

ENTERPRISE SITE LICENSE AGREEMENT
(E119G 11/05)



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

Agreement No. 2005ELA1911

This Enterprise Site License Agreement, including the documents listed below (collectively, "ELA" or "Agreement") is between the City of Portland, OR ("City") and Environmental Systems Research Institute, Inc. ("ESRI") of Redlands, CA. This Agreement entitles City to license ESRI® Software, Data, Documentation, and procure maintenance and specified services over a three (3) year period of time from the effective date subject to a payment of fees and the terms of this Agreement as specified herein.

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

1. Enterprise Site License Agreement signature page(s), E119G
2. Enterprise License Agreement Addendum, E512G, including;
 - APPENDIX A, Enterprise License Agreement Software and Deployment Schedule
 - APPENDIX B, Enterprise License Fee Schedule
 - APPENDIX C, City Annual Deployment Report
 - APPENDIX D, List of Authorized Centralized Help Desk (CHD) Individuals
3. General License Terms and Conditions, E200M
4. ESRI Exhibit 1, Scope of Use, E300
5. Standard Premium Support Services (PSS) terms and conditions, ESRI document E601M is incorporated to the extent necessary to support Licensee in accordance with Article 2.2(b) – Block of Time at an Hourly Rate. As part of this ELA, ESRI agrees to provide up to seventy-two (72) hours of Premium Support for the first year of the Agreement at no additional charge to Licensee. Unused balance of hours are forfeited at the end of the one (1) year period and may not be credited toward other training or consulting services or rolled over to the next annual period.

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 modification(s) or amendment(s) to this Agreement must be in writing and signed by an authorized representative of each party.

CITY OF PORTLAND
(City)

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC.
(ESRI)

By: _____
Authorized Signature

By: *Laura Dangermond*
Authorized Signature

Printed Name: _____

Printed Name: LAURA DANGERMOND
Vice President

Title: _____

Title: _____
NOV 22 2005

Date: _____

Date: _____

ESRI is a trademark, registered trademark, or service mark of ESRI in the United States, the European Community, or certain other jurisdictions.

APPROVED AS TO FORM

Laura Menges
E119G CITY ATTORNEY

179884

Licensee Contact Information

Contact: Rick Schulte – Corporate Technology Mgr. Telephone: (503)823-5634
Address: 1120 SW 5th Ave., Suite 450 Fax: (503)823-9176
City, State, ZIP: Portland, OR E-mail: ricks@ci.portland.or.us



Enterprise License Agreement Addendum

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

ARTICLE 1—DEFINITIONS

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

- A. "Authorized User" means an employee, or staff member of Licensee who is authorized to use the Software, Data, or Documentation solely in support of Licensee.
- B. "Centralized Help Desk" means a centralized location where named authorized representatives of the City serve as the point of contact from which all Tier 1 Support will be given to Authorized Users, and from which all Tier 2 requests will be issued and coordinated with ESRI.
- C. "City"⁽¹⁾ means City of Portland, OR including its agencies, departments, divisions, or offices.
- D. "Deploy", "Deployed", or "Deployment" means the redistribution by the City of the Limited Deployment Software or Enterprise License Software, Data, or Documentation to the Authorized User(s) machine or computer for use in accordance with the terms of this Agreement. Deployment to consultants or contractors is not authorized.
- E. "Enterprise License Software" means the Software identified in Table A-1 of Appendix A that the City may copy and redistribute pursuant to the terms of this Agreement.
- F. "Incident" or "Defect" means a failure of the Software or any component thereof to substantially conform to the Documentation furnished by ESRI. A non-conformity is not an incident or defect if it results directly from the Licensee-City's improper use, alteration or damage, unless it is reasonably likely that such non-conformity would have occurred even without the Licensee-City's improper use, alteration or damage. A non-conformity is not an incident or defect if there is little or negligible impact to operational or functional performance.
- G. "Licensee"⁽¹⁾ means City of Portland, OR, (including its Authorized Users).
- H. "Limited Deployment Software" means the Software identified in Table A-2 of Appendix A for which the quantity to be acquired and Deployed is fixed at a not to exceed quantity.
- I. "Maintenance" means Tier 2 Technical Support and updates, patches, and upgrades to the Software, Data, or Documentation provided by ESRI for the type and quantities of Software defined in Appendix A, excluding Unit Priced items.
- J. "Roll-In" or "Rolled-In" means preexisting Software licenses of the type identified in Appendix A that Licensee acquired for use prior to the date of this Agreement that may be incorporated into this Agreement and maintained for the term of the ELA.
- K. "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.
- L. "Tier 1 Support" means the Technical Support provided by a City Support Site as the primary contact to Authorized Users in attempted resolution of reported Incidents.
- M. "Tier 2 Support" means the Technical Support provided by ESRI to the Support Site when the Incident cannot be resolved through the Tier 1 Support.
- N. "Unit Price" or "Unit Priced" means Software, Data, or Documentation that is subject to a per unit license fee or maintenance fee if maintenance is desired. Unit Priced items shall be acquired via the Portland Metro MPA.

⁽¹⁾ The definition of City and Licensee does not include users or an entity added from the acquisition of a power /utility company or other agency, utility or district. Expansion of the ELA to authorize Deployment to users in acquired City entities or agencies will require mutual agreement of the parties by written modification of this Agreement. This requirement does not otherwise limit Deployment of ESRI Software within the City.

ARTICLE 2—ADDITIONAL GRANT OF LICENSE

Licensee's use of Software, Data, or Documentation is subject to the terms of this Enterprise License Agreement. For all Software licensed hereunder, City shall, at all times, remain primarily responsible to ESRI for compliance with the terms and conditions of this Agreement. In addition to the grant of license in E200, General License Terms and Conditions, the following Permitted Uses are hereby granted for the software identified as Enterprise License Software and Limited Deployment Software in Appendix A:

- A. The City may copy and Deploy the Limited Deployment Software and Enterprise License Software as identified in Appendix A up to the quantities of licenses granted, to Authorized Users for Licensee's internal use during the term of this Agreement. No other Licensee has a right to copy (except as permitted in the E200 General License Terms and Conditions) or Deploy the Software identified in Appendix A. Hard-copy books may not be copied except with the written permission of ESRI.
- B. Licensee may continue to use the Limited Deployment Software and Enterprise License Software Deployed upon the expiration of the term of this Agreement, conditioned upon compliance with the E200, General Terms and Conditions, E300 Scope of Use as further defined in Article 7.2. Licensee may not copy, distribute or Deploy additional copies of the Site License Software beyond the quantities Deployed at the expiration of this Agreement.
- C. City may Roll-In specific quantities of pre-existing licenses, current on paid maintenance, of the Limited Deployment Software and Enterprise License Software for maintenance and technical support under this Agreement, provided City shall identify the quantity of licenses being Rolled-in in Appendix A. All Rolled-In licenses shall be subject to the terms and conditions of this Agreement, except that upon expiration, Licensee may continue to use Rolled-In licenses regardless of whether Licensee elects to pay maintenance on such Rolled-In licenses, subject to compliance with the E200, General License Terms and Conditions and E300, Scope of Use.

ARTICLE 3—ADDITIONAL RESTRICTIONS ON USE

In addition to the restrictions on use in E200, General License Terms and Conditions, the following Uses Not Permitted apply to this Agreement:

City shall not use, transfer, redistribute, or Deploy the Software, Data, or Documentation outside of 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 also be subject to U.S. Export Control Regulation requirements (see E200, General License Terms and Conditions).

ARTICLE 4—POINTS OF CONTACT

Each party shall identify points of contact for administrative and technical issues. Either party may change its points of contact by written notice to the other party.

