

Committee-of-the-Whole Agenda

6:30 p.m.

Tuesday, February 3, 2015

Mayor's Board Appointments

Mayor's appointment of the following to the Citizens Advisory Council on Urban Policy:

Dougal Nelson to fill the expired term of Stan Leach to expire July 31, 2016

Carol Triebel to fill the unexpired term of Mary Kay Lorensen to expire July 31, 2016

Janet Zam to fill the expired term of Tom Luse to expire July 31, 2016

Presentation

Geographic Information Systems (GIS) Update (Todd Green, GIS Coordinator)

Questions on the Agenda

Agenda Items

- 1. GIS Contract** (Nate Scott, Information Technology Manager)
- 2. Surplus Property** (Kim Hankins, Public Safety Director)
- 3. Development Agreement Extension** (Lew Steinbrecher, City Administrator)
- 4. Other**
- 5. Public Comment**

Explanation

- 1. A Resolution authorizing the Mayor and City Clerk to execute a Small Government Enterprise Licensing Agreement (ELA) with Environmental Systems Research Institute, Inc. (ESRI).** (Nate Scott, Information Technology Manager)

Explanation: Prior to 2012, the City spent \$22,400 annually for à la carte software licensing fees to ESRI for its ArcGIS suite of products. Those fees included two server licenses for enterprise functionality plus 17 user licenses that were shared by approximately 45 City employees. The ELA is a three-year agreement with a commitment to pay \$35,000 per year and includes the support benefits the City receives now plus the following: unlimited desktop and server licensing with updates, additional software extensions that allow for advanced GIS analysis, mobile editing of live enterprise data, and online training available to any City employee (see attached for details). The cost of à la carte annual licensing on these products to meet the average usage demand would be \$101,500. The ELA provides a significantly reduced cost per license, solves all license-sharing conflicts users experienced prior to 2012, and facilitates a number of workflows in several City departments. This is a budgeted amount for 2015 that would recur in 2016 and 2017. Additional documentation attached.

Staff Recommendation: Approval
Fiscal Impact: \$35,000 per year in 2015, 2016, and 2017 from 443-0425-417.04-21.
Public Notice/Recording: N/A
Goals Impacted: Financially Strong City, Improved City Infrastructure and Facilities

- 2. A Resolution declaring the following Article 36 seized and forfeited vehicle as surplus property: 2002 Volkswagon Passat, VIN# WVWPD63B92P037349.** (Kim Hankins, Police Chief/Public Safety Director)

Explanation: Illinois State statute provides that law enforcement agencies may seize vehicles used during the attempt or commission of specific crimes and subsequently initiate forfeiture proceedings on those vehicles. The above vehicle has been forfeited to the police department, and City staff is requesting that it be declared as surplus property and disposed of by the Finance Director through the legal disposal process that is most advantageous to the City, whether sealed bid, auction, negotiation, or otherwise.

Staff Recommendation: Approval
Fiscal Impact: Proceeds after costs are for use by the seizing law enforcement agency
Public Notice/Recording: N/A
Goals Impacted: None Identified

- 3. A Resolution amending Council Bill/Resolution No. 1015-2014 by extending the term for City staff to negotiate exclusively with Russell Construction for development of the Moline Place Phase II/Hawk Hollow Redevelopment Project.** (Lew Steinbrecher, City Administrator)

Explanation: On February 11, 2014, City Council approved Council Bill/Resolution No. 1015-2014 authorizing City staff to negotiate exclusively with Russell Construction (“Developer”) for a term of twelve months for the development of the Moline Place Phase II/Hawk Hollow Redevelopment Project. During the past year, staff and Developer have met and discussed the development and a purchase and development agreement for the property, which shall now be known as “The Point.” Developer is finalizing its plans and is reviewing a draft agreement. Therefore, staff and Developer are requesting that an additional 90 days be granted to finalize an agreement for this development.

Staff Recommendation: Approval
Fiscal Impact: N/A
Public Notice/Recording: N/A
Goals Impacted: A Great Place to Live, Improved City Infrastructure & Facilities



December 12, 2014

Mr. Todd Green
City of Moline
1640 6th Ave
Moline, IL 61265

Dear Todd,

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,

Chad Anderson



Quotation # 20461306

Date: December 12, 2014

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
880 Blue Gentian Rd, Ste 200
St. Paul, MN 55121-1596
Phone: (651) 454-0600 Fax: (651) 454-0705
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Customer # 111585 Contract #

City of Moline
Information Technology
1640 6th Ave
Moline, IL 61265

ATTENTION: Todd Green
PHONE: (309) 524-2295
FAX: (309) 797-1858

*To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 12/12/2014 To: 03/12/2015*

Material	Qty	Description	Unit Price	Total
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement- Year One	35,000.00	35,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement- Year Two	35,000.00	35,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement- Year Three	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

The following items are optional items listed for your convenience.
These items are not included in the totals of this quotation.

