ENTERPRISE LICENSE AGREEMENT
(E119GM 6/09)

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

Agreement No. 2009ELA5943

This Enterprise License Agreement including the documents listed below (collectively, "Agreement" or "ELA") is between Leon County, Florida ("County"), with its main offices located at 301 S. Monroe Street, Tallahassee, FL 32301, and Environmental Systems Research Institute, Inc. ("ESRI"), and is effective as of November 1, 2009 ("Effective Date"). This Agreement provides for the licensing and deployment of certain ESRI Software, delivery of ELA maintenance, and provision of ESRI International User Conference registrations and any additional services as specified herein.

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

1. Enterprise License Agreement signature page(s), E119GM
2. Enterprise License Terms and Conditions, E512GM, including;
   - Appendix A, Software and Deployment Schedule
   - Appendix B, Enterprise License Fee Schedule
   - Appendix C, County Annual Deployment Report
   - Appendix D, ELA Points of Contact
   - Appendix E, Tier 1 Help Desk Authorized Individuals
   - Appendix F, Eligible Agency List
3. License Agreement—Agreement No. 2009MLA5943
   - General License Terms and Conditions, E200M
   - ESRI Exhibit 1, Scope of Use, E300
     Note: Licensee is defined on first page of item 2 above.
4. ESRI Enterprise Advantage Program (EEAP) Agreement No. 2009EAP5943

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

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

ACCEPTED AND AGREED:

LEON COUNTY, FLORIDA

By: _____
Parwez Alam, County Administrator

ATTEST:
Bob Inzer, Clerk of the Court, Leon County, Florida

By: _____

Approved as to Form
Leon County's Attorney's Office

By: _____
Herbert W.A. Thiele, Esq., County Attorney

RESEARCH INSTITUTE, INC.
ENVIRONMENTAL SYSTEMS
(ESRI)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

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

ARTICLE 1—DEFINITIONS

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

- "Deploy," "Deployment," or "Deployed" means to redistribute, or the redistribution of, the Enterprise License Software (and its related keycodes/registration files), or its having been redistributed, by County, during the term of this ELA for installation and use on Licensee's hardware.
- "ELA Fee" means the fee set forth in Appendix B, ELA Fee Schedule.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by ESRI for Enterprise License Software and Rolled-In Software.
- "Eligible Agency" means the government entities (i.e., county, city, district, utility, board, or municipality) that are identified in Appendix F as eligible to participate under this ELA.
- "Enterprise License Software" means the Software (including Data, Web Services, and Documentation provided with the particular item) identified in Table A-1 and Table A-2 of Appendix A, Software and Deployment Schedule. Enterprise License Software does not include Unit-Priced Item(s) or ESRI technology that may be embedded in third-party products purchased by Licensee.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" means the General License Terms and Conditions (E200) and Exhibit 1, Scope of Use (E300), referenced on the signature page of this ELA.
- "Licensee" means County and Eligible Agencies. For avoidance of doubt, the definition of Licensee shall not include consultants or contractors.
- "Rolled-In Software" means Software of the same type as Enterprise License Software that Licensee acquired for use prior to the Effective Date that is current on paid maintenance (as shown in ESRI's customer service records) and that receives ELA Maintenance during the term of the ELA.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction, patches, hot fixes, and workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications specified in the most current applicable ESRI U.S. Software Maintenance Program.
- "Tier 1 Help Desk" means County point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in its attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by ESRI to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.

ARTICLE 2—GRANT OF LICENSE

2.1 Grant of License. Licensee's use of the Enterprise License Software is subject to the License Agreement and any additional terms set forth in this Article 2 and in Article 3 below. County shall remain primarily responsible to ESRI for compliance by Licensee (including their users) with the terms and conditions of this ELA. Rolled-In Software shall be licensed in accordance with the License Agreement.

Prior to any Deployment to any Eligible Agency, County shall provide each such Eligible Agency with a copy of the License Agreement and flow down Sections 2.2 and 2.3 of this ELA.

County represents and warrants it has the authority to bind each Eligible Agency to the terms and conditions of the License Agreement and applicable sections of this ELA.

2.2 Beta License. Beta licenses are not available under this ELA. Therefore, Section 3.2, Beta License, in the License Agreement is deleted in its entirety.

2.3 Consultant Access. Section 3.4, Consultant Access, in the License Agreement is modified such that use of any Enterprise License Software is restricted to use by consultants and contractors for the sole benefit of Licensee while (i) working on-site at Licensee's facilities or (ii) remotely using/accessing Enterprise License Software from Licensee's on-site computers or machines.

ARTICLE 3—SCOPE OF USE

The Uses Permitted and Uses Not Permitted sections of the General License Terms and Conditions portion of the License Agreement, are modified as follows:

3.1 Additional Uses Permitted. The following additional Uses Permitted are hereby granted for the Enterprise License Software:

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

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

a. County shall not use, transfer, redistribute, or Deploy the Enterprise License Software outside the United States territories and outlying areas without the prior written permission of ESRI and agreement on additional fees, if any. Any such export shall be subject to U.S. Export Control Regulation requirements of the License Agreement.
b. Hard-copy Documentation may not be copied.
c. A new or additional Eligible Agency may not be added without the express prior written approval of ESRI. Addition of an Eligible Agency may result in an increase in the ELA Fee.
d. Transfer, redistribution, or assignment of Enterprise License Software to any third party without ESRI written permission is prohibited.

ARTICLE 4—MAINTENANCE

4.1 ELA Maintenance. ELA Maintenance is included in the ELA Fee. Rolled-In Software and Enterprise License Software will receive ELA Maintenance, provided that standard maintenance is available. ELA Maintenance includes benefits specified in the most current applicable ESRI U.S. Software Maintenance Program document (found at www.esri.com/legal) as modified by this Section 4.1. ELA Maintenance does not include Technical Support for Web Services.

a. Tier 1 Support Provided by County

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

b. Tier 2 Support Provided by ESRI

(1) ESRI shall log the calls received from the Tier 1 Help Desk individuals.
(2) ESRI shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
(3) ESRI may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
(4) ESRI shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals and not the Licensee.

(5) When the Incident is resolved, ESRI shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee.
(6) ESRI may, at ESRI's sole discretion, make patches, hot fixes, or updates available for downloading from ESRI's Web site or deliver them on media.

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

5.1 Purchase Orders, Delivery, and Deployment

a. County shall issue a purchase order upon execution of the ELA and annually thereafter in accordance with the fee schedule in Appendix B. These fees shall be due and payable within thirty (30) days of the anniversary date of the ELA, with the initial payment due within thirty (30) days of execution of the ELA.
b. Upon receipt of the initial purchase order from County, ESRI shall deliver the number of sets of media listed in Appendix B that contain the Enterprise License Software to County for County's Deployment to Licensees. ESRI shall ship the media to the ship-to address identified in Appendix D, ELA Points of Contact, FOB destination with shipping charges prepaid. County may purchase additional media sets at the prices in effect at the time of purchase.
c. ESRI shall provide County with hardware keys ordered on an as-required basis. The maximum cumulative total of hardware keys provided shall not exceed the number listed in Appendix B. Additional hardware keys may be ordered at the prices in effect at the time of purchase.
d. ESRI shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise License Software to operate.
e. County shall Deploy, install, configure, and track the Deployment status of Enterprise License Software.