A. 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: 909-793-2853, extension 2001
 Fax: 909-307-3083

B. ESRI Contact for Technical Support issues

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

C. Centralized City Point of Contact for order releases and administrative issues.

Name: Rick Schulte
 E-mail: ricks@ci.portland.or.us
 Phone: 503-823-5634
 Fax: 503-823-9176

D. Ship To: All deliverable shall be shipped to the address listed below.

Name: City of Portland – C/O Mitch Vanderperran
 Address: 1120 SW 5th Ave. Suite 450
 Portland, Oregon 97204

ARTICLE 5—MAINTENANCE AND PREMIUM SUPPORT SERVICES

5.1 Maintenance—Maintenance includes benefits specified in the most current applicable ESRI support services policy (as modified by this Agreement for the Software identified in Appendix A as applicable. The applicable Maintenance brochure policies may be found on the ESRI Web site at <http://support.esri.com> or copies of the Maintenance brochure may be requested directly from ESRI. Maintenance for Deployed and Rolled-In Software is included in the annual fee. If, after expiration of this Agreement, paid Maintenance for Software is not purchased or is purchased and discontinued and at some later date Licensee is desirous to restart Maintenance for Software, back Maintenance fees from the date Maintenance was last provided (after the term of this Agreement expires) shall also be due.

5.2 Technical Support—For the Deployed and Rolled-in Software ESRI shall provide Software support consisting of revisions to the Software including identification of bugs/problems either by ESRI, Licensee or other ESRI customer's, patches or workarounds, updates to manuals, installation instructions) and access to ESRI Tier 2 Support via the telephone for ESRI Software that is currently supported by ESRI as further defined below.

City shall provide the first line (Tier 1) of Technical Support for Authorized User(s) of the Software from the City's Centralized Help Desk (CHD) function. The CHD shall provide all Tier 1 Support to Authorized Users. The City will provide Tier 1 Technical Support to its Authorized Users wherever they are located, through its CHD. The CHD will utilize analysts fully trained in the software they are supporting. At a minimum, the 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. The Tier 1 Support analysts shall be the initial points of contact for all questions and Incidents reported by Authorized Users. The Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from the Authorized User. This may include obtaining any customizations, code samples, or map Data involved, if applicable to the Incident. The analyst shall also use any other information and databases it may develop to satisfactorily resolve Incidents. It is expected that approximately 90% of all Incidents shall be handled at the Tier 1 level by the CHD. If this effort does not resolve the Incident, the CHD Tier 1 Technical Support analyst may contact ESRI Technical Support for Incidents involving ESRI Products. CHD assistance services shall be provided in such a way as to minimize repeat calls and make solutions to problems available to the user community residing under the CHD structure.

For Tier 2 Technical Support the CHD will forward support requests to ESRI. ESRI will log the calls received from the CHD and attempt to resolve the issues by dealing with the CHD and not the Authorized User. When resolved, ESRI will communicate the information to the City's CHD, and the CHD shall disseminate the resolution to the Authorized User. The City may assign up to five (5) named CHD individuals (Authorized Users) who may contact ESRI's Technical Support Group directly for Tier 2 Technical Support.

5.3 ESRI Premium Support Services—Premium Support Services terms and conditions are incorporated as identified on the ELA signature page and herein. Up to seventy-two (72) hours of Premium Support will be provided to Licensee by ESRI in the first year of the ELA at no additional charge to Licensee. If other services are ordered applicable fees shall apply and be paid as defined in the Premium Support Services document (E601). The Enterprise License Fee only includes ESRI providing up seventy-two (72) hours of Premium Support in the first year to Licensee.

ARTICLE 6—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

6.1 Purchase Orders, Delivery and Deployment

- a. The City shall issue a purchase order upon execution of this Agreement, and annually thereafter in accordance with the fee schedule in Appendix B. These fees are due and payable within thirty (30) days of the anniversary date of the Agreement, with the initial payment due within thirty (30) days of Agreement execution.
- b. Upon receipt of a the initial purchase order from the City for the Limited Deployment or Enterprise License Software, Data, or Documentation listed in Appendix A, ESRI will deliver three (3) sets of Software media (includes Software, user documentation, and installation instructions) to the designated point of contact for the City, unless less than three (3) licenses are to be Deployed. If less than three (3) copies are to be Deployed then the actual quantity specified shall be shipped. When providing patches, updates, or upgrades under maintenance, ESRI may make these available for downloading from ESRI's web site or deliver Software media. The method of delivery shall be at the sole discretion of ESRI. If the City requires more than the defined quantity of media sets for any Software product, it may purchase them at then-current pricing. It shall be the City's obligation to further Deploy these materials to Authorized Users at Eligible Agencies on an as-required basis. ESRI shall provide to the City the hardware keys or confidential copy protection mechanism information (e.g., registration numbers or keycodes), if necessary, to activate the installed proprietary program that enables the licensed software to operate.
- c. All shipments shall be to County's shipping address listed in Article 4 above. Orders for Unit Price items shall be shipped FOB City - Destination, Prepaid and Charged-back (added). Limited Deployment or Enterprise License Software, Data, or Documentation shall be shipped FOB City - Destination – Prepaid. Only orders from City's centralized point of contact shall be accepted. ESRI remains liable for goods shipped to City until delivery and acceptance by City. All shipments shall be made to the City address identified in Article 4, item D.

6.2 Purchase Order Requirements—Any purchase orders (PO) issued by the City shall reference and be subject to the terms and conditions of this Agreement. No additional or different term contained in a PO or ordering document shall be binding. PO's may be provided by fax, mail, or digitally.

The following information/statements shall also be included in each purchase order.

- Name or identification of Licensee, place of delivery, and the end user name and contact information.
- Purchase order number.
- Applicable annual fee for Enterprise License Software
- On the face of the purchase order, print the following statement: "Subject to Enterprise License Agreement No. 2005ELA1911"
- ESRI Customer Number of Licensee.

6.3 Deliverables—All deliverables shall be shipped to the designated County shipping point for further distribution by County

6.4 Statistics and Tracking—All orders pertaining to this Agreement will be processed through the ESRI office in Redlands as stated herein. The City shall be responsible to track all Enterprise License Software Deployed to Authorized Users and report to ESRI annually and at the termination of this Agreement the quantities, types, and location of all licenses Deployed.

6.5 Annual Report of Deployments—At each anniversary date(s) and ninety (90) days prior to the expiration date of this Agreement, the City shall provide a written report to ESRI detailing the Deployments (to all Authorized End Users) made under this Agreement. The report (reference Appendix C) shall detail the total quantity of licenses Deployed by Software program type and location. The report shall also include the same information for the Rolled-In licenses. The report shall be subject to audit by an authorized representative of ESRI. The total quantity Deployed may be part of the basis for any adjustment in fee at time of renewal.

6.6 ESRI User Conference Passes—Registrations for ESRI's annual International User Conference are among the benefits under this Agreement. The following table outlines the number of International User Conference passes the City will be entitled to under this Agreement. The City will receive ESRI User Conference passes annually for the term of this Agreement in the quantities defined below. The City shall be responsible for distributing the passes to all Licensees in an equitable manner.

Agency	Number of International User Conference Passes
City	12

Upon the expiration of this Agreement, user conference registrations shall be based on standard ESRI policies.

6.7 Update of Terms—The General License Terms and Conditions—E200 and the Exhibit 1, Scope of Use—E300 may be updated from time to time to incorporate updated and/or applicable/revised licensing terms. Software, Data or Documentation updates or upgrades used or installed shall be governed by this Agreement and any revised terms found in the then-current General License Terms and Conditions and Exhibit 1, the terms of which will be indicated on ESRI's Web site or enclosed in the deliverable's packaging, depending on the method of delivery.

6.8 ELA Management and Software Upgrades/Updates—The duties of the City management and administrative issues POC (or its successor in interest) are as follows:

1. Administer the configuration, distribution, tracking, and Deployment of ESRI Enterprise License Software to Authorized End Users.
2. When required, order additional Windows hardware keys via a written (fax or e-mail is acceptable) request of ESRI.
3. Be responsible to obtain keycodes from ESRI to facilitate Deployment of the Enterprise License Software that employs a License Manager.

