SMALL MUNICIPAL AND COUNTY ENTERPRISE LICENSE AGREEMENT (E214-1 05/14/2010)

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

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

This ELA is composed of (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise the ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Purchase Order will not apply, and the terms of this ELA will govern.

ENTERPRISE SOFTWARE SCHEDULE

Unlimited Quantities

Desktop Software and Extensions
ArcInfo
ArcEditor
ArcView
ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and Job Tracking for ArcGIS (JTX)

Server Software and Extensions
ArcGIS Server Workgroup or Enterprise (Advanced, Standard, and Basic)
ArcIMS
ArcGIS Server Extensions: 3D, Schematics, Geostatistical, Job Tracking, Network, Image, and Spatial

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

Limited Quantities
One Annual Subscription to ESRI Developer Network (EDN)

OTHER BENEFITS

Number of ESRI International User Conference Registrations provided annually	**2**
Number of Tier 1 Help Desk Individuals authorized to call ESRI	**2**
Sets of media*	**2**
Virtual Campus Dollars allowance for ESRI authored courses only	**5,000**
Five percent (5%) discount on all commercially available instructor-led training at ESRI facilities	

* Additional sets of media may be purchased.

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

Licensee may accept this ELA by signing and returning it with an authorizing Purchase Order that matches the ELA Quotation, references the ELA, and includes the following statement on the face of its Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."**

Licensee will return this ELA and its Purchase Order to Attn.: ESRI Customer Service, Dept. SG-ELA, 380 New York Street, Redlands, CA 92373-8100; e-mail it to service@esri.com; or fax it to 909-307-3083.

ACCEPTED AND AGREED:

City of Leesburg, Florida
(Licensee)

By: _____
Signature

Printed Name: Bill Polk

Title: Mayor

Date: _____

Attest By: _____
City Clerk

Licensee Contact Information

Contact Name: _____

Address: _____

City, State, ZIP: _____

Telephone: _____

Fax: _____

E-mail: _____

ELA Quotation Number: _____

ESRI Contract Number: _____

ELA TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

Definitions. The terms used are defined as follows:

- "Data" means any ESRI or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related key codes/registration files) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- "ELA Maintenance" means Tier 2 Support, updates, and patches provided by ESRI to Licensee for the Enterprise Software.
- "ELA Quotation" means the ESRI quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by ESRI under this ELA.
- "Software" means the actual copy of 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.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction; patches; hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License" means licenses provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by ESRI to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or ESRI or third-party data provided by ESRI that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

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

ARTICLE 3—GRANT OF LICENSE

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

a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
b. Deploy one subscription of the ESRI Developer Network for use by a single named developer for the term of this ELA.
c. Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.
d. Use Enterprise Software in accordance with Exhibit 1 (provided that all licenses are Term Licenses).

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

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of ESRI and its licensor(s): "Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. Copyright © [*Insert the actual copyright date(s) from the source materials*] ESRI and its licensor(s). All rights reserved."

4.2 Uses Not Permitted

a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service).
b. Except as provided herein, Licensee shall not redistribute the Software to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
c. Licensee shall not reverse engineer, decompile, or disassemble the Enterprise Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measures that control access to, or use of, the Enterprise Software.
e. Except as provided herein, Licensee shall not redistribute the Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
f. Licensee shall not use the Software or Web Services to transfer or exchange any material where such transfer or exchange is prohibited by intellectual property laws or any other applicable laws.
g. Licensee shall not remove or obscure any ESRI or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Enterprise Software.
h. Licensee shall not unbundle individual or component parts of the Software or Data for independent use.
i. Hard-copy Documentation may not be copied.
j. Licensee shall not use, transfer, redistribute, or Deploy Enterprise Software outside the United States.

ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

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

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

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

5.4 No Use upon Expiration or Termination. Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to ESRI. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

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

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

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

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

6.5 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ENTERPRISE SOFTWARE 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. SOFTWARE, DATA, WEB SERVICES, AND DOCUMENTATION ARE 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.

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 the Software subject to the ESRI Maintenance Program found at www.esri.com/legal/maintenance.html; or (iii) return of the license fees paid by Licensee for the Software or Documentation that does not meet ESRI's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Software or Documentation and executes and delivers evidence of such actions to ESRI.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. ESRI AND ITS LICENSOR(S) 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; OR LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ELA OR USE OF THE ENTERPRISE SOFTWARE, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

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 ENTERPRISE SOFTWARE PURSUANT TO THIS ELA.