5.2 Purchase Order Requirements

a. Any purchase orders issued by County shall reference, incorporate, and be subject to the terms and conditions of this ELA. No additional, conflicting, or different terms contained in a purchase order or ordering document shall be binding. All orders and deliveries pertaining to this ELA shall be processed through County's centralized point of contact.
b. The following information shall be included in each purchase order:

(1) County name, ESRI customer number, and the ship-to address as identified in Appendix D.
(2) Purchase order number.
(3) Applicable annual payment due.
(4) On the face of the purchase order, print the following statement: "Governed by and subject to Enterprise License Agreement No. 2009ELA5943."

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

5.4 ESRI International User Conference Registration. County shall receive ESRI International User Conference registrations annually during the term of this ELA in the quantities set forth in Appendix B. County is responsible for distributing the registrations to Licensees. Third parties may not represent or attend on behalf of County or Eligible Agencies at any ESRI International User Conference.

ARTICLE 6—POINTS OF CONTACT; NOTICES

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

6.2 Notices. Except as set forth in Section 6.1, any notice, report, demand, or other communication shall be properly given when made in writing in English and sent by courier; registered or certified airmail; or facsimile or other electronic transmission, and confirmed by courier or by registered or certified airmail, properly addressed to the appropriate party at the address set forth above, until changed by notice in writing by either party hereto. If sent by courier or airmail, notice shall be effective seven (7) days from the date of deposit with the courier service or post office. If sent by electronic transmission, notice shall be effective upon receipt, provided confirmation is given as specified herein. Notices shall be given at the following addresses:

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

To: County
as listed in Appendix D

ARTICLE 7—TERM, TERMINATION, AND EXPIRATION

7.1 Term. The term of the ELA shall be November 1, 2009 through October 31, 2012.

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

7.3 Termination of a Particular Eligible Agency. ESRI may elect to terminate the license rights of a particular Eligible Agency for material breach without terminating this ELA with County or other Eligible Agencies. The breaching Eligible Agency shall be given a period of ten (10) days from date of written notice to cure any material breach. Upon the termination of the Eligible Agency, any licenses for Deployments provided to Eligible Agency shall also terminate. County shall reasonably cooperate with ESRI in termination of an Eligible Agency in material breach of this ELA, including enforcement of the ELA with respect to such Eligible Agency. There shall be no reduction in the ELA Fee if an Eligible Agency's rights are terminated. The terminated Eligible Agency shall have no further access to any benefits, entitlements, rights, or other items included in or otherwise related to this ELA.

7.4 License Term and Use upon Expiration of ELA Term. Upon expiration of this ELA, the License Agreement shall survive, and Licensee may continue to use the Deployed Enterprise License Software and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. Licensee may order maintenance upon expiration of ELA Term for Rolled-In Software for the next year without paying a maintenance reinstatement fee for lapsed maintenance. Licensee shall notify ESRI of the quantity and type of licenses for which Licensee elects to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or Enterprise License Software upon expiration of the ELA, it lapses. If, at a later date, Licensee decides to reinstate maintenance, Licensee must pay maintenance reinstatement fees (e.g., back maintenance fees) from the date of ELA expiration. County shall not Deploy additional copies of the Enterprise License Software beyond the quantities in use upon termination or as of the date of expiration.

ARTICLE 8—CONFIDENTIALITY

8.1 ESRI Confidential Information. Certain terms and conditions of this ELA are confidential and proprietary information of ESRI. County shall not publish or disclose to third parties or Eligible Agencies, in hard copy or electronically, Appendix A and Appendix B, including the ELA Fee, without ESRI's prior written consent. Except in response to an open/public records request, disclosure may be made only to those County employees who have a need to know to perform their duties and have an obligation of confidentiality. To the extent any such disclosures may be required by law, County shall inform ESRI of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requester, in sufficient time for ESRI to assert any objection ESRI may have to such disclosure with the appropriate administrative or judicial body.

PRICING INFORMATION, INCLUDING APPLICABLE DISCOUNT RATES, CONTAINED HEREIN IS CONSIDERED CONFIDENTIAL AND PROPRIETARY. EXCEPT TO SUPPORT AUTHORIZED LICENSE ACQUISITIONS, RECIPIENT SHALL NOT COPY, DISCLOSE TO ANY THIRD PARTY, OR USE ANY PRICING INFORMATION FOR ANY OTHER PURPOSE OR PROGRAM.

ARTICLE 9—RELATIONSHIP OF THE PARTIES

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

ARTICLE 10—FORCE MAJEURE

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

ARTICLE 11—GIS STANDARD

County shall officially name ESRI as its GIS standard and act as a reference for other ESRI customers and potential customers as long as the ELA remains in effect. This ELA shall not be construed or interpreted as an exclusive dealings agreement, and County and each Eligible Agency reserve the right to purchase from third parties any of their requirements for GIS software, or related services.

County agrees that ESRI may publicize the existence of the ELA.

ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

12.1 OEM Licenses. If Licensee obtains Software, Data, Web Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of ESRI, Licensee shall not be entitled to or seek any discount from the OEM business partner or ESRI, directly or indirectly, as a result of or based upon the availability of such Software, Data, or Web Services, as Enterprise License Software under this ELA. 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 business partner and not through this ELA.

12.2 Conversion of Enterprise License Software—Limited Quantity or Unit-Priced Item. Newer or updated Enterprise License Software may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site or enterprise license. ESRI reserves the right to exclude such newer or updated versions of the Enterprise License Software from the tables in Appendix A. Such items can be made available to County on a limited quantity basis or as unit-priced items. In such event, Licensee may continue to use the older (previous) version Deployed, and ESRI will provide Technical Support in accordance with the ESRI Product Life Cycle Support Policy.

12.3 Product Obsolescence. During the term of this Agreement, some of the products listed in Appendix A may become obsolete or will no longer be commercially offered or may no longer be available for Deployment. Licensee may continue to use a product that has been Deployed, but support and upgrades for older products may not be available. ELA Maintenance and maintenance and availability of Enterprise License Software identified in Appendix A shall be subject to each item's Product Life Cycle Support Status, which can be found at http://support.esri.com/index.cfm?fa=software.gateway by selecting the product type and clicking the Product Life Cycle link for specific product plans. ESRI's Product Life Cycle Support Policy, available at http://support.esri.com/knowledgebase/relatedDocs/ProductLifeCycle.pdf, defines the support phases and overall support plans.

