing, analysis, modeling and display of geospatial data. The data includes property boundaries, utility features, sanitary/storm sewer features, U.S census blocks, street centerlines, discrete addresses, zoning, fire districts, political boundaries, several years of aerial photography, optical remote sensing technology known as Light Detection And Ranging (LiDAR), and several more. Nearly all city departments have benefited from this data. The software required to edit, manipulate, analyze and present this data is provided by Environmental Systems Research Institute (ESRI). During the last three years, we have installed and updated ArcInfo on approximately 30 PCs. In addition to the desktop software, we have also installed and updated server based software such as ArcGIS Server and ArcIMS to distribute maps and data on the internet either through MapSifter or other online applications. This license agreement greatly simplifies the licensing and procurement for ESRI software and allows unlimited installs for the three year contract period.

## **Discussion**

The current three year Small Government Enterprise License Agreement with ESRI, which was signed June 22, 2009 in resolution 2009-128, will expire June 29, 2012. This agreement will renew for an additional three years at the same cost to the City as it was three years ago. The agreement will be paid in three annual installments of \$35,000 each for a total of \$105,000.

The new agreement for the City of Grand Island from ESRI, Inc., a General Services Administration (GSA) Contract reseller with special pricing available to government agencies, will be effective from June 30, 2012 through June 29, 2015. This purchase is budgeted for \$35,000 annually in the Information Technology Division Fund.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the three year renewal of ESRI licenses.
2. Disapprove or deny the agreement.
3. Modify the Resolution to meet the wishes of the Council
4. Table the issue

### **Recommendation**

City Administration recommends that the Council approve the new three year ESRI license agreement.

### **Sample Motion**

Move to approve the Small Government Enterprise License Agreement with ESRI, for \$105,000, payable in three annual installments.



Esri Inc  
380 New York Street  
Redlands CA 92373

## **SUBJECT: MAINTENANCE QUOTE**

**DATE:** 03/07/2012  
**TO:** Pat Larson  
**ORGANIZATION:** CITY OF GRAND ISLAND  
INFORMATION TECHNOLOGY DEPT  
**FAX #:** **PHONE #:** 308-385-5444  
**FROM:** Patrick Whalen  
**FAX #:** 909-307-3083 **PHONE #:** 888-377-4575 Ext. 2470  
**EMAIL:** pwhalen@esri.com

Number of pages transmitted  
(including this cover sheet): 3

QUOTATION #25518701  
DOCUMENT DATE: 03/07/2012

Please find the attached quotation for your forthcoming software maintenance term. Keeping your maintenance current entitles you to exclusive benefits, and if you choose to discontinue your coverage, you will become ineligible for these valuable benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your coverage at a later date. For details regarding the maintenance program benefits for your licensing, please visit <http://www.esri.com/maintenancebenefits>.

Customers who have multiple copies of some Esri products may have the option of supporting some of their licenses with secondary maintenance. Please contact Customer Service to find out more about the availability of secondary maintenance.

For information about Esri Desktop, Developer software, or Web services terms of use, as well as purchase order terms and conditions, please visit <http://www.esri.com/legal/licensing/software-license.html>.

Do you need training? You can get affordable Esri software training for your entire organization with a subscription to Esri Virtual Campus. To find out how, visit the campus: <http://campus.esri.com/campus/catalog/subscriptions>

For details about ECP discounts and waivers for non-profit users please visit <http://www.conservaiongis.org/grant>

If you have any questions or need additional information, please contact Customer Service at 888-377-4575 Option 5.



**esri**<sup>®</sup>

380 New York Street  
Redlands, CA 92373  
Phone: 888-377-45752470  
Fax #: 909-307-3083

## Quotation

**Date:** 03/07/2012

**Quotation Number:** 25518701

CITY OF GRAND ISLAND  
INFORMATION TECHNOLOGY DEPT  
PO Box 1968  
GRAND ISLAND NE 68802-1968  
**Attn:** Pat Larson

**Send Purchase Orders To:**

Esri, Inc.  
380 New York Street  
Redlands, CA 92373-8100  
Attn: Patrick Whalen

**Please include the following remittance address on your Purchase Order:**

Esri, Inc.  
File #54630  
Los Angeles, CA 90074-4630

**Customer Number:** 363161

For questions regarding this document, please contact Customer Service at 888-377-4575.