Material	Qty	Description	Unit Price	Total
116996	1	Small Enterprise License Agreement Training Package Add-On at ESRI Site 15 Days Prepaid ILT / ILV, Over 3 Year Term, per Student Seat, 5 Days per Annum Over 3 Year Term Instructor Led Training- Year One	2,500.00	2,500.00
116996	1	Small Enterprise License Agreement Training Package Add-On at ESRI Site 15 Days Prepaid ILT / ILV, Over 3 Year Term, per Student Seat, 5 Days per Annum Over 3 Year Term Instructor Led Training- Year Two	2,500.00	2,500.00
116996	1	Small Enterprise License Agreement Training Package Add-On at ESRI Site 15 Days Prepaid ILT / ILV, Over 3 Year Term, per Student Seat, 5 Days per Annum Over 3 Year Term Instructor Led Training- Year Three	2,500.00	2,500.00

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

For questions contact: Chad Anderson	Email: canderson@esri.com	Phone: (651) 454-0600 x8319
<p>The items on this quotation are subject to the terms set forth herein and the terms of your signed agreement with Esri, if any, or, where applicable, Esri's standard terms and conditions at www.esri.com/legal, which are incorporated by reference. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Acceptance is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's products and services.</p> <p><i>If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630</i></p>		



**SMALL
ENTERPRISE LICENSE AGREEMENT
COUNTY AND MUNICIPALITY**

Authorized Distributor/Esri Use Only:
 Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____

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

This Small Enterprise License Agreement ("ELA") is by and between the organization listed on the signature page ("**Licensee**"); **Environmental Systems Research Institute, Inc. ("Esri")**; and, if Licensee is located outside the United States of America (USA), the Authorized Distributor listed on the signature page ("**Authorized Distributor**"). Authorized Distributor is authorized by Esri to provide access to Online Services and provide ELA Maintenance for Enterprise Products and other benefits, as described herein, to Licensee located outside the USA.

This ELA sets forth the terms for Licensee's use of Enterprise Products and incorporates by reference (i) the ELA Quotation and (ii) the License Agreement. 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) the ELA Quotation, (ii) Small Enterprise License Agreement, and (iii) the License Agreement. 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, and the USA federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this ELA apply only to the Enterprise Products listed in Table A.

**Table A
List of Enterprise Products**

Unlimited Quantities

Desktop Software and Extensions

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

Server Software and Extensions

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

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime Standard
 ArcGIS Runtime Standard Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Network Analyst

Limited Quantities

One (1) Annual Subscription to Esri Developer Network (EDN) Standard*
 One (1) Esri CityEngine Advanced Single Use License
 One (1) Esri CityEngine Advanced Concurrent Use License
 One (1) ArcGIS Online Subscription

Other Benefits

One (1) ArcGIS Online subscription with specified named users and credits as determined in the program description	Level 3
Number of Esri User Conference registrations provided annually	3
Number of Tier 1 Help Desk individuals authorized to call Esri	3
Maximum number of sets of backup media, if requested**	2
Virtual Campus Annual User License allowance	7,500
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement (Discount does not apply to Small Enterprise Training Package.)	

*ELA Maintenance is not provided for these items.

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

Licensee may accept this ELA by signing and returning it with an Ordering Document that matches the ELA Quotation and references this ELA. **ADDITIONAL OR CONFLICTING TERMS IN LICENSEE'S ORDERING DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS ELA WILL GOVERN.** Unless otherwise mutually agreed to, this ELA is effective as of the date of the last signature on the signature page ("Effective Date"), or if no date is provided with the signature, the date of Esri's receipt of Licensee's Ordering Document incorporating this ELA by reference.

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

This ELA may be executed in duplicate by the parties. An executed separate signature page transmitted through electronic means, such as fax or e-mail, is valid and binding even if an original paper document bearing each party's original signature is not delivered.

Accepted and Agreed:

(Licensee)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

LICENSEE CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

ELA Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

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

"Deploy" means to redistribute and install the Enterprise Products and related Authorization Codes within Licensee's organization(s).