ARTICLE 7—TERM, TERMINATION, EXPIRATION AND FOLLOW-ON

7.1 Term and Termination—The term of this Agreement shall be from July 1, 2005 to June 30, 2008 or until such time that ESRI or the City terminates this Agreement after written notice for alleged material breach or in the event it is necessary for the City to terminate because of a public emergency. ESRI may elect to terminate the license rights of a particular Licensee for material breach without terminating this Agreement with the City or other Licensees. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach. Upon the termination of this Agreement for material breach or termination by City for the public good, the City or Licensee shall uninstall, remove, and destroy all Software, Data, or Documentation, and training materials, and any whole or partial copies, modifications, or merged portions in any form and execute and deliver evidence of such destruction to ESRI, which evidence shall be in a form acceptable to ESRI. City shall reasonably cooperate with ESRI in termination of a Licensee in material breach of this Agreement, including enforcement this Agreement with respect to such Licensee.

7.2 License Terms and Use Upon Expiration—Upon payment of fees due and the expiration of this Agreement (at the end of the full term defined in Article 7.1) the Software Deployed and the preexisting Rolled-In Software that has been updated or upgraded (under maintenance) may continue to be used and licensed by the Licensee under ESRI's then current General License Terms and Conditions and Exhibit 1 Scope of Use. At the end of the term of this Agreement, the parties may agree to extend this Agreement. Licensee will notify ESRI as to which licenses it will continue to support under continuing maintenance and which licenses will not be supported under maintenance. City shall not Deploy additional copies of the Software, Data, or Documentation beyond the quantities of licenses in use upon termination or after the date of expiration.

7.3 Follow-on Effort—In the event the parties wish to extend the term of this ELA Agreement up to two (2) years beyond the original term, the annual fee for the fourth (4) and fifth (5) year would increase 8% per year, provided there are no other material changes. For the purposes of this clause, a material change would include, but not be limited to incorporating a new agency or entity, requesting new Software or Data to be added, or a substantial increase in Authorized Users. Modest growth or anticipated increases in use over the course of time (including normal fluctuations of Authorized Users and Deployments in City) is not considered a material change. Subsequent renewals or a new follow-on agreement will be negotiated based upon such factors as (i) number of copies of the Software Deployed; (ii) any additional Software expected to be Deployed or new types of Software added to the Agreement and expected to be Deployed; (iii) number of Full Time Equivalent (FTE)

employees of all participating agencies who make up the potential user community; (iv) number of licenses of limited deployment products required by a Licensee; (v) the quantity/type of Rolled-In Software maintained and; (vi) any special support, maintenance, training or professional services to be provided as part of this Agreement.

ARTICLE 8—NOTICES

Unless otherwise provided herein, all notices, requests and other communications required or provided for hereunder shall be in writing and shall be given at the following addresses:

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

To: City

Any notice, report, demand, or other communication provided for hereunder by either party to the other party shall be properly given when made in writing in the English language and sent by courier; registered or certified airmail; or by facsimile, or other electronic transmission, confirmed by courier or by registered or certified airmail, and properly addressed to the appropriate party at the address set forth below, until changed by notice in writing by either party hereto to the other party. 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.

ARTICLE 9—PROPRIETARY INFORMATION

Pricing information, particularly the overall price charged to the City pursuant to the license, is a public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.). Other pricing information, may or may not be subject to disclosure consistent with Oregon Law. Any portion of an agreement that claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501(2) and ORS 192.502(4).

If a request to inspect ESRI information is made, the City will notify ESRI of the request and its intent whether to release the information requested. If the ESRI contends that the information requested is confidential or constitutes a trade secret, and as a result the City does not disclose the information, and the person seeking the records appeals that matter to the Multnomah County District Attorney (who currently considers such appeals) then ESRI will provide information sufficient to sustain its position to the District Attorney of Multnomah County. If the District Attorney nevertheless orders the City to disclose the records, the City will notify ESRI of that decision and allow ESRI to take all appropriate legal action, including, but not limited to obtaining injunctive relief to prevent the disclosure. ESRI agrees to hold harmless, defend and indemnify the City for all costs, expenses and attorney fees that may be imposed on the City as a result of the City's refusal to disclose ESRI records pursuant to such a public records request.

ARTICLE 10—RELATIONSHIP OF THE PARTIES

This Agreement does not constitute a partnership, joint venture or agency between the parties, nor shall either party hold itself out as such, nor shall either of the parties be bound or become liable because of any representation, action or omission of the other.

ARTICLE 11—FORCE MAJEURE

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

ARTICLE 12—GIS STANDARD

Licensee agrees to officially name ESRI as its GIS standard and further agrees to act as a reference for other ESRI customers and potential customers as long as this Agreement remains in effect. Notwithstanding, under no circumstances shall this Agreement be construed or interpreted as an exclusive dealings agreement and Licensee and its Affiliates reserve the right to purchase from third parties any of their requirements for GIS software. Licensee agrees that ESRI may publicize the existence of this Agreement.

ARTICLE 13—PRODUCTS, CHANGES AND ADDITIONS

Unless otherwise amended by this Agreement, updated or upgraded versions of the Limited Deployment Software and Enterprise License Software listed in Attachment A will be provided to Licensee as they become commercially available in the same manner that they are provided under standard commercial maintenance. Licensee may request additional or new products to be added to the agreement. A request for additional or new products would be evaluated by ESRI to determine how they fit into the City's architecture and the quantity of deployments expected to be made in order to evaluate the impact to the Enterprise License fee, if any. ESRI shall then provide a proposal or response to Licensee's request. Changes would be incorporated via a written amendment executed by both parties.

APPENDIX A
Enterprise License Software and Deployment Schedule

City may Deploy up to the total quantity of Software licenses indicated below for the identified Products to Licensee(s). City shall identify the preexisting Software Products and quantities being Rolled-In to this Agreement. The quantities identified include Roll-In license quantities and are the cumulative quantities available in any given year for the term of the Agreement.

Table A-1
Enterprise License Software

Product	Total Qty./Seats Included in ELA
Desktop GIS	
ArcGIS ArcView SU	Unlimited
ArcGIS ArcView CU	Unlimited
ArcEditor CU	Unlimited
ArcEditor SU	Unlimited
ArcGIS ArcInfo	Unlimited
ArcGIS Desktop Extensions – 3D Analyst	Unlimited
ArcGIS Desktop Extensions – Spatial Analyst	Unlimited
ArcGIS Desktop Extensions – Publisher	Unlimited
ArcGIS Desktop Extensions – Network Analyst	Unlimited
ArcGIS Desktop Extensions – ArcScan	Unlimited
ArcGIS Desktop Extensions – Geostatistical Analyst	Unlimited
ArcGIS Desktop Extensions – Maplex	Unlimited
ArcINFO Workstation	Unlimited
ArcInfo Workstation Extensions – Network	Unlimited
ArcInfo Workstation Extensions - COGO	Unlimited
Server GIS	
ArcGIS Server	Unlimited
ArcGIS Server – Extra 2 CPUs	Unlimited
ArcGIS Server Options – 3d option	Unlimited
ArcGIS Server Options – 3d option– Extra 2 CPUs	Unlimited
ArcGIS Server Options – Spatial option	Unlimited
ArcGIS Server Options – Spatial option– Extra 2 CPUs	Unlimited
ArcGIS Server Options – Network option	Unlimited
ArcGIS Server Options – Network option– Extra 2 CPUs	Unlimited
ArcGIS Server Options – StreetMap option	Unlimited
ArcGIS Server Options – StreetMap option– Extra 2 CPUs	Unlimited
ArcSDE Server	Unlimited
ArcSDE Server– Extra 2 CPUs	Unlimited
ArcSDE Server Connects	Unlimited
ArcIMS	Unlimited
ArcIMS– Extra 2 CPUs	Unlimited

Table A-1 Enterprise License Software	
Developer	
ArcGIS Engine Development Kit	Unlimited
ArcGIS Engine Runtime	Unlimited
ArcGIS Engine Runtime 3D Extension	Unlimited
ArcGIS Engine Runtime Spatial Extension	Unlimited
ArcGIS Engine Runtime GDB Extension	Unlimited
ArcGIS Engine Runtime Streetmap Extension	Unlimited
MapObjects Developer Kit	Unlimited
MapObject Deployments	Unlimited

**APPENDIX A
Enterprise License Software and Deployment Schedule**

**Table A-2
Limited Deployment Software Licenses**

Product	Roll-In Existing Licenses	Additional Licenses to be Deployed	Total Qty./Seats
ArcPad Application Builder SU	2	0	2
ArcPad SU (two from Application Builder)	3	2	5
MapObjects IMS	10	0	10
ArcGIS Business Analyst w/ ESRI BIS data set	1	0	1
Image Server Base License <i>note: IS will be shipped when commercially available – est. commercial release is 2nd quarter 2006</i>	0	1	1

Note: The Limited Deployment Software Licenses listed may not be Deployed in quantities greater than those listed. Rolled-in licenses will qualify for Maintenance, provided Maintenance is commercially offered/available.