Item	Qty	Material#	Unit Price	Extended Price
<p>Per the terms and conditions in your Esri Enterprise License Agreement, your organization is required to provide an annual usage report. This report should detail all deployments made under this agreement for your previous term, and should be provided to Esri as an Excel spreadsheet.</p> <p>The annual usage report must include actual license counts by product, licensee, and location.</p> <p>Please return your report via email to <a href="mailto:ela_usage_reports@esri.com">ela_usage_reports@esri.com</a>.</p> <p>Thank you in advance for your prompt attention to this matter.</p>				
10	1	110036	35,000.00	35,000.00
		Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement		
		Start Date: 06/30/2012		
		End Date: 06/29/2013		
<b>Subtotal</b>				35,000.00
<b>Estimated Tax</b>				0.00
<b>Total</b>				<b>\$ 35,000.00</b>

**DUNS/CEC: 06-313-4175 CAGE: 0AMS3**

This quotation is valid for 90 days and is subject to your Esri License Agreement. The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

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

**Issued By:** Patrick Whalen

**Ext:** 2470

[WHALENP]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



**esri**<sup>®</sup>

380 New York Street  
Redlands, CA 92373  
Phone: 888-377-45752470  
Fax #: 909-307-3083

## Quotation

Page 2

Date: 03/07/2012      Quotation No: 25518701      Customer No: 363161

Item	Qty	Material#	Unit Price	Extended Price
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BY SIGNING BELOW, YOU ARE INDICATING THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION. DO NOT USE THIS FORM FOR ORDER ACTIVATION IF YOUR ORGANIZATION WILL NOT HONOR AND PAY AN INVOICE THAT HAS BEEN ISSUED AT YOUR DIRECTION WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted.

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

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

This transaction is governed exclusively by the terms of the above-referenced contract, if any, or Esri's standard terms and conditions at [www.esri.com/legal](http://www.esri.com/legal).

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

By signing below, you are authorizing Esri to issue a software support invoice in the amount of \$\_\_\_\_\_ plus sales tax, if applicable.

Please check one of the following:

\_\_\_\_\_ I agree to pay any applicable sales tax.

\_\_\_\_\_ I am tax exempt. Please contact me if Esri does not have my current exempt information on file.

Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Title

[WHALENP]



April 2, 2012

Mr. Pat Larson  
CITY OF GRAND ISLAND  
100 E 1ST ST  
GRAND ISLAND, NE 68802

Dear Pat,

The Esri Small Municipal and County Government Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to Esri® term license software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

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

An ELA will provide your organization with numerous benefits including:

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

The following business terms and conditions will apply:

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

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The organization will act as an Esri reference site and will permit Esri to publicize its use of Esri software and services.
- The fee and benefits offered in this ELA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government ELA terms and conditions.
- Licenses are valid for the term of the ELA.

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

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

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

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

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

Thank you very much for your consideration.

Best Regards,

Jessica Spain





ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.  
7775 Walton Parkway Suite 270  
New Albany, OH 43054  
Phone: (614) 933-8698 Fax: (614) 933-9258  
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

*To expedite your order, please attach a copy of  
this quotation to your purchase order.  
Quote is valid from: 04/02/2012 To: 07/01/2012*

## Quotation # 20403140

Date: April 2, 2012

Customer # 363161 Contract #

CITY OF GRAND ISLAND  
INFORMATION TECHNOLOGY DEPT  
100 E 1ST ST  
GRAND ISLAND, NE 68802

ATTENTION: Pat Larson  
PHONE: (308) 385-5444  
FAX:

Material	Qty	Description	Unit Price	Total
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement. Year 1.	35,000.00	35,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement. Year 2.	35,000.00	35,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement. Year 3.	35,000.00	35,000.00
			Item Total:	105,000.00
			Subtotal:	105,000.00
			Sales Tax:	0.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			Total:	\$105,000.00

Please reference attached cover letter for terms and payment information

\* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes.