ARTICLE 13—GENERAL PROVISIONS

13.1 The General Provisions and Limitations of Liability of the License Agreement shall apply to the entire ELA. If there is a conflict among any of the other terms and conditions in the various documents, the order of descending precedence shall be as follows: (1) E119GM Signature Page, (2) E512GM ELA Terms and Conditions, (3) E300 Scope of Use, and (4) E200 General License Terms and Conditions. In the event this ELA includes Enterprise Advantage Program, the terms and conditions of the Enterprise Advantage Program Addendum shall take precedence over the provision of the ELA with respect to the Enterprise Advantage Program. Except as otherwise expressly provided herein, any amendment or Addendum to this ELA must be in writing and signed by an authorized representative of each party.

13.2 Survival of Certain ELA Clauses. The provisions of Articles 7.4 and 8 of this Enterprise License Terms and Conditions document (E512GM) shall survive the expiration or termination of this ELA.

APPENDIX A
SOFTWARE AND DEPLOYMENT SCHEDULE

County may Deploy the Enterprise License Software up to the total quantity of licenses indicated below to Licensees. The quantities identified are the cumulative quantities available in any given year for the term of this ELA.

Table A-1
Enterprise License Software—Unlimited Quantities

Product	Total Qty./Seats to Be Deployed
Desktop Software	
ArcView*	Unlimited
ArcEditor*	Unlimited
ArcInfo*	Unlimited
ArcGIS Geostatistical Analyst; ArcGIS Publisher; ArcGIS Spatial Analyst; ArcGIS 3D Analyst; ArcGIS Network Analyst; ArcGIS Schematics, PLTS for ArcGIS	Unlimited
Server Software and Extensions	
ArcGIS Server (all editions); ArcGIS Server Mobile Deployments, ArcIMS	Unlimited
Development Tool	
ArcGIS Engine Developer Kit	Unlimited
ArcGIS Engine Runtimes	Unlimited
MapObjects Developer Kit	Unlimited
MapObjects Deployment	Unlimited

* A maximum of 50,000 transactions per license, per year are provided under this ELA for Bing Maps (formerly Virtual Earth) with select version 9.3.1 or higher desktop GIS software. Additional transactions may be purchased via a subscription at then-current commercial pricing.

Table A-2
Enterprise License Software—Limited Quantities

Product	Total Qty./Seats to Be Deployed
Image Server	One (1)

APPENDIX B
ELA FEE SCHEDULE

The ELA Fee is $1,110,000. The ELA Fee is in consideration of the Enterprise License Software, ELA Maintenance, ESRI International User Conference registrations, and the ESRI Enterprise Advantage Program (EEAP)*.

* One (1) each of the EEAP for each Year of the ELA.

	Year 1	Year 2	Year 3	ELA Fee
Payments	$350,000	$370,000	$390,000	$1,110,000

Number of ESRI International User Conference Registrations	20
Number of Tier 1 Help Desk Individuals	10
Number of Sets of Media	5
Maximum Number of Hardware Keys	100
Term of ELA pursuant to Section 7.1	November 1, 2009 through October 31, 2012
EEAP Components: ▪ Assigned Technical Advisor-up to 100 hours; ▪ 100 Learning and Services credits that can be utilized for select consulting services support, premium support service, or training; ▪ Access to the Premium Support Services (PSS) database to enter and maintain an inventory of TLC GIS's technical environment; ▪ Annual account review and strategy meeting; ▪ Quarterly technology webcasts.	

APPENDIX C
COUNTY ANNUAL DEPLOYMENT REPORT

SAMPLE REPORT—This report shall be provided to ESRI as an Excel spreadsheet or comparable format.

ENTERPRISE LICENSE COUNTS

Licensee and Location	Unlimited Qty. Licenses								Limited Qty. Licenses			

Licenses will be counted by product and location annually.

APPENDIX D
ELA POINTS OF CONTACT

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

1. ESRI point of contact for order processing issues:

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

2. ESRI contact for Tier 2 Support issues:

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

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

   Name: Lee Hartsfield
   E-mail: hartsfieldl@leoncountyfl.gov
   Phone: (850) 606-5584
   Fax: (850) 606-5501

4. All deliverables to County shall be shipped to the address listed below:

   County Office: Tallahassee-Leon County GIS
   Name: Lee Hartsfield
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301

5. All notices to County shall be mailed to the address listed below:

   County Office: Tallahassee-Leon County GIS
   Name: Lee Hartsfield
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301

APPENDIX E
TIER 1 HELP DESK AUTHORIZED INDIVIDUALS

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

1. Name: Elizabeth Ostrus
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301
   Phone: (850) 606-5504
   Fax: (850) 606-5501
   E-mail: OstrusE@leoncountyfl.gov

2. Name: Fran Ward
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301
   Phone: (850) 606-5504
   Fax: (850) 606-5501
   E-mail: WardF@leoncountyfl.gov

3. Name: John Marquez
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301
   Phone: (850) 606-5504
   Fax: (850) 606-5501
   E-mail: MarquezJ@leoncountyfl.gov

4. Name: Steve Stauffer
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301
   Phone: (850) 606-5504
   Fax: (850) 606-5501
   E-mail: StaufferS@leoncountyfl.gov

5. Name: Debbie Deng
   Address: 300 S. Adams St.
   Tallahassee, FL 32301
   Phone: (850) 891-8514
   Fax: (850) 891-8735
   E-mail: Debbie.Deng@talgov.com

APPENDIX F
ELIGIBLE AGENCIES*

1. Eligible Agency Name: City of Tallahassee
   Contact Name: Lee Hartsfield
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301
   Phone: (850) 606-5584
   Fax: (850) 606-5501
   E-mail: hartsfieldl@leoncountyfl.gov

2. Eligible Agency Name: Property Appraiser
   Contact Name: Lee Hartsfield
   Address: 301 S. Monroe St.
   Tallahassee, FL 32301
   Phone: (850) 606-5584
   Fax: (850) 606-5501
   E-mail: hartsfieldl@leoncountyfl.gov

* Licensee shall not include Agencies or other entities due to the acquisition of a "power" or "water utility company or district" and "school district" or "library department" use is limited to internal administrative use.