APPENDIX B
Enterprise License Fee Schedule*

	Year 1**	Year 2**	Year 3**
Total	\$195,000	\$215,000	\$215,000

* Fee includes Enterprise License and Limited Deployment License Software in the type and quantity identified in Appendix A and specified items or services as defined in this Agreement

** These fees are due and payable within thirty (30) days of the anniversary date of the Agreement, with the initial payment due within thirty (30) days of Agreement execution. The City shall issue a purchase order to ESRI upon signature and annually thereafter for the annual Enterprise License Fee. EAP is included in year one of the Agreement and may be purchased thereafter.

Items Not Covered by the Addendum terms and Annual ELA Fee: ESRI Unit Priced Software, Data, or Documentation, training, or Maintenance for Unit Priced items are not included in this Agreement. Training may be ordered separately as provided via ESRI quote. Training shall be governed by the E207 document. Unit Price items may be acquired via the PORTLAND METRO MPA.

**APPENDIX C
City Annual Deployment Report**

Note: this is a sample form for use as the format of the annual report.

Authorized User/Licensee	
Location	
Date	

SOFTWARE/PRODUCT		Licenses Rolled-in and Deployed
ArcGIS Desktop		
Server		
Developer		
ESRI BIS/Other		

All Rolled-In and Deployed Licenses shall be counted together for annual reporting purposes.

APPENDIX D
LIST OF AUTHORIZED CENTRALIZED HELP DESK (CHD) INDIVIDUALS

1. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

2. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

3. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

4. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____

5. Name: _____
Address: _____

Phone: _____
Fax: _____
E-mail: _____



ESRI

GENERAL LICENSE TERMS AND CONDITIONS
(E200 3/05)

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

ARTICLE 1—DEFINITIONS

Definitions—As used herein, the following words, phrases, or terms in this License Agreement shall have the following meanings:

- (a) "Data" means any ESRI or third party data vendor(s) digital data set(s) including, but not limited to, geographic, vector data coordinates, raster, reports, or associated tabular attributes in ESRI GIS software compatible format(s) supplied under this License Agreement.
- (b) "Documentation" means all of the printed and digital materials including, but not limited to, user documentation, training documentation, or technical information and briefings supplied under this License Agreement.
- (c) "License Manager" means the nondestructive license management software program or hardware key, or similar copy protection mechanism, which controls the distribution of the licensed number of Software copies to requesting end user(s) of Licensee.
- (d) "Software" means the actual copy of all or any portion of ESRI's proprietary geographic information system (GIS) software technology, computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media, including, but not limited to, alpha, beta, prerelease, restricted version(s), or final commercial release provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, sample code, or merged copies permitted hereunder or subsequently supplied under this License Agreement.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

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(E300 9/05B)**

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Desktop Software

- ArcGIS Desktop
 - ArcReader (1 and 18)
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 - ArcInfo (2, 6, and 14)
 - ArcInfo Workstation Extensions (2 and 6)
 - ArcGIS Desktop Extensions (1, 2, and 6)
- Production Line Tool Set for ArcGIS (PLTS); GIS Data ReViewer; Job Tracking for ArcGIS (1 and 2)
- ArcView GIS 3.x
 - ArcView and Extensions (1)
- ArcPad (1, 9, and 10)
- ArcPad StreetMap (1, 9, and 19)
- ArcLogistics Route (1 and 8)
- BusinessMAP (1)
- Maplex (1)
- MOLE (1)
- ArcExplorer (1 and 18)
- Data Sets (1)

Server Software

- ArcGIS Server
 - ArcGIS Server Base License (3, 5, 7, and 22)
 - Extensions (3, 6, 7, and 22)
- ArcSDE
 - ArcSDE Application and Connection Server (3, 5, 7, 17, and 22)
 - ArcSDE for Coverages (3, 5, 7, 17, and 22)
 - ArcSDE Client Access (2, 17, and 22)
 - ArcSDE CAD Client (2, 17, and 22)
- ArcIMS
 - ArcIMS and Extensions (3, 5, 6, 7, 12, and 22)
 - ArcIMS ArcMap Server (3, 5, 7, 12, and 22)
 - RouteMap IMS (3, 5, 7, 12, and 22)

- Tracking Server (7 and 22)
- ESRI Image Server
 - ESRI Image Server Base License (3, 5, 7, and 22)
 - Extensions (3, 6, 7, and 22)

Developer Software

- ArcGIS Schematics SDK (1, 4, 12, and 15)
- ArcGIS Engine
 - ArcGIS Engine Developer Kit (1, 12, and 21)
 - ArcGIS Engine Runtime (1, 12, and 21)
 - Extensions (1, 6, 12, and 21)
- MOLE SDK (1, 4, and 12)
- ArcPad Application Builder (1)
- MapObjects—Windows Edition (1, 4, 11, 12, and 15)
- MapObjects—Java Edition (1, 3, 4, 5, 7, 12, 15, 16, and 22)
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- NetEngine (1, 5, and 12)
- NetEngine Internet (3, 5, and 13)
- Geocoding Development Kit (1)

ESRI Software, Data, and Documentation

- ArcGIS Business Analyst (1, 2, and 20)
- ArcView Business Analyst (1 and 20)
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 - Consumer Expenditure
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- Third Party Data (1 and 20)
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- Sourcebook America (included with ArcReader) (1, 18, and 20)
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15. The Redistribution Stand-alone (or Deployment) license is per application per computer. For MapObjects—Windows Edition, Internet or Intranet Deployment requires an ArcIMS Internet Deployment License. Except for ArcIMS licenses, one (1) Internet Deployment license is required for each ArcIMS server/CPU that runs Web mapping applications built with MapObjects—Windows Edition. For MapObjects—Java Edition, Internet or Intranet Deployment requires a MapObjects—Java Internet Deployment License. An application upgrade is not a redeployment as long as it uses the same major revision of ArcGIS Schematics SDK, MapObjects—Windows Edition, or MapObjects—Java Edition.
16. The MapObjects—Java Edition contains Java Archive (JAR) files, which indicate they are authentic ESRI-certificated files when used over the Internet. Any Licensee certificate placed on the modified "re-jarred" files cannot reference ESRI as a source of trusted content. In addition to any other rights and restrictions in the Agreement, Licensee may use the MapObjects—Java Edition on a single computer to
- (a) Build applet(s) that are used only as an internal component in end user interfaces, and to copy the applet(s) to additional computers (e.g., Web Server) from which Licensee may deploy the applet(s) to end users via download in the course of browsing or interacting with Licensee's Web pages. End user redistribution of the applet(s) is not allowed; and
 - (b) Build stand-alone Java Applications. Licensee may deploy the Java class ESRI certificated libraries as an integral part of Licensee's application(s); and
 - (c) Build servlets and/or Enterprise JavaBeans with MapObjects—Java components, requiring a MapObjects—Java Internet Deployment License for each server configuration; and
 - (d) Distribute MapObjects Java applets, provided (i) Licensee's Web pages or software application(s) is targeted at end users and not as a development tool; (ii) Licensee does not use ESRI's name, logos, or trademark to market Licensee's Web pages or application(s); and (iii) Licensee includes a valid Licensee copyright notice on Licensee's Web pages and software application(s).
17. ArcSDE is licensed on a Server/CPU basis and on a one-to-one basis with a relational database. Licensee may run ArcSDE on a Server to connect to a DBMS, or may connect directly to a DBMS by running ArcSDE on an individual desktop computer. Each ArcSDE Server license permits multiple ArcSDE instances on one (1) server or one (1) desktop computer if Licensee has multiple database instances on the corresponding database Server. Licensee may not connect to more than one (1) database server with an ArcSDE license. ArcSDE for Coverages is licensed only in conjunction with ArcView, ArcEditor, or ArcInfo concurrent use licenses, or ArcSDE Server or ArcIMS Server licenses. Licensee may reproduce and redistribute ArcSDE for Coverages for its internal use.
18. Licensee may reproduce and redistribute the ArcReader and/or ArcExplorer Software provided all of the following occur:
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19. Data provided with ArcPad StreetMap may be used for mapping, geocoding, and routing purposes but may not be used for dynamic routing purposes. Dynamic routing or "real-time guidance" is predictive routing and is not included in the ArcPad StreetMap functionality. For instance, ArcPad StreetMap may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or calculating an alternate route if a turn is missed.
20. Notwithstanding the Term and Termination provision of the General License Terms and Conditions, Tapestry and Community Coder are term licenses. ESRI Software, Data, and Documentation shall be subject to the Permitted Uses and Uses Not Permitted described below