For questions contact: Jessica Spain

Email: [jspain@esri.com](mailto:jspain@esri.com)

Phone: (614) 933-8698 x5514

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions  
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

***If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630***

SPAINJ

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



## SMALL MUNICIPAL AND COUNTY ENTERPRISE LICENSE AGREEMENT

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

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and **Environmental Systems Research Institute, Inc. ("Esri")**, with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of Esri's receipt of Licensee's Order citing this ELA. This ELA grants Licensee certain rights to use specific Esri Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA incorporates the ELA Quotation by reference and comprises (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207SET), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise this ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207SET), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of this ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Order or addendum will not apply, and the terms of this ELA will govern.

### ENTERPRISE SOFTWARE SCHEDULE

#### Unlimited Quantities

##### **Desktop Software and Extensions**

ArcInfo

ArcEditor

ArcView

ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, ArcGIS Network Analyst, Geostatistical Analyst, ArcGIS ArcScan, ArcGIS Data Reviewer, ArcGIS Publisher, Maplex for ArcGIS, ArcGIS Schematics, and ArcGIS Workflow Manager

##### **Server Software and Extensions**

ArcGIS Server Workgroup and Enterprise (Advanced, Standard, and Basic)

ArcIMS

ArcGIS Server Extensions: 3D, Schematics, Geostatistical, ArcGIS Workflow Manager, Network, Image, and Spatial

#### Developer

ArcGIS Engine Runtime

ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

#### Limited Quantities

One (1) Annual Subscription to Esri Developer Network (EDN)

One (1) Esri CityEngine Advanced Single Use License

### OTHER BENEFITS

Number of Esri International User Conference Registrations provided annually	<b>3</b>
Number of Tier 1 Help Desk Individuals authorized to call Esri	<b>3</b>
Maximum number of sets of backup media, if requested*	<b>2</b>
Virtual Campus Annual User License allowance	<b>7,500</b>
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside of this Agreement (Discount does not apply to Small Enterprise Training Package.)	

\* Additional sets of backup media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it to Attn.: Esri Customer Service, 380 New York Street, Redlands, CA 92373-8100; e-mailing it to [service@esri.com](mailto:service@esri.com) or faxing it to 909-307-3083. **ADDITIONAL OR CONFLICTING TERMS IN LICENSEE'S ORDER WILL NOT APPLY, AND THE TERMS OF THIS ELA WILL GOVERN.**

ACCEPTED AND AGREED:

\_\_\_\_\_  
(Licensee)

By: \_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

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

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

Esri EIN Number: **95-2775732**

#### **Licensee Contact Information**

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

ELA Quotation Number: \_\_\_\_\_

Esri Contract Number: \_\_\_\_\_

## ELA TERMS AND CONDITIONS

### ARTICLE 1—DEFINITIONS

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

- "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 ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related registration/authorization numbers or access codes) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including help files and user reference documentation that are delivered with the Software or, if delivered via download, that are delivered from the Software setup or installation program.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri to Licensee for the Enterprise Software.
- "ELA Quotation" means the Esri quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by Esri under this ELA.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Software" means the actual copy of all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies as identified in Exhibit 1.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License(s)" means license(s) provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee 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 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.
- "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, excluding Virtual Campus, as identified in Exhibit 1.

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

The Enterprise Software is licensed and not sold. Esri and its licensors own the Enterprise Software 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 the Enterprise Software from unauthorized use, reproduction, distribution, or publication. Esri and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Web Services.

### ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License.** Subject to the terms and conditions of this ELA, Esri grants to Licensee a personal, nonexclusive, nontransferable Term License solely to

- a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
- b. Access and use any secure Esri website resources made available to Licensee for Licensee's 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.
- c. Use Enterprise Software in accordance with Exhibit 1—Scope of Use, provided that all licenses are Term Licenses.

