

LICENSE AGREEMENT

1. <u>Parties</u>	ACCELA Accela, Inc. 2633 Camino Ramon, Suite 120 Bishop Ranch 3 San Ramon, California 94583 Attention: Contracts Administration T: 925.659.3200 F: 925.407.2722 e-Mail: contractsadmin@accela.com	CUSTOMER City of Tempe, Arizona 120 East Fifth Street Post Office Box 5002 Tempe, Arizona 85281 Attention: Cyndy Lawshe T: 480.858.2044 F: N/A e-Mail: cyndy_lawshe@tempe.gov
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This License Agreement ("LA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

- 2.1 Term Provided that Customer signs and returns this LA to Accela **no later than June 28, 2013**, this LA is effective as of the date of Customer's signature ("Effective Date") and will continue until terminated as provided herein
- 2.2 Termination Either party may terminate if the other party materially breaches this LA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within ninety (90) calendar days. Upon any termination or expiration of this LA, all rights granted to Customer are cancelled and revert to Accela.

3. Intellectual Property License

- 3.1 License The software products ("Software") listed in Exhibit A are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in the Software and grants to Customer a limited, nonexclusive, nontransferable license to use the Software, subject to the following terms and conditions:
- 3.1.1 The Software is provided for use only by Customer employees and agents under its control.
- 3.1.2 The Software will be delivered or made available to Customer for electronic download from Accela's File Transfer Protocol ("FTP") site.
- 3.1.3 The Software may be installed on one or more computers but may not be used by more than the number of users for which the Customer has named user licenses. The Software is deemed to be in use when it is loaded into memory in a computer, regardless of whether a user is actively working with the Software. Accela may audit Customer's use of the Software to ensure that Customer has paid for an appropriate number of licenses. Should the results of any such audit indicate that Customer's use of the Software exceeds its licensed allowance, Customer agrees to pay all costs of its overuse as determined using Accela's then-current pricing; any such assessed costs will be due and payable by Customer upon assessment. Customer agrees that Accela's assessment of overuse costs pursuant to this Subsection is not a waiver by Accela of any other remedies available to Accela in law and equity for Customer's unlicensed use of the Software.

- 3.1.4 Customer may make backup copies of the Software only to protect against destruction of the Software. Customer may copy Accela's documentation only for internal use by Customer's employees.
- 3.1.5 Customer may not make any form of derivative work from the Software, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques licensed to Customer by Accela.
- 3.1.6 Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices.
- 3.1.7 Customer is liable to Accela for any losses incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in Customer's possession or control.
- 3.1.8 Customer may use the Software only to process transactions relating to properties within both its own geographical and political boundaries and may not sell, rent, assign, sublicense, lend, or share any of its rights under this LA.
- 3.1.9 Customer is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; Customer is not entitled to receive source code for the Software except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties. Customer may not decompile or reverse-engineer the Software.
- 3.1.10 All rights not expressly granted to Customer are retained by Accela.

3.2 License Warranties

- 3.2.1 Accela warrants that it has full power and authority to grant this license and that, as of the effective date of this LA, the Software does not infringe on any existing intellectual property rights of any third party. Accela agrees to indemnify and hold Customer harmless from and against any and all claims, losses, liability, damages, costs, and expenses (including attorney's fees, expert witness fees, and court costs) directly or indirectly arising from or related to any actual or alleged infringement (including contributory infringement), misappropriation, or violation of any third party's patents, copyrights, trade secret rights, trademarks, or other intellectual property or proprietary rights of any nature in any jurisdiction, resulting from the authorized use of the Software by Customer. If a third party claims that the Software does infringe, Accela may, at its sole option, secure for Customer the right to continue using the Software or modify the Software so that it does not infringe. In no event shall Customer be liable to Accela for any charges after the date that Customer no longer uses the Software because of actual or claimed infringement. Accela will have the sole right to conduct the defense of any legal action and all negotiations for its settlement or compromise.
- 3.2.2 Accela shall have no warranty or indemnification obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not provided by Accela. Accela provides no warranty whatsoever for any third-party hardware or software products.
- 3.2.3 Accela represents and warrants to Customer that it owns all rights, title, and interest in and to the Software, or that in the case of any third party software that it has the right to grant a sublicense to use such third party software.