"Permitted Uses:

- (a) Licensee is granted permission to include resultant maps, reports, or other data output derived from ESRI Software, Data, and Documentation only as part of Licensee's value-added products and/or services (e.g., Licensee's client reports, presentation packages, marketing studies, etc.) to current or prospective clients, so long as the resultant maps, reports, or other data output derived from ESRI Software, Data, and Documentation comprises less than twenty percent (20%) of the total value of the Licensee's client reports, presentation packages, or marketing studies.
- (b) If Licensee orders a license for ArcGIS Business Analyst with a subset of the national data set (i.e., Region, State, Local), Licensee may use only the licensed subset, and may not use any other portion of the national data set.

Uses Not Permitted:

- (a) Licensee shall not sell; rent; lease; sublicense; lend; assign; time-share; or act as a service bureau or Application Service Provider (ASP) of full, complete, stand-alone reports, maps, or data output created from ESRI Software, Data, and Documentation without first entering into an appropriate reseller-type agreement with ESRI.
 - (b) Unless Licensee has separately licensed a copy of Community Coder, or ESRI Data that permits appending of the Community Tapestry market segmentation system codes ("Tapestry Codes"), Licensee shall not use the ESRI Data to assign or append Tapestry Codes to addresses or geographical data not included with ESRI Software, Data, and Documentation. If Licensee is granted the right to assign Tapestry Codes to Licensee's own files or records (i.e., profiling), Tapestry Codes shall not be disclosed to or used for the benefit of third parties nor shall Licensee provide any third party with mapping, indexing or delivery services made possible through the use of the deliverables without ESRI's express written permission.
 - (c) Licensee shall not use, copy, redistribute, publicly display, rebroadcast, or otherwise retransmit the ESRI Software, Data, and Documentation on the Internet without first entering into an appropriate Internet/Intranet Deployment-type agreement with ESRI.
 - (d) Licensee shall not withhold any substantial right (e.g., extension of credit) from any individual based solely on the Community Tapestry market segmentation systems type of said individual's place of residence.
21. The ArcGIS Engine Developer Kit grants the right to develop an unlimited number of applications on a single computer and to deliver the applications with or without the Engine Runtime Software to end users. The ArcGIS Engine Developer Kit licenses and Engine Runtime licenses may be licensed independent of the other. Licensee shall not redistribute the Engine Developer Kit authorization file. The Engine Runtime licenses shall not be used for development of Engine applications. Internet and Server development and deployment is not permitted. An end user must license either ArcGIS Engine Runtime Software or other ArcGIS Desktop Software (ArcView, ArcEditor, or ArcInfo) to obtain the right to run an unlimited number of applications built from the ArcGIS Engine Developer Kit on one (1) computer. The ArcGIS Engine Runtime Extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine applications. Developers must attribute as follows: "Portions of this computer program are owned by LizardTech, Inc., and are Copyright © 1995–2002 LizardTech, Inc., and/or the University of California. All rights reserved. U.S. Patent No. 5,710,835."
22. Server Software may be used in logical, virtual, and "on-demand" server configurations. When counting the number of CPU licenses required for each type of server configuration, ESRI counts all the physical CPUs in a server where the Server Software is installed and/or running. In logical server configurations each Server Software license may be installed on up to two (2) CPUs in one (1) logical server. For "on-demand computing" dormant CPUs do not need to be licensed until they are activated. In virtual server configurations all CPUs in the server must be licensed.



PREMIUM SUPPORT SERVICES SERVICE LEVEL TERM AND CONDITIONS

This Service Level Agreement ("Agreement") for Premium Support Services is between the licensee printed below ("Licensee") and Environmental Systems Research Institute, Inc. ("ESRI").

DEFINITIONS

The definitions in the General License Terms and Conditions (E200) and Exhibit 1, Scope of Use (E300), are incorporated by reference herein. The additional terms are defined as follows:

- **"Add-On Premium Services"** means certain optional enhanced Technical Support services that may be ordered in addition to the standard Premium Support Services.
- **"After-Hours"** means any time not covered by Normal Business Hours including weekends and ESRI holidays.
- **"Development Site"** means a Licensee developing complex geographic information system (GIS) applications for an enterprise, typically editing in a multiuser environment, working with geometric networks, customizing ESRI ArcGIS Software using VB/VC++ programming tools with ArcObjects technology, and implementing cross-platform and cross-product integration.
- **"Emergency"** means any failure of the Software to perform as designed and documented that results in production interruptions or loss of data.
- **"Incident"** and "Defect" means a reported failure of the Software or any component thereof to substantially conform to the Documentation furnished by ESRI. A non-conformity is not an incident or defect if it results directly from the Licensee-City's improper use, alteration or damage, unless it is reasonably likely that such non-conformity would have occurred even without the Licensee-City's improper use, alteration or damage.
- **"Incident Severity"** means the type of business operation interruption experienced as a result of the Incident. The four (4) levels of Incident Severity are identified in Article 4.
- **"Maintenance"** means Technical Support and Software upgrades and updates, and if applicable, updated Data and Documentation provided by ESRI.
- **"Normal Business Hours"** means the ESRI business hours of Monday through Friday, from 6:00 a.m. to 6:00 p.m. Pacific time, excluding ESRI holidays and weekends.
- **"Premium Support Services"** means the enhanced Technical Support services as described herein, whether provided for a fixed fee or at an hourly rate, exclusive of standard Maintenance.
- **"Production Site (COTS)"** means a Licensee generally using commercial off-the-shelf (COTS) ESRI Software, but requiring a higher level of response and service than is available under the standard ESRI support infrastructure.
- **"Technical Support"** means assistance in solving problems with the use of ESRI Software, providing an Incident remedy (if available) through error correction, patches, hotfixes, work-arounds, replacement deliveries, or any other type of Software or Documentation corrections or modifications exclusive of Software upgrades or updates provided under standard Maintenance.
- **"Technical Support Group (TSG)"** provides ESRI Software users within the United States support with the installation and maintenance of ESRI Software, assistance in solving problems arising from the use of the Software, hardware interfacing of peripheral devices, and logging of enhancement requests and bug reports.
- **"Developer Support Group (DSG)"** provides assistance with solving development issues through support, training, and consulting services for users of ESRI developer tools and back office Software by highly skilled programmers and database administrators.
- **"Premium Support Group (PSG)"** provides support to ESRI Software users with highly specialized needs and includes a premium support analyst to oversee the account and to address database administration, diverse application issues such as cross-product and cross-platform implementation, and act as a liaison with the ESRI Software development team and the Quick-Fix Engineering team on behalf of the client.
- **"Quick Fix Engineering (QFE) Team"** provides support to ESRI users through the delivery of a hotfix or patch as a quick repair to a problem or bug reported for an ESRI Software program that are generally temporary in nature until incorporated into or replaced by a new Software release.