**3.2 Consultant Access.** Subject to Section 3.1, Licensee may provide access to and use of the Enterprise Software to any consultant or contractor of Licensee, provided consultants' and contractors' access to and use of the Enterprise Software is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Software from Licensee's on-site computers or machines, or (iii) remotely accessing or using Enterprise Software from a third party's computers or machines under contract to Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultants and contractors to discontinue access to and use of Enterprise Software upon completion of work for Licensee.

### ARTICLE 4—SCOPE OF USE

#### 4.1 Permitted Uses

- a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
- b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize the 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 the Documentation.
- d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice

acknowledging the proprietary rights of Esri and its licensor(s): "Portions of this document include intellectual property of Esri and its licensor(s) and are used herein under license. Copyright © [Insert the actual copyright date(s) from the source materials] Esri and its licensor(s). All rights reserved."

#### 4.2 Uses Not Permitted

- a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software 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 charging for access to the site or service).
- b. Except as provided herein, Licensee shall not redistribute the Software 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 the Enterprise Software, 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, the Enterprise Software.
- e. Except as provided herein, Licensee shall not redistribute the 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 the 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 licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Enterprise Software.
- h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.
- i. Hard-copy Documentation may not be copied.
- j. Licensee shall not use, transfer, redistribute, or Deploy Enterprise Software outside the United States.

#### ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

**5.1 Term.** The term of this ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite term or perpetual license grants are provided with this ELA.

**5.2 Termination for Lack of Funds.** Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

**5.3 Termination for a Material Breach.** Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

**5.4 No Use upon Expiration or Termination.** Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and

Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to Esri. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

#### 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) the media upon which the Software is provided, if any, 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.** The 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 licensor(s) do not warrant that the Data and Web Services will meet Licensee's needs or expectations, that the use of the Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. Esri and its licensor(s) are not inviting reliance on this Data or Web Services, and Licensee should always verify actual Data or Web Services.

**6.3 Special Disclaimer.** SAMPLES, PATCHES, AND HOT FIXES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSEE ASSUMES ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SAMPLES, PATCHES, AND HOT FIXES.

**6.4 Internet Disclaimer.** THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

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**9.3 Taxes and Fees.** Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. Esri will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

**9.4 No Implied Waivers.** The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

**9.5 Severability.** The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

**9.6 Successor and Assigns.** Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without Esri's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

**9.7 Survival of Terms.** The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

**9.8 Equitable Relief.** The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Esri shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

**9.9 Governing Law.** This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

#### ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Enterprise Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable Esri US Software Maintenance Program document (found at [www.esri.com/legal](http://www.esri.com/legal)) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by Licensee

- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
- (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 user. 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 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) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact Esri directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from 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.
- (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 user.

Esri may, at Esri's sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website.

- c. No Software other than the defined Enterprise Software will receive maintenance under this ELA. Licensee may acquire maintenance for other Software (non-Enterprise Software) outside this ELA.

#### ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

##### 11.1 Orders, Delivery, and Deployment

- a. Licensee shall issue an Order upon execution of this ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of this ELA. Esri's Federal ID Number is 95-2775-732.
- b. Upon receipt of the initial Order from Licensee, Esri shall authorize download of the Enterprise Software to Licensee for its Deployment activities. If requested, Esri will ship backup media to the ship-to address identified on the Order, FOB Destination, with shipping charges prepaid. For those entities that avoid sales tax by downloading deliverables, request for delivery or receipt of tangible media may cause license fees to be subject to taxes. Licensee acknowledges that should such taxes become due, Esri has a right to invoice and Licensee agrees to pay any such sales or use tax associated with its receipt of tangible media.
- c. Esri shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
- d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

##### 11.2 Order Requirements

- a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
- b. The following information shall be included in each Order (or ordering document):
  - (1) Licensee name; Esri customer number, if known; and bill-to and ship-to addresses
  - (2) Order number
  - (3) Applicable annual payment due

- (4) On the face page of its Order (or ordering document), Licensee shall insert a reference to this ELA and the following statement: "THIS ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE ORDER WILL NOT APPLY."