"ELA Maintenance" means Tier 2 Support, updates, and patches provided by Esri or its Authorized Distributor to Licensee for the Enterprise Products.

"ELA Quotation" means the Small Enterprise License Agreement offer letter and quotation provided separately by Esri or its Authorized Distributor to Licensee.

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

"Enterprise Products" means the Products identified in Table A—List of Enterprise Products and any updates to such list provided in writing by Esri or its Authorized Distributor.

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

"License Agreement" means the applicable license agreement incorporated by this reference that is (i) found at <http://www.esri.com/legal/software-license>; composed of the General License Terms and Conditions (E204) and Exhibit 1, Scope of Use (E300); and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed license agreement between Esri, Distributor (if applicable), and Licensee that supersedes such electronically acknowledged license agreement.

"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 Enterprise Product corrections or modifications.

"Tier 1 Help Desk" means Licensee's 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 or its Authorized Distributor to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1

Support. Licensees located in the USA will receive Tier 2 Support from Esri. Licensees outside the USA will receive Tier 2 Support from an Authorized Distributor located in the Licensee's region.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this ELA, Esri grants to Licensee a personal, nonexclusive, nontransferable Term License solely to use, copy, and Deploy quantities of the Enterprise Products listed in Table A for the term provided in Section 3.1—Term (i) for which the applicable license fees have been paid and (ii) in accordance with the License Agreement.

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

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. The term of this ELA and all licenses hereunder shall commence on the Effective Date and continue for three (3) years, unless this ELA is terminated earlier as provided herein. Licensee is only authorized to use Deployed Enterprise Products during the term of this ELA. No indefinite term or perpetual license grants are provided with this ELA.

3.2 No Use upon Expiration or Termination. All Deployed Enterprise Product licenses and all ELA Maintenance, Virtual Campus access, and User Conference Registrations terminate on expiration or termination of this ELA.

3.3 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 the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For government or government-owned entities only, 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.

4.0—ENTERPRISE PRODUCT UPDATES

4.1 Future Updates. Esri and its Authorized Distributor reserve the right to update the list of Enterprise Products in Table A by providing written notice to Licensee. Licensee may continue to use all Enterprise Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Enterprise Products are incorporated into the standard program, they will be offered to Licensee via written notice for incorporation into the Enterprise Products schedule at no additional charge. Licensee's use of new or updated Enterprise Products requires Licensee to adhere to applicable additional or revised terms and conditions of the License Agreement.

4.2 Product Life Cycle. During the term of this ELA, some Enterprise Products may be retired or may no longer be available for unlimited quantity Deployment. ELA Maintenance shall be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <http://support.esri.com/en/content/productlifecycles>. Updates for Enterprise Products in the mature and retired phases may not be available; however, Licensee may continue to use Deployed Enterprise Products for the term of this ELA, but Licensee will not be able to Deploy retired Enterprise Products.

5.0—ELA MAINTENANCE

ELA Maintenance is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in either (i) the most current applicable Esri Standard Maintenance Program document (found at <http://www.esri.com/legal>) for USA-based Licensees or (ii) the applicable Authorized Distributor software maintenance policy as modified by this Article 5.0—ELA Maintenance. At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Enterprise Products will receive ELA Maintenance. Licensee may acquire maintenance for other Software (non-Enterprise Products) outside this ELA.

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 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 authorized to contact Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by Esri or Its Authorized Distributor

1. Tier 2 Support shall log the calls received from Tier 1 Help Desk individuals.
2. Tier 2 Support 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. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting Tier 1 Help Desk individuals.
5. When the Incident is resolved, Tier 2 Support shall communicate the information to Tier 1 Help Desk individuals, and Tier 1 Help Desk shall disseminate the resolution to the user.

6.0—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or Licensee's endorsement of Esri or its Authorized Distributor. Licensee agrees that Esri and its Authorized Distributor may publicize the existence of this ELA upon execution.

7.0—ADMINISTRATIVE REQUIREMENTS

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

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration date of this ELA, Licensee shall provide a written report detailing all Deployments to either (a) Esri if Licensee is located in the USA or (b) Authorized Distributor if Licensee is located outside the USA. The report will be subject to audit.

7.3 Renewal. Any follow-on ELA will be offered in accordance with then-current ELA pricing and license terms and conditions.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Licensee shall issue an Ordering Document upon execution of this ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) calendar days

of the anniversary date of the Effective Date, with the initial payment due within thirty (30) calendar days of execution of this ELA. Esri's Federal ID Number is 95-2775-732.