- 3.2.4 Accela represents that the Software has been developed and delivered with strict procedures to protect Customer's environment against viruses. If, in the Customer's opinion, there is a justified suspicion that a virus exists in Customer's copy of the Software or if Customer finds a virus, Accela shall assist the Customer in resolving the matter. If Accela is responsible for the existence of the virus, it shall within a period of three (3) days from the delivery of the Software by Accela remove the virus from the Software or supply without charge a copy or download of the Software that is virus-free.
- 3.2.5 Accela represents and warrants that the Software does not contain any software routine, code or instruction, hardware component or combination of the above, which is designed to intentionally repossess the Software by electronic or other means upon the failure of Customer to make payments to Accela.
- 3.2.6 Accela represents and warrants that all updates, upgrades, and revisions to the Software furnished hereunder will be developed in such manner as to maintain backward compatibility with the previous version or release of Software furnished to Customer and Customer data produced or maintained using previous versions or releases shall continue to be operable with the Software as updated, upgraded, or revised, in materially the same manner and with materially equivalent performance.
- 3.2.7 Except as expressly set forth herein, Accela disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

3.3 Compensation

- 3.3.1 License Fees In exchange for the Software described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A.
- 3.3.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. Accela will endeavor to provide all quotes and invoices with appropriate sales tax. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts upon occurrence of the billing events described in Exhibit A. The payment terms of all invoices are net thirty (30) calendar days from the dates of the invoices. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

4. Confidentiality

- 4.1 Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the

Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this LA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 4.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

4.2 Confidentiality Term The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this LA ("Confidentiality Term").

4.3 Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

4.4 Publicity During the term of this LA, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Accela web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Accela's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

5.1 Dispute Resolution This LA is governed by the laws of the State of Arizona. In the event of a dispute, either party may call for escalation by written notice to the other. Within five (5) business days of such notice, each party will designate a representative with authority to make commitments that would resolve the dispute. The parties' representatives will meet in person or by telephone ("Dispute Conference") within ten (10) business days of their designation and will negotiate in good faith to resolve the dispute. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither party will initiate litigation until ten (10) business days after a failed attempt at mediation as set forth in Section 5.1.1 below.

5.1.1 If the parties cannot themselves resolve a dispute arising out of or related to this LA, they will attempt to resolve such dispute through non-binding mediation in Maricopa County, Arizona,

with the parties sharing equally the costs of mediation. The parties shall select an independent mediator experienced in commercial information systems contract disputes, and each shall designate a representative(s) to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representative and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party. Except to the extent necessary to prevent irreparable harm or to preserve rights or remedies, neither party will initiate litigation until ten (10) days after the first mediation conference, unless the other party has materially breached its obligations set forth in the preceding sentence.

- 5.1.2 Except where clearly prevented by the area in dispute, both parties shall continue performing their non-disputed obligations under this LA while the dispute is being resolved under this Section unless and until the dispute is resolved or until this LA is terminated as provided herein. Except for disputes relating to the payment of Accela fees as set forth in Section 3.3, the time frame for a party to cure any breach of the terms of this LA shall not be tolled by the pendency of any dispute resolution procedures.
- 5.1.3 anything contained in this LA to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such equitable relief in a court of competent jurisdiction.
- 5.2 Removal and Destruction of Software Within ten (10) business days following termination of this LA by either Party, Customer will remove all copies of the Software from those computer systems which it owns or controls and will destroy all media which contain copies of the Software or portions thereof. Customer will certify said removal and destruction to Accela within fifteen (15) business days following termination of this LA.
- 5.3 Assignment Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.
- 5.4 Survival The following provisions will survive the termination or expiration of this LA: Section 3.3 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5, and all subsections thereof.
- 5.5 Conflict of Interest This Agreement is subject to cancellation pursuant to the provisions of Arizona Revised Statute ("A.R.S.") § 38-511 regarding conflict of interest.
- 5.6 Specially Designated Nationals and Blocked Persons List Accela represents and warrants to Customer that neither Accela nor any affiliate or representative of Accela (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Accela certifies that it does not have a scrutinized business operation in either Iran or Sudan.
- 5.7 Equal Opportunity Customer is an equal opportunity, affirmative action employer. Accela hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment,

5.12 Severability and Amendment If any particular provision of this LA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this LA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this LA will be effective unless it is described in writing and signed by the Parties.

ACCELA

City of Tempe



Signature

Mark W. Mitchell, Mayor

COLIN SAMUELS

Name (Printed)

Name (Printed)

ASST. CORP. SECRETARY

Title

ATTEST:

14 JUNE 2013

Date

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

Exhibit Follows.

END OF DOCUMENT

EXHIBIT A

Deliverables	Quantity	Fees
Accela Automation® Land Management Site License	1	\$275,000.00
100% Customer Discount on Accela Land Management	N/A	(\$275,000.00)
Accela Citizen Access™ Server Software	1	\$10,995.00
Accela Citizen Access Module Fee	1	\$10,995.00
Accela Citizen Access Population Fee (Based Upon 164,000 Population)	1	\$13,120.00
Accela Mobile Office™ Server Software (Includes 5 Named User)	1	\$49,995.00
Accela Mobile Office User License Packs (5 Named Users Per Pack)	3	\$32,985.00
20% Customer Discount on Accela Citizen Access and Mobile Office	N/A	(\$23,618.00)
Accela GIS™ Site License	1	\$100,000.00
Estimated Arizona Sales Use Tax	N/A	\$12,835.15
Total of Fees		\$207,307.15

License Fees are fixed-price deliverables for which full payment is due upon signing.

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