GENERAL LICENSE TERMS AND CONDITIONS
(E200M 6/08)

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

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

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

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

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

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms of this License Agreement, ESRI grants to Licensee a personal, nonexclusive, nontransferable license solely to

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

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

a. If accepted into the Beta Testing Program, ESRI will provide to Licensee access to Beta and will grant Licensee a personal, nonexclusive, nontransferable, royalty-free license to use Beta at the authorized and identified test sites solely for the purpose of testing Beta as delivered, in accordance with the Beta Testing Program guidelines and the terms of this License Agreement. This grant of license is effective from the date accepted into the program or date of receipt of any Beta until the date of the commercial release of Software from ESRI Customer Service or the date of termination of the Beta Testing Program for the specific Beta, whichever is sooner.
b. Licensee agrees to provide suggestions or comments regarding performance, usability or effectiveness, bug reports, test reports, or other feedback (collectively, "Feedback") to ESRI with respect to Beta. ESRI retains title to such comments and may freely use, disclose, reproduce, license, distribute, and otherwise commercialize any Feedback.
c. Beta and Feedback contain confidential information and trade secrets that are proprietary to ESRI. Licensee agrees to use commercially reasonable means (at least as great as those used by Licensee for its own confidential information) to maintain the integrity, confidentiality, and ESRI proprietary rights in Beta and Feedback.

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ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

a. Licensee may install and store Software, Data, and Documentation on electronic storage device(s).
b. Licensee may make one (1) copy of Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
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b. Licensee shall not redistribute Software, Data, or Web Services to unauthorized third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs without the prior written approval of ESRI.
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6.4 Internet Disclaimer. BOTH 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) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (iii) NEITHER PARTY IS 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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6.6 Exclusive Remedy. Licensee's exclusive remedy and ESRI's entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at ESRI's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software subject to the ESRI Support Services Policy; or (iii) return of the license fees paid by Licensee for Software or Documentation that does not meet ESRI's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation and executes and delivers evidence of such actions to ESRI.

ARTICLE 7—LIMITATION OF LIABILITY

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7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF

WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR SOFTWARE, DATA, WEB SERVICES, OR DOCUMENTATION PURSUANT TO THIS LICENSE AGREEMENT.

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ARTICLE 8—INFRINGEMENT INDEMNITY

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c. ESRI has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
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8.4 In no event shall the indemnification set forth in this Article 8 apply to any Samples, hot fixes, Beta, or evaluation software delivered hereunder.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF ESRI WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Orders. Updates or released new Software, Data, Web Services, and Documentation may require additional or differing terms for use. New or updated Software, Data, Web Services, and Documentation shall be governed by the then-current ESRI license terms and conditions. Updated versions of the license terms and conditions will be available on ESRI's Web site, included with a quote, or included with the deliverable Software, Data, Web Services, or Documentation.

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

9.3 Taxes and Fees, Shipping Charges. License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this License Agreement 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 License Agreement 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 License Agreement without ESRI's prior written consent, and any attempt to do so without consent shall be void. This License Agreement shall be binding upon the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor that has acquired Software, Data, Web Services, or Documentation under contract to the government may assign this License Agreement to its government customer upon written notice to ESRI, provided the government customer assents to the terms of this License Agreement.

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

9.8 Equitable Relief. Licensee agrees that any breach of this License Agreement by Licensee 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 without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

9.9 Government Licensee. The Software, Data, Web Services, and Documentation are commercial computer software, commercial data, commercial computer software documentation, and commercial Web Services. This License Agreement contains ESRI's commercial license terms and conditions for such items. The commercial license rights in this License Agreement strictly govern Licensee's use, reproduction, or disclosure of the Software, Data, Web Services, and Documentation. No other license terms or conditions shall apply unless expressly agreed in writing by ESRI and Licensee. ESRI Software source code is unpublished and all rights to the Software, Data, Web Services, and Documentation are reserved under copyright laws of the United States. In the event any court, arbitrator, or board holds that Licensee has greater rights to any portion of the Software, Data, Web Services, or Documentation under applicable public procurement law, such rights shall extend only to the portion affected, and use, duplication, or disclosure by Licensee is subject to restrictions as provided in FAR 52.227-19(b) (DEC 2007), FAR 52.227-14 (ALT III) (DEC 2007), DFARS 252.227-7015 (NOV 1995), or NFS 1852.227-86 (DEC 1987), or the local, state, or foreign equivalent, as applicable.

9.10 Governing Law. *Licensees in the United States of America, Its Territories, and Outlying Areas.* This License Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to conflict of laws principles, except that U.S. federal law shall govern in matters of intellectual property.

9.11 Maintenance. Maintenance for qualifying Software or Data consists of updates and other benefits such as access to technical support, specified in ESRI's most current applicable software maintenance policy.

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

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

EAP Agreement No. 2009EAP5943

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

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

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

Authorized EAP Contact Information
(to be completed by Licensee)

Contact: Lee Hartsfield

Telephone: (850) 606-5584

Address: 301 S. Monroe St.

Fax: (850) 606-5501

City, State, ZIP: Tallahassee, FL 32301

E-mail: hartsfieldl@leoncountyfl.gov

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

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EAP Agreement shall have the meaning found in the applicable ESRI license agreement.

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

"PSS" means Premium Support Services.

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

"Term" means the initial term of this EAP Agreement.

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

ARTICLE 2—ENTERPRISE ADVANTAGE PROGRAM

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

a. *Assigned Technical Advisor.* An ESRI Technical Advisor who has expertise in ESRI GIS software capabilities and has the ability to analyze and assess optimal solutions in the context of GIS enterprise implementation will be assigned to Licensee. Licensee will receive up to the number of ordered Technical Advisor Hours. Licensee may elect to retain additional Technical Advisor Services blocks (100 hour blocks) for a supplemental price. Technical Advisors are not substitutes for services provided by ESRI Support Services or the Professional Services Division. Licensee will continue to contact ESRI Support Services as the first point of contact for all technical support inquiries. If a custom application or other services are required, Licensee will need to use ESRI Professional Services. If Licensee requests the Technical Advisor to come to Licensee's site, Licensee will pay reasonable travel costs. The assigned Technical Advisor in coordination with the assigned Account Manager shall

   (1) Advise Licensee on GIS strategies, architectures, and product selection;
   (2) Advise Licensee on training needs, available business partner solutions, and business case development;
   (3) Act as Licensee's technical advocate in dealing with ESRI;
   (4) Participate in annual account reviews; and
   (5) Serve as point of escalation if Licensee is not satisfied with the resolution of an incident through ESRI Support Services.

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

c. *System Environment Profile.* ESRI will provide Licensee access to ESRI's Premium Support Services Web site to enable Licensee to complete and maintain an inventory of Licensee's relevant GIS technical environment to assist the Technical Advisor(s) and PSS Coordinator in supporting Licensee's environment as appropriate.

d. *Learning and Services Credits*

   (1) Licensee will receive the number of ordered Learning and Services Credits. Licensee may use the credits toward any combination of consulting services support, training, premium support, or related travel expenses as described below.
   (2) Licensee may order, for an additional price, one (1) additional block of Learning and Services Credits during the initial term of the EAP Agreement and one (1) additional block of Learning and Services Credits for each Renewal Term.