#### **ARTICLE 12—ENDORSEMENT AND PUBLICITY**

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of Esri by Licensee. Licensee agrees that upon execution of this ELA, Esri may publicize the existence of this ELA.

#### **ARTICLE 13—ADMINISTRATIVE REQUIREMENTS**

**13.1 OEM Licenses.** Certain Esri partners are authorized to either embed limited portions of Esri technology or bundle Esri products or services with their application or service under Esri's OEM or Solution OEM programs. Partner pricing and product bundling are 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 partner or Esri, directly or indirectly, as a result of or based on the availability of such Software, Data, or Web Services as Enterprise 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, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM partner and not through this ELA.

**13.2 Product Obsolescence.** During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of this ELA, but updates for such obsolete Enterprise Software may not be available. Esri's Product Life Cycle Support Policy, available at [help.arcgis.com/en/shared/Product-life-cycle/ProductLifeCycle.pdf](http://help.arcgis.com/en/shared/Product-life-cycle/ProductLifeCycle.pdf), defines the support phases and overall support plans. ELA Maintenance shall be subject to the individual Product Life Cycle Support Status, which can be found at <http://resources.arcgis.com/content/product-life-cycles>.

**13.3 Renewal.** Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on ELA will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

**13.4 Annual Report of Deployments.** At each anniversary date and ninety (90) days prior to the expiration date of this ELA, Licensee shall provide a written report to Esri detailing all Deployments made. The report will be subject to audit by an authorized representative of Esri.

#### **ARTICLE 14—OPTIONAL ITEMS**

If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of this ELA with respect to the training courses.





**EXHIBIT 1  
SCOPE OF USE  
(E300 02/27/2012)**

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

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

**Software**

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iOS, Windows Phone, or Android (1, 16, 25, and 33)
- ArcGIS Desktop
  - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
  - 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 Runtime (1, 15, 18, 33, 35, and 59)
- ArcGIS Runtime SDK (1, 15, 18, 33, 35, and 60)
- 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, and 35)
- 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, and 45)
- 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
  - Workgroup (either 3, 4, or 5 and 8, 9, 21, 25, 28, 29, 31, 33, 39, 40, 45, and 48)
  - Enterprise (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 39, 40, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) (either 3, 4, or 5 and 8, 9, 21, 25, 27, 31, 33, 36, 39, 40, and 45)
- Esri Business Analyst Server Developer (3, 6, 25, 33, 35, and 51)
- Esri Business Analyst Server Developer (Canadian Edition) (3, 6, 25, 33, 35, 36, and 51)
- Esri CityEngine (either 1 or 2 and 44)
- 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 File Geodatabase API (47)
- Esri Maps for IBM Cognos (5 and either 49 or 53)
- Esri Nautical Solution (either 1 or 2)
- Esri Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- 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)
- Portal for ArcGIS (5, 6, 31, 33, 61, 62, and 63)
- Tracking Server (either 4 or 5 and 31)

**Web Services**

- ArcGIS Online Services (6, 25, 33, 34, and 35)
- Esri Business Analyst Online (6, 25, 33, 48, 56, 57, and 58)
- Esri Business Analyst Online Mobile (1, 6, 25, 33, 48, 56, 57, and 58)
- Esri Community Analyst (6, 25, 33, 48, 56, 57, and 58)
- Esri MapStudio (6, 25, 33, 34, 35, and 56)
- Esri Redistricting Online (6, 25, 33, 34, and 35)

**Data**

- Data with ArcGIS Data Appliance (6, 23, 25, and 41)
- Esri Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- Esri Business Analyst (Canadian Edition) Data (either 1 or 2 and 6, 21, 25, 33, 36, and 45)
- Esri Business Analyst Data (either 1 or 2 and 21, 25, 33, 45, and 48)
- Esri Business Analyst Server (Canadian Edition) Data (either 3, 4, or 5 and 21, 25, 33, 36, and 45)
- Esri Business Analyst Server Data (either 3, 4, or 5 and 21, 25, 33, 45, and 48)
- Esri Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- Esri Data (either 1, 2, or 5 and 25 and 48)
  - Demographic, Consumer Spending, Market Potential, Retail MarketPlace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)



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21. Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the individual's place of residence, as profiled in the Tapestry Segmentation system.