7.3 Applicability of Disclaimers and Limitations. The parties agree that ESRI has set its fees and entered into this ELA in reliance upon 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 8—INFRINGEMENT INDEMNITY

8.1 ESRI shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Software infringes a U.S. patent, copyright, or trademark provided

a. Licensee promptly notifies ESRI in writing of the claim;
b. Licensee provides documents clearly describing the allegations of infringement;
c. ESRI has sole control of the defense of any actions and negotiations related to the defense or settlement of any claim; and
d. Licensee cooperates fully in the defense of the claim.

8.2 If the Software is found to infringe a U.S. patent, copyright, or trademark, ESRI, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or (ii) modify the allegedly infringing elements of the Software while maintaining substantially similar software functionality or data/informational content. If neither alternative is commercially reasonable, the infringing items shall be returned to ESRI, the license shall terminate, and Licensee shall uninstall the infringing items. ESRI's entire liability shall then be to indemnify Licensee pursuant to section 8.1 and to refund a portion of the fees paid by Licensee in the current fee payment period. The refund will be calculated for the time remaining for the fee payment period, starting from the notice date of infringement to the end of the fee payment period.

8.3 ESRI shall have no obligation to defend Licensee or to pay any resulting costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement of the Software by (i) the combination of or integration with a product, process, or system not supplied by ESRI; (ii) material alteration by anyone other than ESRI or contractors acting on behalf of ESRI; (iii) use after Licensee has been notified of possible infringement; or (iv) use after modifications are provided or a return is ordered by ESRI under section 8.2.

8.4 In no event shall the indemnification set forth in this Article 8 apply to any Samples delivered hereunder.

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

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Versions/Updates. Updated or new Enterprise Software may require additional or revised terms and conditions. Terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. ESRI may provide notice of the revisions to Licensee in writing or by posting them on ESRI's Web site at www.esri.com/legal. The revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release the Enterprise Software, 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 Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity to which such export or reexport 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. Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. ESRI will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

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

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

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

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

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, a party shall

have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

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

ARTICLE 10—ELA MAINTENANCE

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

a. Tier 1 Support Provided by Licensee

   (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
   (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
   (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
   (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from Licensee user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
   (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact ESRI Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
   (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact ESRI directly for Tier 2 Support. Licensee may revise named individuals by written notice.

b. Tier 2 Support Provided by ESRI

   (1) ESRI shall log the calls received from Tier 1 Help Desk individuals.
   (2) ESRI shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
   (3) ESRI may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
   (4) ESRI shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
   (5) When the Incident is resolved, ESRI shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee user.

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 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

11.1 Purchase Orders, Delivery, and Deployment

a. Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. ESRI's Federal ID Number is 95-2775-732.
b. Upon receipt of the initial Purchase Order from Licensee, ESRI shall deliver media containing the Enterprise Software to Licensee for its Deployment activities. ESRI shall ship the media to the ship-to address identified on the Purchase Order, FOB Destination, with shipping charges prepaid.
c. ESRI shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

11.2 Purchase Order Requirements

a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
b. The following information shall be included in each Purchase Order:

   (1) Licensee name; ESRI customer number, if known; and bill-to and ship-to addresses
   (2) Purchase Order number
   (3) Applicable annual payment due
   (4) On the face page of its Purchase Order (or ordering document), Licensee shall insert a reference to the ELA and the following statement: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

ARTICLE 12—ENDORSEMENT AND PUBLICITY

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

ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

13.1 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 on the availability of such Software, Data, or Web Services as Enterprise 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.

13.2 Product Obsolescence. During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of the ELA, but updates for such obsolete Enterprise Software may not be available. ESRI's Product Life Cycle Support Policy, available at http://resources.arcgis.com/content/product-life-cycles,

defines the support phases and overall support plans. ELA Maintenance shall be subject to the Product Life Cycle Support Status, which can be found at http://resources.arcgis.com/content/product-life-cycles.