(3) If Licensee requests additional blocks of Learning and Services Credits over and above the initial additional block provided for in the preceding paragraph, Licensee must order the Learning and Services Credits and Technical Advisor Services bundle.
(4) Learning and Services Credit may be exchanged as follows:

Technical Consulting Services Support consisting of review of technology strategy, systems design, prototyping, and other general technical consulting services support activities (Any project-related activities requiring a deliverable other than consulting time will be scoped, budgeted, and scheduled through a separate agreement.)	1 credit = 2 hours
Annual Premium Support Limited	15 credits = 5 Incidents
Annual Premium Support Limited	25 credits = 10 Incidents
Annual Premium Support Unlimited	75 credits = Unlimited Incidents
Instructor-led Training for one person at an ESRI Facility	1 credit = 1 day
Licensee site Instructor-led Training (up to 12 people)	9 credits = 1 day
Including Mobile Lab	1 credit = 1 day
Phone Support	1 credit = 1 course
Virtual Campus Dollars	1 credit = 480 Virtual Campus dollars
Virtual Classroom Course	1.5 credits = 1 course
Related ESRI travel and per diem expenses	as quoted

Note: Offerings above may be added or removed from time to time in conformance with the EAP requirements.

(5) Unused Learning and Services Credits may be carried over to future years as long as Licensee remains an ESRI Enterprise Advantage Program customer. If this EAP Agreement expires (exclusive of termination for default), any unused credits will expire six (6) months after the expiration of this EAP Agreement; however, the Technical Advisor Services will not be available during this post-Term period.
(6) ESRI will provide EAP Contact with a monthly report outlining usage of Enterprise Advantage Program Learning and Services Credits to date of usage.

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

2.2 Learning and Services Credit Use

a. *Current on Maintenance.* Licensee must remain current on standard maintenance during the term of this EAP Agreement. Standard maintenance is described at http://www.esri.com/legal, which may be changed from time to time.
b. *Authorization of Credit Use.* Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. ESRI will submit to Licensee a Learning and Services Credit estimate by e-mail for confirmation and authorization for use of the credits.
c. *Travel and Per Diem.* Any ESRI travel and per diem will be quoted separately. Licensee may direct ESRI to use credits for travel and per diem as stated in Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and ESRI will invoice Licensee for the travel and per diem expenses as described below in Article 6.
d. *Notification of Consumed Credits.* ESRI will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify ESRI to stop work on such requested work. ESRI reserves the right to discontinue work when the authorized credits are consumed.
e. *Review of Proposed Activities.* Any activities proposed to be completed under the Enterprise Advantage Program will be subject to review and approval by ESRI to ensure alignment with the intent of the program.

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

ARTICLE 3—LICENSE GRANT

3.1 Training. *The terms of the ESRI License Agreement shall be applicable to all Licensee course participants* and for all Software, Data, Web Services, and Documentation licensed for use in any training course to be

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

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties and Disclaimers

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

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

ARTICLE 5—LIMITATION OF LIABILITY

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

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

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

ARTICLE 6—COMPENSATION

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

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

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

ARTICLE 7—TERM AND TERMINATION

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

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

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

7.4 Upon termination or expiration of this EAP Agreement

a. Except when termination results from nonrenewal, all outstanding Learning and Services Credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of ESRI.
b. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to ESRI shall be accelerated automatically so that such amounts become due and payable on the effective date of termination, regardless of the payment term provisions set forth in this EAP Agreement.
c. Except where a provision specifically provides otherwise, any cause of action or claim of one (1) party accrued to or to accrue because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

ARTICLE 8—CONFIDENTIALITY

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

8.2 Work Product

a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee shall have met its obligations under this EAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advanced written consent of ESRI. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
c. The disclosures permitted under this Section 8.2 shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties

as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EAP Agreement and obtain their agreement to be bound by them.

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

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

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

9.2 Licensee may use Learning and Services Credits for PSS (annually) for any product covered under ESRI's standard maintenance subscription. Licensee may order Annual PSS Limited or Annual PSS Unlimited, and such PSS shall be provided for the Term of the EAP Agreement.

9.3 Premium Support Description. PSS shall provide (1) a designated Premium Support Coordinator ("PSC"), (2) telephone and e-mail support accessible to Licensee during normal business hours, (3) Priority Incident Management, and (4) other additional enhanced support and services.

9.4 Premium Support Coordinator. ESRI shall assign a PSC to Licensee. The assigned PSC shall work directly with Licensee's authorized contact and shall oversee all of Licensee's open Incidents.

The PSC shall

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

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

a. Licensee may open an Incident by calling Support Services or logging the Incident via the PSS Web site. An automated e-mail acknowledgment shall be sent to Licensee for a new Incident logged via the PSS Web site. The assigned PSC shall use commercially reasonable efforts to call or send an e-mail response within one (1) hour of receipt of a new Incident to notify Licensee that the logged Incident is in the initial stage of review;
b. Licensee shall have a separate and dedicated telephone number to call Support Services that includes a personalized greeting and Priority Incident Management; and
c. PSS shall be available to Licensee from 5:00 a.m. to 5:00 p.m., Monday through Friday, Pacific standard time. In the event that PSC is not available during such time, Licensee's telephone calls and e-mails shall be routed to a Senior Support Analyst who can assist Licensee until PSC becomes available.

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

a. Incidents reported by Licensee shall be given priority handling after the initial Incident is created and documented;
b. Incidents shall be monitored by PSC, and PSC shall provide Licensee with a daily status update on all open Incidents;
c. Software defects affecting Licensee shall be a priority for discussion of the User Advocacy Group; and
d. For identified Software defects that are approved for an out-of-cycle hot fix or patch, PSC shall assist in presenting the hot fix or patch to Licensee and verify that the delivered hot fix or patch addresses the reported issue.

9.7 Other Additional Enhanced Support and Services. ESRI shall further provide the following to Licensee:

a. *Authorized Callers.* Licensee may designate up to two (2) specific authorized callers who may contact PSC, thereby providing continuity and promoting the improvement of services by building technical and business knowledge of the parties.
b. *Premium Support Web Site Access.* Licensee shall have access to the PSS Web site at http://support.esri.com/psg. PSC shall log and track the status and completion of all identified Incidents on this Web site. Licensee's authorized

callers may log and view their Incidents, initiate chat sessions and remote screen sharing with PSC, and access other PSS-related tools and information through this Web site.

c. *System/Environment Profile.* Through the PSS Web site, Licensee shall have access to an ESRI database to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with ESRI technology.
d. *PSS Software Alert Newsletter.* Licensee shall receive a news bulletin that discusses key current issues in Software being investigated by ESRI.
e. *Quarterly Teleconference Meeting.* ESRI and Licensee shall conduct a quarterly teleconference meeting to discuss Licensee's Incidents. ESRI shall make available the assigned Account Manager, PSC, Premium Support Manager, and other ESRI staff as deemed necessary by ESRI.