22. (a) ArcGIS Engine Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an ArcGIS Engine application on one (1) computer; and (c) the ArcGIS Engine Runtime extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. A single user can have multiple applications installed on one (1) computer for use only by that end user.
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35. Licensed end users shall not share the client-side data cache derived from ArcGIS Online Services with other licensed end users or third parties.
36. Licensee's use of Esri Business Analyst (Canadian Edition) Data is subject to the Use of Data Restrictions specific to [Esri Business Analyst \(Canadian Edition\) Data](#).
37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
38. The ArcGIS Server 3D extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cache(s) or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server 3D extension Software is permitted with ArcGIS Server Standard.
39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.
43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.

44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with Esri Business Analyst and Esri Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension. If Licensee orders a license for Esri Business Analyst or Business Analyst (Canadian Edition) with a subset of the national dataset (i.e., Region, State, Local), Licensee may use only the licensed subset, not any other portion of the national dataset.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Licensee may develop and distribute software or web applications that use the Esri File Geodatabase API to Licensee's end users.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the Esri reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of Esri. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. A user quantity restriction applies. This authorizes installation and use of a sufficient quantity of instances of ArcGIS Server Enterprise Standard solely for the purposes of integrated communication between Esri ArcGIS Server Map Services and IBM Cognos data packages and is subject to the per user restriction.
50. Reserved
51. Esri Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of Esri. Licensee shall treat any source code file identified as "Software" in a README file or at <http://www.esri.com/legal/> as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. This authorizes installation and use of a sufficient quantity of instances of ArcGIS Server Enterprise Standard solely for the purposes of integrated communication between Esri ArcGIS Server Map Services and IBM Cognos data packages.
54. ArcGIS Mobile is licensed for use with ArcGIS Server Advanced (Enterprise or Workgroup) and ArcGIS Desktop (ArcInfo, ArcEditor, ArcView, and ArcGIS Engine applications).
55. Licensee may develop software or web applications that use the Business Analyst Online API to access, query, create, display, and redistribute Reports and resulting static, electronic maps to end user(s) of Licensee's software or web applications. End user(s) of Licensee's software or web applications may use the Reports and maps for internal purposes only and not for further redistribution. "Report" means any formatted output created by the Business Analyst Online API, which includes PDF, CSV, Excel, HTML, and XML formats. Licensee shall not redistribute any Data in vector formats.
56. For Reports or maps displayed or posted to an external website, or Reports or maps created for Licensee's end user(s), Licensee shall affix an attribution notice to Licensee's online and/or hard-copy output that acknowledges Esri's and its third-party data supplier's intellectual property. These notices are found in the PDF or export image format of each individual Report or image, or as follows: "Source [Esri, Supplier]" or Copyright © [year(s)] [Esri, Supplier]. All rights reserved."
57. Licensee may only display or post any combination of 100 Business Analyst Online or Community Analyst Reports and maps on its external websites.
58. Licensee shall order a separate Business Analyst Online or Community Analyst subscription for each person who uses Business Analyst Online or Community Analyst and shall provide output from the Business Analyst Online or Community Analyst subscription only to the e-mail of the individual subscriber. Licensee shall not unbundle or use independently of Licensee's Subscription any software components used to access the Deliverables, including, but not limited to, Business Analyst Online API or Community Analyst API.
59. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Runtime Software up to the number of deployment licenses that have been purchased.
60. (a) ArcGIS Runtime licenses shall not be used for Internet and server development and deployment; (b) an end user must purchase a software application that includes an ArcGIS Runtime license to obtain the right to run an ArcGIS Runtime application on one (1) computer. A single user may have multiple ArcGIS Runtime licensed applications installed on one (1) computer that utilize a single ArcGIS Runtime.