- b. Upon receipt of the initial Ordering Document from Licensee, Esri shall authorize download of the Enterprise Products 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 Authorization Codes to activate the nondestructive copy protection program that enables the Enterprise Products to operate.
- d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Products.

8.2 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

9.0—TRAINING

9.1 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.

9.2 Unique Terms for the Small Enterprise Training Package

- a.** To order training, Licensee must include training in the Ordering Document for the ELA or provide an Ordering Document as required and specified within the ELA that matches the Esri quotation.
- b.** Where Licensee submits an additional Ordering Document to purchase training days for additional year(s), any unused training days will automatically roll over.
- c.** An Ordering Document is required annually for each three (3)-year term. Failure to submit an annual Ordering Document will result in the forfeit of unused training days.
- d.** 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.
- e.** The training days are available for a period of twelve (12) months, commencing on the Effective Date, and ending when all training days are consumed, whichever is sooner.
- f.** Esri will invoice for outstanding training expenses where applicable.
- g.** Training days are not transferable and not refundable for any other Esri products or services.



TRAINING TERMS AND CONDITIONS

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

This Training Agreement ("**Agreement**") is between you (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

This Agreement allows Esri to conduct training courses and provide training-related services to Client who wishes to obtain training in the use of Esri GIS software. Both parties agree to the terms and conditions contained below.

ARTICLE 1—DEFINITIONS

- a. "**Client-Supplied Training Data**" means any digital dataset(s) including, but not limited to, geographic, vector data, coordinates, raster, or associated tabular attributes supplied by Client for use in training.
- b. "**Esri Mobile Lab**" means Esri hardware shipped to domestic US Client site training events, if Client does not have the required hardware to host a scheduled training event, consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches.
- c. "**Esri Training Event Assistant**" means Client's primary Esri liaison in organizing Client site and private training events.
- d. "**Student**" means a registered participant for a specific training course, Client coaching services, or training-related services.
- e. "**Training Materials**" means digital or print content required to complete a course, which may include, but are not limited to, workbooks, data, concepts, exercises, and exams.

ARTICLE 2—TRAINING DESCRIPTION

- 2.1 Instructor-led training and Client coaching services are offered by Esri in the use of Esri's GIS Software.
- a. Instructor-led training is offered online in a cloud-based environment, at a Client site, or at an Esri learning center. Course information, location, dates, number of maximum participants, and registration requirements are located in the Esri training catalog (<http://training.esri.com>). Courses are conducted in close conformance with the course description outlined in the Esri training catalog and are subject to change due to limitations or constraints including, but not limited to, technical capabilities, and Client's needs.
 - b. Client coaching services are available for Client to enhance the learning experience by providing extra time to review and practice course concepts with an instructor's on-site guidance.

ARTICLE 3—ESRI'S RESPONSIBILITIES

- 3.1 Esri will
- a. Provide training in a manner consistent with the technical and professional standards of the industry.
 - b. Provide an instructor qualified to conduct the training course(s), Client coaching services, or training-related services.
 - c. Provide all necessary Training Materials for Student.
 - d. Confirm class approximately ten (10) business days prior to the scheduled start date. Client site and private classes confirmation is dependent on receipt of the completed Client site training request form and intended method of payment.

ARTICLE 4—CLIENT'S RESPONSIBILITIES

- 4.1 Client will
- a. Ensure all Students have received confirmation from Esri to participate in an Esri training event. Unregistered Student[s] will not be permitted to view or participate in an online classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered Student[s].

- b. Confirm all registered Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- c. Submit registrations with a confirmed payment commitment at least seven (7) business days prior to the scheduled start date. Registrations submitted without payment commitment will not be a guaranteed reservation and will be added to a wait list pending payment confirmation. All wait list reservations are subject to availability.
- d. Submit to the Esri Training Event Assistant a list of the names and e-mail addresses of Student[s] who are to attend a Client site or private training event at least three (3) business days before the scheduled start date. Subject to compliance with Article 14 Export Control Regulations, any Student who is a resident of a US embargoed country or is found on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists will not be permitted to attend the training event.
- e. Be responsible for all Student travel arrangements and agrees that Esri is not responsible for losses from nonrefundable travel arrangements due to the denial of Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations.
- f. Complete and submit an Esri Client site training request form, if applicable, and ensure that the class environment adheres to the requirements for Esri Training as found online at <http://training.esri.com/gateway/index.cfm?fa=classroom.requirements>.
- g. Ensure Student use of Training Materials provided by Esri complies with the terms of this Agreement.
- h. Assume full responsibility for Student attending training course(s) under this Agreement. Client agrees to indemnify Esri, its officers, directors, and employees for any and all claims, liabilities, and expenses (including reasonable legal fees) arising out of or based on any uncured material breach by Student of the terms and conditions of this Agreement.