9.8 PSS Restrictions and Exclusions

a. *Excluded Software.* PSS is not available for third-party software. ESRI is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.
b. *Territory.* PSS is available only within the United States and its territories.
c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of the Software to PSS is not a guarantee that it can or will be corrected. At ESRI's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by ESRI.
d. *Hardware Support.* ESRI does not provide support for hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, and so forth, except to answer questions regarding how standard, supported devices interface with Software.
e. *On-Site Support.* PSS does not include on-site support.

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

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

10.2 Patents and Inventions

a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Addendum. The parties shall jointly own any Inventions made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to ESRI an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.
b. Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.
c. A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.
d. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to ESRI for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party.

10.3 Ownership. Except as specifically granted in this EAP Agreement, ESRI or its licensors own and retain all right, title, and interest in the Work Product.

ARTICLE 11—TRAINING TERMS AND CONDITIONS

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

11.2 Training Location. Training may be conducted at Licensee's site or at an ESRI learning center.

11.3 Course Descriptions. The ESRI Software training courses offered, location, dates during which the courses are to be conducted, number of participants, and prices to be paid to ESRI are as set forth in the *ESRI Course Catalog* or at ESRI's training Web site (http://training.esri.com). Licensee Site pricing and schedule information are available on request. All courses shall be conducted in substantial conformity with course descriptions outlined on the ESRI training Web site (http://training.esri.com). ESRI reserves the right to modify course content when necessary due to Software technical capabilities or limitations.

11.4 ESRI's Responsibility

a. ESRI shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants. ESRI will provide each student with a course manual.
b. ESRI's Training Event Assistant, through whom all course(s), dates, and locations shall be confirmed, can be reached via the contact information as listed in the Licensee Site Training Request Form, found at http://downloads2.esri.com/Campus/documents/regapp.pdf.
c. Scheduled dates for the learning center training class shall be confirmed by the Training Event Assistant approximately ten (10) business days prior to the start date.
d. Licensee Site classes shall be confirmed by the Training Event Assistant upon receipt of payment/order information and completed Licensee Site Training Request Form.

11.5 Licensee's Responsibilities

a. Licensee must ensure that ESRI copyrights are observed and that neither Licensee nor any third party copies or distributes any training materials provided for training purposes.
b. Licensee is not authorized to resell ESRI training seats, unless explicitly authorized by ESRI in writing.
c. Licensee is responsible for confirming that all registered students meet the applicable minimum prerequisites for the applicable class set forth on ESRI's training Web site.
d. Licensee shall submit to the Training Event Assistant a list of student names at least three (3) business days before the class start date for checking export license compliancy.
e. Travel is Licensee's responsibility. ESRI assumes no responsibility for nonrefundable travel arrangement losses resulting from denial of a student's(s') participation due to U.S. government export licensing requirements, course scheduling changes, or cancellations. Even though ESRI strives to confirm all classes, class cancellations are sometimes unavoidable.
f. Licensee must notify the Training Event Assistant of any cancellation, rescheduling, or participant substitution requirements and receive confirmation of change(s) prior to the class start date.

11.6 Unique ESRI Learning Center Terms. Where courses are to be conducted at ESRI facilities, the following restrictions and requirements apply:

Seating is limited in some classes. Registrations are always processed, using a standard student registration application, on a first come, first served basis. Waiting lists are used when necessary. Class schedules and registration applications are attached to every course catalog and are available on the Web at http://training.esri.com. Registrations must be submitted in advance.

11.7 Unique Licensee Site Terms. Where courses are to be conducted at Licensee's facilities, Licensee shall provide physical training facilities that meet the following minimum requirements or modifications as mutually agreed to by both parties:

a. Licensee shall, where possible, provide a one (1)-room facility, sufficient for a training course for up to twelve (12) persons (or such other number as may be agreed to by ESRI's Training Event Assistant). The facility shall have appropriate climate control and lighting as well as sufficient power and number of outlets to accommodate the required number of computers and other equipment to be used.
b. Where the ESRI Mobile Lab is utilized for a scheduled class:

(1) Licensee shall be responsible for any and all loss, damage, or theft to the Mobile Lab while in Licensee's possession. Licensee should immediately report any damage or missing items, upon receipt, to the Training Event Assistant.
(2) Licensee shall keep the Mobile Lab equipment in a secure, locked area between class sessions.
(3) Licensee shall sign release form at completion of course that outlines status of Mobile Lab and makes the Mobile Lab equipment available for freight pickup immediately on conclusion of the ESRI course(s).
(4) Licensee shall ensure no one except registered students uses the Mobile Lab equipment.
(5) Licensee warrants that it shall maintain sufficient insurance coverage to enable it to meet its obligations created by this agreement and by law.

c. Where the ESRI Mobile Lab is not utilized for a scheduled class:

(1) Licensee shall supply all computer hardware for the training course(s). Computers must be platforms fully supported by ESRI. All computer hardware shall be configured with an appropriate release of an operating system to run the current release version of the ESRI required Software.
(2) There shall be a minimum of one (1) computer and color monitor for every participant.
(3) ESRI will not be liable for any damage or loss to Licensee computer hardware or software where ESRI has provided telephone support to Licensee for its computer hardware configuration for the scheduled class.

d. Licensee shall provide other peripheral devices including, but not limited to, digitizers and plotters/printers, as required by the training course being conducted, and they should be fully supported by Licensee.
e. Licensee shall be responsible for providing one (1) high-resolution PC projector and screen as well as one (1) large writing board. Where Licensee cannot make a PC projector available, it must contact the Training Event Assistant no less than ten (10) business days prior to start date.
f. Licensee shall limit the number of course participants to twelve (12) students per course. Additional students, up to a maximum of fifteen (15), may be added to some classes for an additional fee.
g. Licensee shall complete and submit an ESRI Licensee Site Training Request Form, as provided by the Training Event Assistant, no less than four (4) weeks prior to the start of any course. Final schedule is subject to mutual agreement.

11.8 Software Licenses. The terms of the ESRI license agreement shall be applicable to all Licensee course participants and for all Software and Documentation licensed for use in any training course to be conducted. For Licensee Site training, temporary Software licenses may be issued by ESRI where there is an insufficient number of Software licenses available at the training facility. Licensee shall uninstall the temporary Software licenses at the conclusion of the training course(s).

11.9 Cancellation and Rescheduling Policy. Licensee may cancel or reschedule student attendance in a learning center class or a Licensee Site class up to three (3) working days before the scheduled class start date. In such event, Licensee will be responsible for any reasonable travel and shipping expenses incurred by ESRI. Where Licensee does not notify ESRI at least three (3) days prior to the scheduled training date for a learning center class or a Licensee Site class, Licensee will be liable for the full payment of the student enrollment or ESRI will deduct the appropriate number of Learning and Services Credits.

In the event that ESRI is unable to conduct the training on the scheduled date, ESRI will make reasonable attempts to notify Licensee at least three (3) business days before the scheduled date. ESRI will either reschedule the training or cancel the order without ESRI incurring any liability.