ARTICLE 1—TERM AND FEE

In consideration of Licensee's payment of the applicable Premium Support Services fees, ESRI will provide Premium Support Services to Licensee in accordance with the provisions of this Agreement. The initial term of this Agreement shall begin on receipt of order (renewal date) and shall continue for twelve (12) consecutive months at the fee(s) noted in the ESRI Quotation for Premium Support Services. Thereafter, Licensee may extend this Agreement for consecutive one (1)-year terms effective as of the renewal date at the then current fee(s). Should Licensee decide to extend this Agreement, Licensee shall issue a purchase order in advance of the renewal date at the quoted price. Payment is due annually in advance, except as stated in Article 2, Section 2.2b., Block of Time at an Hourly Rate. Licensee agrees to pay ESRI invoices within thirty (30) days of receipt.

ARTICLE 2—PREMIUM SUPPORT SERVICES

2.1 Premium Support Services Availability

Premium Support Services are available through the Premium Support Group (PSG) to Development Sites and Production Sites (COTS) to provide enhancements over standard ESRI support programs. Licensee must order standard ArcGIS Desktop, ArcIMS, or Developer Support Group (DSG) Maintenance and Technical Support to qualify for Premium Support Services. Premium Support Services are available only to Licensees located within the United States. The Premium Support Services Center offerings are continually evolving. ESRI reserves the right to make service substitutions and modifications to support services at any time provided they do not cause a materially adverse effect in overall service performance.

2.2 Standard Premium Support Services

ESRI will support the licensed Software by providing Licensee with online and telephone support and other services described below through the ESRI Premium Support Group. Certain Add-On Premium Services described in Section 2.4 below are available when ordered. ESRI does not provide Technical Support for hardware, graphics cards, monitors, plotters, graphics printers, digitizers, modems, and so forth, except to answer questions of how standard, supported devices interface with Software. Technical Support and Maintenance are available only for commercially released current versions of the Software and one (1) release prior to the most currently released version. Software upgrades and updates are provided only for standard hardware platforms and operating systems supported by ESRI as described in the Software Documentation for licenses under current Maintenance. Licensee is responsible for making or arranging for upgrades or updates to interfaces for nonstandard devices or custom applications. ESRI supports users with the installation and Maintenance of ESRI Software, assistance in solving problems arising from the use of the Software, hardware interfacing of peripheral devices, and logging of enhancement requests submitted by the user. If ESRI develops and provides to Licensee a hotfix, patch, correction of an error, defect or incident, or other intellectual property ("IP") under, as a result of, or related to this Agreement, ESRI shall retain sole ownership of such IP, which shall be subject to the terms of the applicable ESRI Software license agreement. Standard Premium Support Services does not include on-site support, but such support is available as Add-On Premium Services. Standard Premium Support Services are available either for an annual fee payable in advance, or in blocks of time as described below:

- a. **Annual Fee.** If Licensee elects to pay the annual fee in advance, Licensee the right to receive standard Premium Support Services for twelve (12) consecutive months. The annual fee for a Premium Support Services subscription includes the cost of hotfixes subject to the limitations in this paragraph.
- b. **Block of Time at an Hourly Rate.** Alternatively, Licensee may elect to order blocks of time in minimum blocks of thirty-six (36) hours to be used during Normal Business Hours over the one (1)-year term of the Agreement. When the logged time expended nears the thirty-six (36)-hour time period, ESRI will invoice Licensee for the block of hours payable on a net 30-day basis. If Licensee does not promptly pay the undisputed amount due, Licensee agrees ESRI may discontinue logging incidents and all ongoing work by the Premium Support Group shall cease. If, at the end of the annual term, Licensee has not consumed the entire thirty-six (36)-hour block of time, ESRI will invoice Licensee for the number of hours expended (or credit back an overpayment) based on the then-current hourly rate. The right to use any remaining hours within that block of time shall lapse. Licensee may order an additional block of thirty-six (36) hours for the subsequent year, but no hours will carry forward into the next year. At time of invoice, ESRI will provide a summary of the incident numbers, allocated hours billed to the nearest quarter hour (15 minutes) for each incident, and tasks associated with the billed time. Licensee may request to have a support request covered under normal maintenance, subject to normal queue, response, and resolution times provided Licensee advises ESRI of its intent when it first calls ESRI Support for the incident. All time spent working on incidents by members of the QFE/PSG/DSG/TSG will be billed against the block of time, regardless of the type or outcome of the call, including reported Software program code errors ("bugs"). Development staff time incurred

working on incidents will be billed against the block of time for all incidents except for correction of bugs or Software limitation issues.

- c. **Hotfixes under Premium Support.** ESRI in its sole discretion shall determine whether to resolve an incident by a work-around solution, hotfix, new release, or other means, provided a correction or resolution of the incident is commercially reasonable. Furthermore, ESRI may delay or decline to build any requested hotfix at any time. Licensee may request a hotfix (each of which is referred to as a "Request" in this Article 2.2) as described below:

- Licensee requests a hotfix specifically for Licensee's use;
- Licensee requests an early release of a hotfix or patch that ESRI planned to release commercially at a later date; or
- Licensee requests ESRI to port back a hotfix or patch of a bug released in a later version of the Software to an earlier version of the Software.

Regardless of whether the Premium Support Services are provided under an annual fee or through a block of time at an hourly rate, Licensee shall provide a written justification to ESRI explaining the necessity for the hotfix in lieu of a work-around solution or other resolution of the incident at the time Licensee makes the Request. The justification shall follow the format in the sample Justification for Hotfix form attached hereto. ESRI shall determine whether the problem is capable of being corrected through the QFE Team as a hotfix, whether such hotfix is commercially reasonable, and whether the justification is sufficient. If ESRI determines the justification is sufficient and the hotfix is feasible, ESRI shall notify Licensee. If Licensee obtains Premium Support Services through an annual subscription fee, ESRI shall comply with the Request and perform the work to provide the hotfix. If Licensee obtains Premium Support Services for a block of time at an hourly rate, ESRI shall provide Licensee a good faith estimate of the labor hours and cost to build the hotfix and request direction to proceed at Licensee's expense. Licensee shall notify ESRI within five (5) business days of receipt of estimate whether Licensee wishes ESRI to proceed with the hotfix. If Licensee timely notifies ESRI that Licensee wants ESRI to proceed with the hotfix, Licensee acknowledges and agrees that it shall be liable for the cost incurred to build and deliver the hotfix to be charged against the block of time at an hourly rate, even if the final hours and cost incurred exceed the estimate. ESRI shall charge the hours expended at the hourly rate against Licensee's account for the hotfix upon its completion. If creation and delivery of a hotfix requested by Licensee is, in ESRI's estimation, likely to exceed the remaining hours available, Licensee agrees to order an additional thirty-six (36) hour block of time upon notice by ESRI. ESRI shall have no obligation to complete the hotfix if Licensee fails to order the additional block of time, and may charge the hours expended up to the total available hours.

2.3 Premium Support Services Functions

The following functions are provided as part of the Premium Support Services:

- a. **Assigned Account Manager.** Pursuant to Licensee's request, ESRI will assign a PSG technical analyst to the Licensee as the assigned account manager. The assigned account manager will work directly with the Licensee's named contacts to ensure that the Licensee's Technical Support needs are met.
- b. **Point of Contact for Development Issues.** The PSG assigned account manager will be a liaison between Licensee and the ESRI development staff or QFE team to resolve issues promptly and effectively. The assigned account manager will determine when and how this contact is made between ESRI and the Licensee.
- c. **One (1)-Hour Response Time.** ESRI will respond within one (1) hour to calls received by ESRI's Technical Support Call Reception Center during Normal Business Hours.
- d. **Two (2) Authorized Callers.** Licensee may designate two (2) specific callers who can contact PSG, thereby building technical and business knowledge by both parties to improve services.
- e. **Premium Web Site Access.** Designated callers from the Licensee site can log and view their premium support incidents, initiate chat sessions and remote screen sharing with assigned ESRI support staff, and access other PSG-related tools and information. Licensee shall maintain any access code or password as confidential information. Services provided as part of the premium Web site access are more fully described in Section 2.5 below.
- f. **System/Environment Profiling.** Through Premium Support Services Web access, PSG will maintain, with the help of Licensee, a database of equipment, applications, and skill sets for the site. ESRI will periodically collect data from the Licensee for that purpose. The system and release level of the Licensee will be documented. PSG analysts will also log and track status and completion of all identified PSG issues. This database will be treated as confidential information of Licensee.