61. Oracle is a third-party beneficiary of Esri's rights under the Esri License Agreement with respect to the Software but is not a party hereto and assumes no obligations hereunder.
62. Esri and its Licensors reserve the right to conduct an audit of Licensee's use of the Software. Licensee will provide reasonable assistance and access to information regarding Licensee's use of the Software. Audit results may be reported to Esri's Licensors. Fees for over-deployment or excess usage are payable within thirty (30) days of the invoice date.
63. Licensee may not publish the results of benchmark tests run on the Software without the prior written permission of Esri and its Licensors.



**EXHIBIT 2  
TRAINING ADDENDUM  
(E207SET 3/11)**

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

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**ARTICLE 1—TRAINING DESCRIPTION**

Esri offers instructor-led training related to the use of its proprietary GIS software. Esri will provide to Licensee a fixed number of training days to use for Instructor-Led Training, as defined in this Small Enterprise Training Package, if purchased. Instructor-Led Training events occur at an Esri Learning Center or via the web in a cloud environment. The Esri software training course(s) to be conducted, location, schedule dates, 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.

**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 class scheduled dates approximately ten (10) business days prior to the class start date.

**ARTICLE 3—LICENSEE'S RESPONSIBILITIES**

- Licensee must ensure the protection of Esri's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of Esri's training material(s) unless otherwise required by law.
- Licensee must not resell seat(s) to an Esri training class unless explicitly authorized in writing by Esri.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on Esri's Training website.
- Licensee 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 a Virtual Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Students.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class 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.
- 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, Licensee must submit to Esri Customer Service a list of the names of Students that are to attend any training class. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- 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 regulation requirements, course scheduling changes, or cancellations.
- 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 these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment 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.**

**ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY**

- When a Student's place in class 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 class 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 class 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 class 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 class 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 Student Seat fee.

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.

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.

#### **ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE**

- To order training, Licensee must include training in the Purchase Order for the ELA or provide a Purchase Order as required and specified within the ELA that matches the Esri quotation.
- Where Licensee submits additional Purchase Orders to purchase training days for additional year(s), any unused training days will automatically roll over.
- A Purchase Order is required annually for each three (3)-year term. Failure to submit annual Purchase Orders will result in the forfeit of unused training days.
- Licensee must assign an individual within its organization to the role of Training Administrator to serve as liaison between Licensee's organization and Esri as well as internally manage and authorize allocated training days.
- The training days are available for a period of twelve (12) months, commencing on the purchase Effective Date, and ending when all training days are consumed, whichever is sooner.
- Esri will invoice for outstanding training expenses where applicable.
- Training days are not transferable and not refundable for any other Esri products or services.

#### **ARTICLE 6—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 7—WARRANTY**

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

**7.2 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 TRAINING IS ERROR FREE.

#### **ARTICLE 8—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY**

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE 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 LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **ARTICLE 9—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.

R E S O L U T I O N 2012-135

WHEREAS, the Information Technology Division of the Finance Department works continually on maintaining the city's computer network, both hardware and software, etc, and

WHEREAS, due to the growing number of Geographic Information System (GIS) users, the variety of GIS software programs utilized and the constant need for software upgrades, it is imperative to consistently maintain the entire city software licenses; and

WHEREAS, the City of Grand Island can utilize the Environmental Systems Research Institute (ESRI) Small Government Enterprise License Agreement to install an unlimited amount of licenses with the City until June, 2015; and

WHEREAS, the cost for such an agreement is \$105,000, which can be paid in three annual installments of \$35,000; and

WHEREAS, this is the most cost effective approach to upgrading GIS software, and

WHEREAS, the proposed agreement has been reviewed and approved by the City Attorney's office;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Information Technology Department is hereby authorized to utilize the ESRI Small Government Enterprise License Agreement by entering into a three-year agreement to license any City computer for ESRI software at a cost of \$105,000, which can be paid in three annual installments.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 22, 2012.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
May 21, 2012	☐ City Attorney