Class participants may transfer to another class up to two (2) times at no additional charge. Subsequent transfers will be assessed an additional nonrefundable transfer fee. Student substitutions, when a student's place in class is filled by another person from the same organization, are allowed provided that the ESRI Training Event Assistant is notified three (3) business days in advance of class start date.

ARTICLE 12—GENERAL PROVISIONS

12.1 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EAP Agreement and shall take other necessary steps to protect ESRI's or its licensor's intellectual property rights.

12.2 Nonsolicitation of Contractor Personnel. Licensee shall not solicit for hire any ESRI employee who is associated with efforts called for under this EAP Agreement during the term and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee shall pay ESRI liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision.

12.3 Export Control. ESRI's technology is subject to U.S. export control laws and regulations—ESRI's Software, data, documentation, and any underlying information or technology may not be exported, reexported, or provided in whole or in part to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Department of the Treasury list of Specially Designated Nationals; (iii) any person or entity on the U.S. Department of Commerce Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation.

ARTICLE 6—COMPENSATION

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

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

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

ARTICLE 7—TERM AND TERMINATION

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

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

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

7.4 Upon termination or expiration of this EAP Agreement

a. Except when termination results from nonrenewal, all outstanding Learning and Services Credits shall be subject to cancellation, acceptance, or rejection at the sole discretion of ESRI.
b. In the event of termination for a material breach, the due dates of all invoices for amounts owed by Licensee to ESRI shall be accelerated automatically so that such amounts become due and payable on the effective date of termination, regardless of the payment term provisions set forth in this EAP Agreement.
c. Except where a provision specifically provides otherwise, any cause of action or claim of one (1) party accrued to or to accrue because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit their complete fulfillment or discharge.

ARTICLE 8—CONFIDENTIALITY

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

8.2 Work Product

a. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered only in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee shall have met its obligations under this EAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, *provided that* the means for reverse engineering, decompiling, or disassembling Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.
b. Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advanced written consent of ESRI. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.
c. The disclosures permitted under this Section 8.2 shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties

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ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

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

9.2 Licensee may use Learning and Services Credits for PSS (annually) for any product covered under ESRI's standard maintenance subscription. Licensee may order Annual PSS Limited or Annual PSS Unlimited, and such PSS shall be provided for the Term of the EAP Agreement.

9.3 Premium Support Description. PSS shall provide (1) a designated Premium Support Coordinator ("PSC"), (2) telephone and e-mail support accessible to Licensee during normal business hours, (3) Priority Incident Management, and (4) other additional enhanced support and services.

9.4 Premium Support Coordinator. ESRI shall assign a PSC to Licensee. The assigned PSC shall work directly with Licensee's authorized contact and shall oversee all of Licensee's open Incidents.

The PSC shall

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

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

a. Licensee may open an Incident by calling Support Services or logging the Incident via the PSS Web site. An automated e-mail acknowledgment shall be sent to Licensee for a new Incident logged via the PSS Web site. The assigned PSC shall use commercially reasonable efforts to call or send an e-mail response within one (1) hour of receipt of a new Incident to notify Licensee that the logged Incident is in the initial stage of review;
b. Licensee shall have a separate and dedicated telephone number to call Support Services that includes a personalized greeting and Priority Incident Management; and
c. PSS shall be available to Licensee from 5:00 a.m. to 5:00 p.m., Monday through Friday, Pacific standard time. In the event that PSC is not available during such time, Licensee's telephone calls and e-mails shall be routed to a Senior Support Analyst who can assist Licensee until PSC becomes available.

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

a. Incidents reported by Licensee shall be given priority handling after the initial Incident is created and documented;
b. Incidents shall be monitored by PSC, and PSC shall provide Licensee with a daily status update on all open Incidents;
c. Software defects affecting Licensee shall be a priority for discussion of the User Advocacy Group; and
d. For identified Software defects that are approved for an out-of-cycle hot fix or patch, PSC shall assist in presenting the hot fix or patch to Licensee and verify that the delivered hot fix or patch addresses the reported issue.

9.7 Other Additional Enhanced Support and Services. ESRI shall further provide the following to Licensee:

a. *Authorized Callers.* Licensee may designate up to two (2) specific authorized callers who may contact PSC, thereby providing continuity and promoting the improvement of services by building technical and business knowledge of the parties.
b. *Premium Support Web Site Access.* Licensee shall have access to the PSS Web site at http://support.esri.com/pss. PSC shall log and track the status and completion of all identified Incidents on this Web site. Licensee's authorized

callers may log and view their Incidents, initiate chat sessions and remote screen sharing with PSC, and access other PSS-related tools and information through this Web site.

c. *System/Environment Profile.* Through the PSS Web site, Licensee shall have access to an ESRI database to enter and maintain data regarding Licensee's equipment, applications, and skill sets associated with ESRI technology.
d. *PSS Software Alert Newsletter.* Licensee shall receive a news bulletin that discusses key current issues in Software being investigated by ESRI.
e. *Quarterly Teleconference Meeting.* ESRI and Licensee shall conduct a quarterly teleconference meeting to discuss Licensee's Incidents. ESRI shall make available the assigned Account Manager, PSC, Premium Support Manager, and other ESRI staff as deemed necessary by ESRI.

9.8 PSS Restrictions and Exclusions

a. *Excluded Software.* PSS is not available for third-party software. ESRI is not responsible for errors attributable to third-party software used in conjunction with or built upon Software.
b. *Territory.* PSS is available only within the United States and its territories.
c. *Acknowledgment.* Licensee acknowledges and agrees that the report of an error or defect of the Software to PSS is not a guarantee that it can or will be corrected. At ESRI's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by ESRI.
d. *Hardware Support.* ESRI does not provide support for hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, and so forth, except to answer questions regarding how standard, supported devices interface with Software.
e. *On-Site Support.* PSS does not include on-site support.

ARTICLE 10—CONSULTING SERVICES SUPPORT TERMS AND CONDITIONS

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

10.2 Patents and Inventions

a. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Addendum. The parties shall jointly own any Inventions made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Software, Licensee hereby grants and agrees to grant to ESRI an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use.
b. Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.
c. A joint owner ("Assigning Owner") electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the other joint owner ("Beneficial Owner") as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.
d. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to ESRI for Inventions relating to the Software and shall otherwise not be unreasonably withheld by either party.

10.3 Ownership. Except as specifically granted in this EAP Agreement, ESRI or its licensors own and retain all right, title, and interest in the Work Product.

ARTICLE 11—TRAINING TERMS AND CONDITIONS

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

11.2 Training Location. Training may be conducted at Licensee's site or at an ESRI learning center.

11.3 Course Descriptions. The ESRI Software training courses offered, location, dates during which the courses are to be conducted, number of participants, and prices to be paid to ESRI are as set forth in the *ESRI Course Catalog* or at ESRI's training Web site (http://training.esri.com). Licensee Site pricing and schedule information are available on request. All courses shall be conducted in substantial conformity with course descriptions outlined on the ESRI training Web site (http://training.esri.com). ESRI reserves the right to modify course content when necessary due to Software technical capabilities or limitations.

