

MAINTENANCE AGREEMENT

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| 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 Maintenance Agreement ("MA") 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 MA to Accela **no later than June 28, 2013**, this MA is effective as of the date of Customer's signature and will continue for a period of five (5) years unless terminated, canceled, extended or renewed as otherwise provided herein. Thereafter, Customer shall have the options to continue this MA for five (5) additional years in periods of twelve (12) months each, at the rates described in Exhibit A. Customer may elect to continue its maintenance coverage for additional annual terms beyond the initial committed term of five (5) annual periods and the five (5) optional annual periods described herein by paying to Accela the fees associated with such terms when these are due; said fees will be calculated as twenty percent (20%) of the then-current list license fees. Should Customer fail to renew its maintenance coverage or pay the applicable fees, Accela reserves the right to withhold all support. If Customer resumes maintenance coverage after one or more periods without such coverage, Customer will pay an amount equivalent to one hundred ten percent (110%) of all maintenance fees attributable to the period(s) without coverage, as such fees are calculated based upon pricing in effect at the time of resumption of maintenance coverage.

2.2 Termination Either party may terminate if the other party materially breaches this MA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this MA, all rights granted to Customer are cancelled and revert to Accela.

3. Scope of Maintenance

3.1 Maintenance Services

3.1.1 Telephone Support Accela will provide Customer with a telephone number to contact the Customer Resource Center (CRC), Accela's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Accela's observed holidays.

3.1.2 E-Mail Support Accela will provide Customer with one or more electronic mail addresses to which Customer may submit routine or non-critical support requests, which Accela will address during its regular business hours.

- 3.1.3 Online Support Accela will provide Customer with access to archived software updates and other technical information in Accela's online support databases, which are continuously available.
- 3.1.4 Remote Support When required to properly resolve a maintenance request, Accela will provide remote assistance to Customer via the Adobe Connect™ environment or another mutually-acceptable remote communications method.
- 3.1.5 On-Site Support If Customer does not wish for Accela to resolve its maintenance requests remotely, Accela will provide on-site assistance to Customer at Accela's then-current time-and-materials rates. In addition to these charges, Customer will compensate Accela for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.
- 3.1.6 Software Updates Accela will provide revisions of and enhancements to maintained software products to Customer as such updates are generally-released by Accela. Software updates will be delivered or made available to Customer for electronic download from Accela's File Transfer Protocol ("FTP") site.

3.2 Maintenance Limitations

- 3.2.1 Limitations Generally The following are not covered by this MA, but may be separately available at rates and on terms which may vary from those described herein:
 - a) Services required due to misuse of the Accela-maintained software products;
 - b) Services required due to software corrections, customizations, or modifications not developed or authorized by Accela;
 - c) Services required by Customer to be performed by Accela outside of Accela's usual working hours;
 - d) Services required due to external factors including, but not necessarily limited to, Customer's use of software or hardware not authorized by Accela;
 - e) Services required to resolve or work-around conditions which cannot be reproduced in Accela's support environment;
 - f) Services which relate to tasks other than maintenance of Customer's existing implementation and configuration of the Accela-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;
 - g) Services requested by Customer to implement software updates provided by Accela pursuant to this MA; and
 - h) New or additional applications, modules, or functionality released by Accela during the term of this MA.
- 3.2.2 Legacy Releases Accela will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Accela will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Accela will not be provided pursuant to this MA, but may be separately available at rates and on terms which may vary from those described herein.

- 3.3 Warranty Accela will commence and complete the maintenance obligations described in this MA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted

within and expected of Accela's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Accela may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved, Customer's exclusive remedy will be damages in an amount equal to the total of maintenance fees paid to Accela for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding Customer's maintenance request.

Accela represents and warrants that it will provide all documentation and any updated documentation (reflecting any customizations or modifications) created for the Software and that such documentation will be detailed and complete and will accurately describe the functional and operational characteristics of the Software. The warranty and commitments contained in this section shall remain in full force and effect for as long as Customer continues to receive support and maintenance services from Accela

3.4 Compensation

3.4.1 Maintenance Fees In exchange for the Maintenance Services described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A.

3.4.2 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 MA 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 MA ("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 MA, 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 Customer Obligations As required, Customer will provide Accela with appropriate access to Customer's facilities, data systems, and other resources. If security restrictions impair such access, Customer acknowledges that some maintenance services hereunder may not be provided to Customer. It is Customer's sole responsibility to maintain current backup copies of its data and of its implementation of Accela's software products. If Customer's failure to create proper backups substantially increases the difficulties of any remedial actions by Accela hereunder, Accela reserves the right to charge Customer for any extra work reasonably-attributable to such increased difficulty, as calculated at Accela's then-current time-and-materials rates.