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

ARTICLE 14—OPTIONAL ITEMS

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

EXHIBIT 1
SCOPE OF USE
(E300 05/14/2010)

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

Software

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iPhone (1, 16, 25, and 33)
- ArcGIS Desktop
  - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iPhone (1, 20, 25, and 33)
- ArcGIS Mapping
  - For Excel (5, 6, 33, and 35)
  - For SharePoint (5, 6, 31, 33, 35, and 47)
- ArcGIS Mobile Deployments (1, 15, 16, 25, and 33)
- ArcGIS Server
  - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45)
  - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45)
- ArcGIS Server Extensions
  - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping APIs (including JavaScript™, Adobe® Flex™, Microsoft® Silverlight™/WPF™, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (either 1 or 2 and 25)
  - Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
  - Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
  - Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- ESRI Aeronautical Solution (either 1 or 2)
- ESRI Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- ESRI Business Analyst Server (either 3, 4, or 5 and 8, 9, 21, 25, 28, 31, 33, 39, 40, 45, and 48)
- ESRI Business Analyst Server Developer (6, 25, 33, 35, and 51)
- ESRI Defense Mapping (either 1 or 2)
- ESRI Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- ESRI Nautical Solution (either 1 or 2)
- ESRI Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

Web Services

- ArcGIS Online Services (6, 25, 33, 34, and 35)

Data

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

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42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.

43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.
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53. Deployment license options are as follows:

    a. A license for Web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com or example.com.xx (where xx is a registered country code), *example* is the principal registered unique domain identifier.
    b. A license for desktop applications is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

EXHIBIT 2
TRAINING ADDENDUM
(E207CWM 9/09)

ARTICLE 1—TRAINING DESCRIPTION

ESRI offers instructor-led training related to the use of its proprietary GIS software. ESRI will provide to Licensee a fixed number of days of Instructor-Led Training, as defined in the Small Enterprise Training Package included in the ELA. Instructor-led training events occur at an ESRI Learning Center or via the Web. The ESRI software training course(s) to be conducted, location, and schedule dates are set forth in the *ESRI Course Catalog* located on ESRI's Training Web site (http://training.esri.com). All courses are conducted in substantial conformity with course descriptions outlined on the ESRI Training Web site. ESRI reserves the right to modify course content when necessary due to software technical capabilities or limitations.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- ESRI will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. ESRI will provide each Student with a course manual where applicable.
- ESRI will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

ARTICLE 3—LICENSEE'S RESPONSIBILITIES

- Licensee must ensure the protection of ESRI's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of ESRI's training material(s).
- Licensee must not resell seat(s) to an ESRI training class unless explicitly authorized in writing by ESRI.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on ESRI's Training Web site.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, ESRI will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- U.S. government export control laws and regulations prohibit U.S. persons from engaging in transactions with certain denied persons found on various U.S. Government Denied Persons lists (e.g., U.S. Department of the Treasury's Specially Designated Nationals List, U.S. Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to the ESRI Training Event Assistant a list of the names of Students that are to attend any training class. Licensee must submit the list of Student names to ESRI at least three (3) business days before the class start date. Any Student that is found on any of the various U.S. Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. ESRI assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to U.S. government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to ESRI's Customer Service of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for ESRI training as found at http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from ESRI.

ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

Licensee may cancel or reschedule Student attendance in training up to three (3) working days before the scheduled class start date. In the event of a cancellation, Licensee will reimburse ESRI for any reasonable travel and shipping expenses incurred by ESRI. In the event Licensee does not notify ESRI at least three (3) days prior to the scheduled training date, ESRI will deduct the appropriate number of class days from the remaining account training days.

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

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

Students may transfer from one scheduled ESRI Learning Center class to another up to two (2) times at no additional charge. Subsequent transfers may 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 ESRI Customer Service is notified three (3) business days in advance of the class start date.

ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- The training days are available for a period of thirty-six (36) months, commencing on the Effective Date, or when all training days are consumed, whichever is sooner.
- Licensee is committed to scheduled training days when ESRI training requests are received and accepted by ESRI.
- ESRI will invoice for outstanding training expenses where applicable.
- Upon the anniversary, unused training days are forfeited.
- Training days are nontransferable and nonrefundable for any other ESRI products or services.

ARTICLE 6—CONFIDENTIAL INFORMATION

ESRI or the Licensee may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the confidential information of the other party.

ARTICLE 7—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

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ARTICLE 10—UCC INAPPLICABILITY

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