4.2 If the Esri Mobile Lab is used, Client will

- a. Immediately report any existing damage to Esri Mobile Lab equipment to Training Event Assistant, upon receipt of the equipment.
- b. Keep Esri Mobile Lab equipment in a secure, locked area between training event sessions.
- c. Ensure that only registered Student[s] use Esri Mobile Lab equipment.
- d. Be responsible for loss of, damage to, and/or theft of Esri Mobile Lab equipment while in Client's possession.
- e. Warrant that it maintains sufficient insurance coverage obligations created by this Agreement and by law.
- f. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of training. Any damage to Esri 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.
- g. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the training event.

ARTICLE 5—INSURANCE AND INDEMNIFICATION

5.1 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.

5.2 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 6—LICENSING AND MATERIALS

6.1 Training Materials Reservation of Ownership. This Agreement gives Student certain limited rights to use electronic and tangible versions of the Training Materials. Esri and its licensor(s) retain exclusive rights, title, and ownership to the copy of Training Materials, software, data, and documentation licensed under this Agreement. Training Materials are protected by United States copyright laws and applicable international copyright treaties and/or conventions. All rights not specifically granted in this Agreement are reserved to Esri and its licensor(s).

6.2 Grant of License. Esri grants to Student a personal, nonexclusive, nontransferable license to use Training Materials for Student's own training purposes. Student may run and install one (1) copy of Training Materials and reproduce one (1) copy of Training Materials. Student may make one (1) additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.

6.3 Training Materials are intended solely for the use of the training of the individual Student who registered and attended a specific training course. Student may not (i) separate the component parts of the Training Materials for use on multiple systems or in the cloud, use in conjunction with any other software package, and/or merge and compile into a separate database(s) or documents for other analytical uses; (ii) make any attempt to circumvent the technological measure(s) (e.g., software or hardware key) that effectively controls access to Training Materials; (iii) remove or obscure any copyright, trademark, and/or proprietary rights notices of Esri or its licensor(s); or (iv) use audio and/or video recording equipment during a training course.

6.4 Client-Supplied Training Data. Client will retain ownership of any Client-Supplied Training Data.

6.5 Software. Client's existing license agreement, if any, or the License Agreement found at <http://www.esri.com/legal/software-license> will cover all applicable terms of use for Esri provided software, data, documentation, and content used by Student during a training event. Esri may issue temporary Esri software licenses for Client site training if Client has an insufficient number of Esri software licenses available at Client's training facility. Client must uninstall all temporary Esri software licenses and return any media provided by Esri upon conclusion of the training event.

ARTICLE 7—TERM AND TERMINATION

7.1 This Agreement is effective upon acceptance. Either party may terminate this Agreement at any time upon written notice to the other party or for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure. Upon termination of this Agreement for breach, Esri may request Client to return or destroy all copies of Training Materials in its possession, and any whole or partial copies, in any form and deliver evidence of such destruction to Esri, which evidence shall be in a form acceptable to Esri in its sole discretion. The parties agree that all provisions that operate to protect the rights of Esri and its licensor(s) shall remain in force should breach occur. Termination does not relieve Client from payment for any current or outstanding training registrations. Upon termination, Client agrees to pay Esri all current and outstanding invoices for training. Student[s] who are currently registered for a training course are granted the right to continue to attend the training course subject to the terms and conditions of this Agreement.

ARTICLE 8—STUDENT REGISTRATION AND TRAINING EVENT CHANGE POLICY

8.1 Individual Student Seats. Client will provide written notice to Esri's Customer Service department at service@esri.com of any Student transfer, cancellation, or substitution requests at least three (3) business days before the scheduled start date.

- a. Multiple requests and any requests that occur without the three (3) business days advance notice are subject to a fee, as determined by Esri.
- b. Cancellation of Student registrations that occur without the three (3) business days advance notice are subject to the full training event fee.
- c. Substitute Student must be from the same organization as Student being replaced.

8.2 Client Site/Private Class/Coaching Services (Training Event). Client will provide written notice to Esri's Customer Service department at service@esri.com of any training event reschedule, cancellation, or Student substitution requirements at least three (3) business days before the scheduled start date.