- g. **Escalation Management.** If Licensee believes an incident is not given proper priority, or is dissatisfied with the services received, the Licensee may request escalation of the support incident. PSG will record and manage escalated incidents in an interactive process that includes daily contact with Licensee on progress. PSG will work with the Development staff or QFE team in an attempt to speed resolution of the problem. If not resolved at that level, the incident may be further escalated to the attention of appropriate management personnel at ESRI.
- h. **PSG Software Alert Newsletter.** Licensee will receive a news bulletin that discusses current issues being investigated by ESRI Development staff. It also contains information on hotfixes and patches as they become available.
- i. **Hotfix Support.** PSG will work with the QFE team to identify and use commercially reasonable efforts to extend hotfixes to Licensee's issues subject to the limitations in this Agreement.
- j. **Toll-Free Support Number.** Licensee will receive unlimited online support and telephone support for all current Maintenance ESRI-supported Software problems during Normal Business Hours. Licensee may request support by accessing Online Support at <http://support.esri.com/psg> or <http://support.esri.com>, by telephone at 888-621-1755 (toll free to domestic callers) or 909-793-3774, or by facsimile at 909-792-0960.

2.4 Add-On Premium Services

Subject to receipt of order and payment of applicable fee(s) for each additional service listed below, ESRI will provide the services described as elected by Licensee.

- a. **On-Site Support.** When needed, members of PSG or other appropriate ESRI personnel will travel to Licensee's domestic location(s) to work toward resolution of an Incident. ESRI reserves the right to schedule the on-site support at times it deems reasonable, based on the priority level of the Incident, the type of support necessary to resolve the Incident, and other factors.
- b. **Quarterly Teleconference Meeting.** ESRI and Licensee will schedule a quarterly teleconference meeting to discuss Licensee's current support issues. ESRI will make available the PSG manager, the assigned account manager, and any other necessary ESRI staff.
- c. **Proactive Planning Support.** During the planning and development phases of Licensee's project or GIS implementation, a PSG member(s) will meet with Licensee's key personnel for a selected number of days.
- d. **Twenty-Four/Seven (24/7) Emergency After-Hours Pager Support.** Licensee may contact an ESRI Technical Support representative for Emergency support after-hours, seven (7) days per week. The Emergency After-Hours pager support is available outside Normal Business Hours, Monday through Friday (6:00 p.m. through 6:00 a.m.), weekends, and ESRI holidays. (Note: 24/7 Emergency After-Hours pager support is the only add-on Premium Support Service that may also be purchased independent of procurement of Premium Support Services.) Emergency After-Hours pager support includes

- Licensee may name two (2) authorized callers for Emergency After-Hours access.
- Licensee may select two (2) of the following seven (7) specialty areas for After-Hours support:
 1. Application development using ArcObjects Software technology
 2. ArcSDE Software issues
 3. ArcView 3.x Software issues
 4. ArcView 3.x Software extension issues
 5. Core ArcGIS Desktop Software issues
 6. ArcIMS, RouteMAP IMS Software issues
 7. Installation, License Manager, and hardware issues
- ESRI will assign senior analysts with expertise in each specialty selected.
- ESRI will provide Licensee with a unique telephone number with pager service access.
- ESRI will respond within four (4) hours of contact by the authorized callers.
- Licensee may purchase additional specialties within the seven (7) authorized specialties but may not name additional authorized callers.

- e. **Limitations.** The 24/7 Emergency After-Hours pager support is not available to licensees that maintain their own GIS technical support centers (e.g., central support sites). Resolution time for reported incidents is not guaranteed. Licensee is responsible for determining that the fault is not with its application before calling, whether during Normal Business Hours or for Emergency After-Hours pager support. The 24/7 Emergency After-Hours support is *limited to Emergency calls only*.

2.5 Premium Web Site Access

ESRI will provide certain support services via the Internet as described herein.

- a. **Online Support.** Licensee will receive access to the Premium Support Services Center at <http://support.esri.com/psg>. This center allows the Licensee to perform multiple functions via the Web. For example:

- Submit a support request.
- View and list the status of an existing support request(s) for the last ninety (90), thirty (30), and seven (7) days.
- View and update Licensee profile.
- Start a chat session with remote viewing capability (available for Microsoft Windows only).

2.6 Premium Support Services Restrictions and Exclusions

- a. **ArcGIS Releases.** Licensee will receive support for the ArcGIS family of Software and other authorized ESRI Software programs.
- b. **Excluded Software.** Premium Support Services may not be available for selected Software. ESRI is not responsible for errors attributable to third party software used in conjunction with or built upon ESRI Software.
- c. **Hotfix Availability.** Hotfixes may not be applicable or available for all Premium Support Services customers.
- d. **Acknowledgment.** Licensee acknowledges and agrees that report of an error or defect with the Software to PSG 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.

ARTICLE 3—LICENSEE RESPONSIBILITIES

3.1 Cooperation and Restriction on Transfer

Licensee shall use reasonable efforts to cooperate with ESRI in resolving Technical Support issues. Licensee agrees to use all reasonable efforts to determine whether the incident is due to the Software, third party software, hardware, incorrect installation, or integration with other non-ESRI applications prior to contacting ESRI for Technical Support. Licensee shall not transfer, sell, lease, loan, distribute, or otherwise provide the ESRI Technical Support documents and information sent to the Internal Support Provider during Incident resolution to any third party, unless expressly agreed to in writing and in advance by the parties.

3.2 Responsibilities for Contacts and Incident Reporting

Licensee acknowledges and agrees to assume responsibility for the following:

- a. **Authorized Contacts.** Licensee shall provide two (2) authorized support contacts possessing reasonably sufficient knowledge and skill to interact with PSG staff upon execution of this Agreement. Licensee shall advise ESRI in writing of any changes in such support contacts, and agrees to substitute personnel of equivalent knowledge and skill. The authorized contacts shall serve as the central and only point of contact between Licensee and the ESRI PSG staff.
- b. **Incident Information.** Licensee acknowledges that the authorized contacts are required to provide ESRI with a valid customer number in order to demonstrate service entitlement prior to service delivery. The contact shall provide the following information for each Incident:
- The Software name and version number
 - The install number or customer number
 - The type of hardware and peripherals the authorized end user was using (manufacturer, version of operating system)
 - The exact wording of any messages that appeared on the Licensee's screen
 - What happened and what the Licensee was doing when the problem occurred
 - How the contact tried to solve the problem
 - The priority or Incident Severity classification for the Incident as defined in Article 4—Premium Support Services Priority and Response Time. However, after receiving and logging an Incident, the

priority/severity classification may be changed by mutual agreement of the contact and the assigned account manager.

- c. **Preparation.** The named contact will be at his/her computer and, in addition to the above information, have the appropriate Software Documentation on hand when the call is placed for Premium Support Services.
- d. **Electronic Data Capability.** In order to receive electronic documents, Licensee is required to procure an appropriate gateway including equipment and communications facilities. Licensee is also required to have access to File Transfer Protocol (FTP) capabilities for transfer of data.
- e. **System Maintenance.** Licensee shall comply with ESRI requests to perform prescribed system maintenance including, but not limited to, patch updates, file system maintenance, and provision of proactive diagnostic information.
- f. **Prior Testing.** Licensee will conduct testing of Software applications prior to filing a support call. Specifically, testing shall include functional testing. PSG must receive from Licensee a reproducible case of any given problem. It is the Licensee's responsibility to provide this reproducible case. PSG must be able to identify the error and reproduce the error to effectively and efficiently work on resolution of reported incidents.
- g. **Participation.** In the event that Licensee is entitled to receive additional services, Licensee will actively participate in all planning and review of all activities requested by PSG.
- h. **One (1)-Hour Response Time.** Licensee shall contact the Technical Support Call Center during Normal Business Hours to ensure one (1)-hour response time. If Licensee calls an analyst or anyone else directly, then the one (1)-hour response is not guaranteed.
- i. **Maintenance in Effect.** ESRI is not obligated to perform the services described in this Agreement unless Licensee has Maintenance and Technical Support services currently in effect with ESRI and has received an order confirmation from ESRI accepting the purchase order or electronic order for the support services.