11.4 ESRI's Responsibility

a. ESRI shall provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants. ESRI will provide each student with a course manual.
b. ESRI's Training Event Assistant, through whom all course(s), dates, and locations shall be confirmed, can be reached via the contact information as listed in the Licensee Site Training Request Form, found at http://downloads2.esri.com/Campus/documents/regapp.pdf.
c. Scheduled dates for the learning center training class shall be confirmed by the Training Event Assistant approximately ten (10) business days prior to the start date.
d. Licensee Site classes shall be confirmed by the Training Event Assistant upon receipt of payment/order information and completed Licensee Site Training Request Form.

11.5 Licensee's Responsibilities

a. Licensee must ensure that ESRI copyrights are observed and that neither Licensee nor any third party copies or distributes any training materials provided for training purposes.
b. Licensee is not authorized to resell ESRI training seats, unless explicitly authorized by ESRI in writing.
c. Licensee is responsible for confirming that all registered students meet the applicable minimum prerequisites for the applicable class set forth on ESRI's training Web site.
d. Licensee shall submit to the Training Event Assistant a list of student names at least three (3) business days before the class start date for checking export license compliancy.
e. Travel is Licensee's responsibility. ESRI assumes no responsibility for nonrefundable travel arrangement losses resulting from denial of a student's(s') participation due to U.S. government export licensing requirements, course scheduling changes, or cancellations. Even though ESRI strives to confirm all classes, class cancellations are sometimes unavoidable.
f. Licensee must notify the Training Event Assistant of any cancellation, rescheduling, or participant substitution requirements and receive confirmation of change(s) prior to the class start date.

11.6 Unique ESRI Learning Center Terms. Where courses are to be conducted at ESRI facilities, the following restrictions and requirements apply:

Seating is limited in some classes. Registrations are always processed, using a standard student registration application, on a first come, first served basis. Waiting lists are used when necessary. Class schedules and registration applications are attached to every course catalog and are available on the Web at http://training.esri.com. Registrations must be submitted in advance.

11.7 Unique Licensee Site Terms. Where courses are to be conducted at Licensee's facilities, Licensee shall provide physical training facilities that meet the following minimum requirements or modifications as mutually agreed to by both parties:

a. Licensee shall, where possible, provide a one (1)-room facility, sufficient for a training course for up to twelve (12) persons (or such other number as may be agreed to by ESRI's Training Event Assistant). The facility shall have appropriate climate control and lighting as well as sufficient power and number of outlets to accommodate the required number of computers and other equipment to be used.
b. Where the ESRI Mobile Lab is utilized for a scheduled class:

(1) Licensee shall be responsible for any and all loss, damage, or theft to the Mobile Lab while in Licensee's possession. Licensee should immediately report any damage or missing items, upon receipt, to the Training Event Assistant.
(2) Licensee shall keep the Mobile Lab equipment in a secure, locked area between class sessions.
(3) Licensee shall sign release form at completion of course that outlines status of Mobile Lab and makes the Mobile Lab equipment available for freight pickup immediately on conclusion of the ESRI course(s).
(4) Licensee shall ensure no one except registered students uses the Mobile Lab equipment.
(5) Licensee warrants that it shall maintain sufficient insurance coverage to enable it to meet its obligations created by this agreement and by law.

c. Where the ESRI Mobile Lab is not utilized for a scheduled class:

(1) Licensee shall supply all computer hardware for the training course(s). Computers must be platforms fully supported by ESRI. All computer hardware shall be configured with an appropriate release of an operating system to run the current release version of the ESRI required Software.
(2) There shall be a minimum of one (1) computer and color monitor for every participant.
(3) ESRI will not be liable for any damage or loss to Licensee computer hardware or software where ESRI has provided telephone support to Licensee for its computer hardware configuration for the scheduled class.

d. Licensee shall provide other peripheral devices including, but not limited to, digitizers and plotters/printers, as required by the training course being conducted, and they should be fully supported by Licensee.
e. Licensee shall be responsible for providing one (1) high-resolution PC projector and screen as well as one (1) large writing board. Where Licensee cannot make a PC projector available, it must contact the Training Event Assistant no less than ten (10) business days prior to start date.
f. Licensee shall limit the number of course participants to twelve (12) students per course. Additional students, up to a maximum of fifteen (15), may be added to some classes for an additional fee.
g. Licensee shall complete and submit an ESRI Licensee Site Training Request Form, as provided by the Training Event Assistant, no less than four (4) weeks prior to the start of any course. Final schedule is subject to mutual agreement.

11.8 Software Licenses. The terms of the ESRI license agreement shall be applicable to all Licensee course participants and for all Software and Documentation licensed for use in any training course to be conducted. For Licensee Site training, temporary Software licenses may be issued by ESRI where there is an insufficient number of Software licenses available at the training facility. Licensee shall uninstall the temporary Software licenses at the conclusion of the training course(s).

11.9 Cancellation and Rescheduling Policy. Licensee may cancel or reschedule student attendance in a learning center class or a Licensee Site class up to three (3) working days before the scheduled class start date. In such event, Licensee will be responsible for any reasonable travel and shipping expenses incurred by ESRI. Where Licensee does not notify ESRI at least three (3) days prior to the scheduled training date for a learning center class or a Licensee Site class, Licensee will be liable for the full payment of the student enrollment or ESRI will deduct the appropriate number of Learning and Services Credits.

In the event that ESRI is unable to conduct the training on the scheduled date, ESRI will make reasonable attempts to notify Licensee at least three (3) business days before the scheduled date. ESRI will either reschedule the training or cancel the order without ESRI incurring any liability.

Class participants may transfer to another class up to two (2) times at no additional charge. Subsequent transfers will be assessed an additional nonrefundable transfer fee. Student substitutions, when a student's place in class is filled by another person from the same organization, are allowed provided that the ESRI Training Event Assistant is notified three (3) business days in advance of class start date.

ARTICLE 12—GENERAL PROVISIONS

12.1 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EAP Agreement and shall take other necessary steps to protect ESRI's or its licensor's intellectual property rights.

12.2 Nonsolicitation of Contractor Personnel. Licensee shall not solicit for hire any ESRI employee who is associated with efforts called for under this EAP Agreement during the term and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee shall pay ESRI liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision.

12.3 Export Control. ESRI's technology is subject to U.S. export control laws and regulations—ESRI's Software, data, documentation, and any underlying information or technology may not be exported, reexported, or provided in whole or in part to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Department of the Treasury list of Specially Designated Nationals; (iii) any person or entity on the U.S. Department of Commerce Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control law or regulation.