- a. Training event reschedules and cancellations that occur without the three (3) business days advance notice are subject to the full training event fee. Client will be responsible for all of Esri's reasonable travel expenses and shipping costs (including Esri Mobile Lab) for all rescheduled or canceled training events.
- b. Student substitutions that occur without the three (3) business days advance notice are subject to a fee. Substitute Student must be from the same organization as Student being replaced.

8.3 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 or cancel the training without incurring any liability.

8.4 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 start date.

ARTICLE 9—PAYMENT

9.1 Payments

- a. Accepted payment methods are found at <http://training.esri.com/gateway/index.cfm?fa=catalog.paymentdetails>.
- b. Esri will invoice Client upon completion of each training course or immediately upon receipt of a purchase order, if mutually agreed to by the parties. Client's payment will be due no later than thirty (30) days after receipt of the invoice.
- c. 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 10—CONFIDENTIAL INFORMATION

10.1 Except for any personally identified information (PII), any data or information controlled for export under the United States International Traffic in Arms Regulations (ITAR), or other classified data, 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 other party's confidential information.

ARTICLE 11—FORCE MAJEURE

11.1 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, or 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

12.1 Limited Warranty. Esri warrants that the media upon which Training Materials is 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.

12.2 Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE TRAINING AND TRAINING MATERIALS CONTAINED THEREIN ARE PROVIDED "AS-IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. ESRI DOES NOT WARRANT THAT THE TRAINING OR TRAINING MATERIALS WILL MEET CLIENT'S NEEDS OR

EXPECTATIONS; THAT THE USE OF TRAINING MATERIALS WILL BE UNINTERRUPTED; OR THAT ALL NONCONFORMITIES, DEFECTS, OR ERRORS CAN OR WILL BE CORRECTED. THE TRAINING DATABASE HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS, AND THE OPINIONS BASED THEREON, ARE NOT GUARANTEED. THE TRAINING DATABASE MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, ERRORS, AND/OR OMISSIONS. ESRI AND ITS LICENSOR(S) DO NOT WARRANT THAT THE TRAINING DATABASE WILL MEET CLIENT'S NEEDS OR EXPECTATIONS, THAT THE USE OF THE TRAINING DATABASE WILL BE UNINTERRUPTED, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. ESRI AND ITS LICENSOR(S) ARE NOT INVITING RELIANCE ON THIS TRAINING DATABASE, AND CLIENT OR STUDENT SHOULD ALWAYS VERIFY ACTUAL DATA, WHETHER MAP, SPATIAL, RASTER, TABULAR INFORMATION, AND SO FORTH. THE DATA CONTAINED IN THIS PACKAGE IS SUBJECT TO CHANGE WITHOUT NOTICE. IN ADDITION TO AND WITHOUT LIMITING THE PRECEDING PARAGRAPH, ESRI DOES NOT WARRANT IN ANY WAY TRAINING DATA. TRAINING DATA MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION; BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET CLIENT'S NEEDS OR EXPECTATIONS. NEITHER CLIENT NOR STUDENT SHOULD RELY ON ANY TRAINING DATA UNLESS CLIENT HAS VERIFIED TRAINING DATA AGAINST ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

12.3 Exclusive Remedy. Client's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 12 shall be limited, at Esri's sole discretion, to (i) replacement of any defective Training Materials; (ii) repair, correction, or a workaround for Training Materials, or (iii) return of the fees paid by Client for Training Material that do not meet Esri's limited warranty, provided that Client uninstalls, removes, and destroys all copies of the Training Materials; and executes and delivers evidence of such actions to Esri.

ARTICLE 13—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

13.1 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 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

14.1 Client must comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Client expressly acknowledges and agrees not to export, reexport, transfer, or release Esri provided Training Materials, in whole or in part, to (i) any US embargoed country (including to a resident of any US embargoed country); (ii) any person or entity on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Lists of Parties of Concern; or (iv) any person or entity where such export, reexport, or provision violates any US 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 US export laws.

ARTICLE 15—TAXES

15.1 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

16.1 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

17.1 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.

ARTICLE 18—ENTIRE AGREEMENT

18.1 This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements (including any attached purchase order terms and conditions) between the parties relating to such subject matter. The undersigned hereby acknowledges and represents that he/she has read and understands this Agreement and has the authority to bind his/her organization to these terms and conditions. An executed Agreement shall constitute a duplicate if it is transmitted through electronic means, such as fax or e-mail, and reflect the signing of the document by Client. Duplicates are valid and binding even if an original paper document bearing Client's original signature is not delivered.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

(Client)

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____