ARTICLE 4—PREMIUM SUPPORT SERVICES PRIORITY AND RESPONSE TIME

4.1 Defined Priorities

Licensee may designate up to two (2) authorized contacts as described in Section 3.2a above. Only authorized contacts may request support and assign support priority, subject to concurrence by ESRI. Following are the Premium Support Services priority levels:

- a. **Priority 1—System Down.** Software is not operational. Some examples of Priority 1 calls include
 - Software hang (unable to save work in progress).
 - Software functionality failure causes data losses or Software unusable.
 - Functionality failure renders system ineffective.
 - Software malfunction causes mission-critical applications to start/proceed.
- b. **Priority 2—System Impaired.** Covered Software is not operating with full capability but is still operational. Some examples of Priority 2 calls include
 - Impaired or broken functionality with significant impact to applications
 - Frequent application failure but no data loss
 - Serious but predictable management system failure
 - Significant system performance degradation
- c. **Priority 3—System Operation Normal.** Covered system is up and running with limited or no significant impacts. Some examples of Priority 3 calls include
 - Bugs that cause limited or no direct impact to performance and functionality
 - Request to replace a bug work-around
 - Limited impact defective functionality
 - System performance support questions and issues
- d. **Priority 4—Enhancement Requests and Minor Errors.** Errors that have a minor impact on GIS production. An example of a Priority 4 call: Licensee requests performance and usability enhancements to core ArcGIS and ArcObjects functionality.

4.2 Response Time

ESRI will use commercially reasonable efforts to respond to support calls within one (1) hour of determination of the problem provided the call has been made through ESRI's Technical Support Call Reception Center. The response times stated above for Priority 1 through Priority 4 problems apply to covered Software problems that are mutually agreed upon by Licensee and PSG contact.

4.3 PSG Escalation Support

For Priority 1–4 problems, PSG technical staff will provide the online and telephone support. Escalation management is an interactive process between PSG and Licensee that permits Licensee to escalate Incidents that are not resolved in a timely manner or to Licensee's satisfaction by contacting the technical account manager or the PSG manager. PSG then initiates daily contact to inform Licensee of progress on the Incident. If warranted by the priority level, the technical account manager or PSG manager works with the Development team or Quick Fix Engineering team in an attempt to speed the resolution process. If the Quick Fix Engineering team is able to provide a hotfix, it will be regarded as if it is part of the commercially available Software, subject to any applicable warranties, indemnities, and other license terms and conditions.

ARTICLE 5—CONFIDENTIALITY

The parties acknowledge that, in order to perform the services called for in this Agreement, it may be necessary for ESRI or Licensee to disclose to the other party certain trade secret(s) or confidential information. The parties further acknowledge that Software updates, upgrades, patches, and hotfixes may incorporate, of necessity, such trade secret(s) or confidential information. Each party agrees that it shall not disclose, transfer, use, copy, or allow access to any such trade secret(s) or confidential information of the disclosing party to any employees or third parties, except those who have a need to know such trade secret(s) or confidential information of the disclosing party consistent with the requirements of this Agreement and who have undertaken an obligation of confidentiality by signing a written agreement to that effect. In no event shall the receiving party disclose any such trade secret(s) or confidential information of a disclosing party to any competitors of the disclosing party.

The parties further agree that neither party shall use for its account or permit use for the account of a third party such trade secret(s) or confidential information of a disclosing party. Any disclosure, sale, or loan of the identified information is strictly prohibited. Identification of the proprietary, confidential, or privileged nature of the trade secret(s) or confidential information of ESRI or Licensee may be made in writing or verbally, followed by written identification, in any media.

As used herein, the term "trade secret(s)" shall mean any scientific or technical data, information, design, process, procedure, formula, or improvement that is commercially valuable to the disclosing party and not generally known in the industry. As used herein, the term "confidential information" shall mean any business or trade information that is imparted in secret, treated as private; not for publication; or, if disclosed to unauthorized persons or entities, would likely cause substantial harm to the competitive position of the disclosing party. The obligations set forth in this Article, as they pertain to trade secret(s), shall survive this Agreement and continue for as long as the material remains a trade secret(s).

Notwithstanding the foregoing, the parties understand that third persons may claim that proprietary confidential information claimed as such by ESRI or claimed by ESRI as a trade secret and delivered to Licensee-City under this agreement may be, by virtue of its possession by City, a public record and subject to disclosure pursuant to ORS 192.410 – 192.505. The parties agree that in the event such a claim is made, City shall immediately notify ESRI of the claim and ESRI, will, at its cost, defend and hold harmless City and its officers and employees from any such claim. City, in consideration thereof, will not disclose any such proprietary information in response to any such claim until a final unappealable order from a court or agency having authority to issue such order shall have been issued, and any such disclosure shall be the minimum necessary to comply with such order. Except as described above, City shall be liable to ESRI for any intentional disclosure, in whole or part, of proprietary information provided to it by ESRI hereunder. The City recognizes that ESRI software is proprietary, developed at ESRI expense, is ESRI intellectual property and is licensed for use on a fee basis.

ARTICLE 6—LIMITATION OF LIABILITY AND REMEDIES

ESRI will use commercially reasonable efforts to provide corrections or work-around solutions for any errors reported and determined to be in the Software or Documentation for the term of this Agreement. ESRI reserves the right to make service substitutions and modifications to support services at any time provided they do not cause a materially adverse effect in overall service performance.

EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, 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, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. ESRI DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED EXCEPT AS PROVIDED IN THIS AGREEMENT.

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IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE SOFTWARE OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND 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.

ARTICLE 7—LICENSE

Maintenance and Technical Support are provided subject to the terms and conditions of the then current General License Terms and Conditions and Exhibit 1. Licensee may only use the type and number of copies of the Software, Data, and Documentation for which the appropriate license fees have been paid to ESRI and in accordance with the General License Terms and Conditions; Exhibit 1, Scope of Use; and the licensed configuration on file with ESRI Customer Service, or any other terms mutually agreed upon by the parties in writing and signed by their respective representatives. Licensee may not assign the rights granted hereunder, or any of them, without the prior written consent of ESRI.

ARTICLE 8—TERMINATION

Licensee may terminate this Agreement by providing sixty (60) days' advance written notice to ESRI. ESRI may terminate this Agreement upon termination of the Software license agreement, or for material breach of this Agreement provided Licensee is given a reasonable opportunity to cure.

ARTICLE 9—FORCE MAJEURE

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

JUSTIFICATION FOR HOTFIX

Customer #	Incident #	PSG Technical Account Manager (TAM)	Date
<p>1) What Software Product?</p> <p><input type="checkbox"/> ArcGIS Desktop</p> <p><input type="checkbox"/> ArcGIS Extension Specify Extension: _____</p> <p><input type="checkbox"/> ArcIMS</p> <p><input type="checkbox"/> ArcIMS Extension Specify Extension: _____</p> <p><input type="checkbox"/> ArcGIS Server</p> <p><input type="checkbox"/> ArcSDE</p> <p><input type="checkbox"/> ArcGIS Engine</p> <p><input type="checkbox"/> ArcPad</p> <p><input type="checkbox"/> ArcPad Application Builder</p> <p><input type="checkbox"/> ArcPad StreetMap</p> <p><input type="checkbox"/> MapObjects–Java Edition</p> <p><input type="checkbox"/> MapObjects–Windows Edition</p> <p><input type="checkbox"/> MapObjects LT</p> <p><input type="checkbox"/> NetEngine</p> <p><input type="checkbox"/> Schematics SDK</p> <p><input type="checkbox"/> Maplex</p> <p><input type="checkbox"/> ArcExplorer</p> <p><input type="checkbox"/> ArcWeb</p> <p><input type="checkbox"/> Other</p>			
<p>2) Please give a brief description as to why the work-around provided (if applicable) is not sufficient or why an immediate Hotfix is necessary for your businesses success.</p>			