5.2 Proprietary Rights The remedial methods, software updates, and product information provided to Customer pursuant to this MA are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in such items and grants to Customer a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this MA and other agreements between Accela and Customer.

5.3 Limitation of Liability Accela provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the application services may be adversely affected by remedial or other actions performed pursuant to this MA; Accela bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Accela provides all Maintenance Services "as is" without express or implied warranty of any kind regarding the character, function,

capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to Accela by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages.

5.4 Force Majeure If either party is delayed in its performance of any obligation under this MA due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.

5.5 Dispute Resolution This MA 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 5.5.1 below.

5.5.1 If the parties cannot themselves resolve a dispute arising out of or related to this MA, 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.

5.5.2 Except where clearly prevented by the area in dispute, both parties shall continue performing their non-disputed obligations under this MA while the dispute is being resolved under this Section unless and until the dispute is resolved or until this MA is terminated as provided herein. Except for disputes relating to the payment of Accela fees as set forth in Section 3.4, the time frame for a party to cure any breach of the terms of this MA shall not be tolled by the pendency of any dispute resolution procedures.

5.5.3 Notwithstanding anything contained in this MA 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.

5.6 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. Accela may subcontract with qualified third parties to provide portions of the Maintenance Services described hereinabove.

5.7 Survival The following provisions will survive the termination or expiration of this MA: Section 2.1, as to Customer's obligation to pay any fees associated with a lapse in maintenance coverage upon

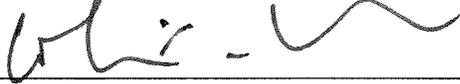
resumption of such coverage; Section 3.3, as to limitation of remedy; Section 3.4 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5 and all subsections thereof with the exceptions of Subsections 5.1 and 5.4.

- 5.8 Alternate Terms Disclaimed The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 5.9 Severability and Amendment If any particular provision of this MA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this MA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this MA will be effective unless it is described in writing and signed by the Parties.
- 5.10 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.
- 5.11 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.
- 5.12 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, nor shall it deny the benefits of this Agreement, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Accela covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.
- 5.13 Legal Compliance Accela agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work, products, goods, facilities and services pursuant to the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Accela acknowledges that a breach of this warranty is a material breach of this Agreement and Accela is subject to penalties if awarded by competent court for violation(s) of this provision, including termination of this Agreement. Accela hereby agrees to indemnify, defend and hold Customer harmless for, from and against all losses and liabilities, imposed by statutory authorities on Customer arising from any and all violations by the Accela.
- 5.14 Accela's Records Accela agrees to retain all books, accounts, reports, files and other records relating to this Agreement pursuant to A.R.S. § 35-214. Accela shall make said records available with prior

written notice at all reasonable times for inspection and audit by the Customer during the term of this Agreement.

- 5.15 Availability of Funds The parties recognize that the obligations of Customer may be dependent upon the appropriation of funds by the Tempe City Council. Should the Tempe City Council fail to appropriate the necessary funds or funding becomes otherwise not legally available, Customer may reduce the scope of this Agreement if appropriate or cancel or terminate Agreement without further duty or obligation. Customer agrees to notify Accela as soon as reasonably possible after the unavailability of said funds comes to Customer's attention

ACCELA



Signature

City of Tempe

Mark W. Mitchell, Mayor

COLIN SAMUELS

Name (Printed)

ASST. CORP. SECRETARY

Title

14 JUNE 2013

Date

Name (Printed)

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

Exhibit Follows.

END OF DOCUMENT

EXHIBIT A

Deliverables	Fees
First-Term Annual Maintenance for Accela Automation® Land Management Site License	\$55,000.00
First-Term Annual Maintenance for Accela Citizen Access™ (1 Server, 1 Module [Based Upon 164,000 Population])	\$7,022.00
First-Term Annual Maintenance for Accela Mobile Office™ (1 Server, 20 Named Users)	\$16,596.00
First-Term Annual Maintenance for Accela GIS™ Site License	\$20,000.00
Estimated Arizona Sales Use Tax	\$6,508.79
Total of Fees	\$105,126.79

First-Term Annual Maintenance Fees are fixed-priced deliverables for which full payment is due upon signing.

Second-Term Annual Maintenance fees are subject to an annual increase of three percent (3%) over the previous year's fees and are due on the first anniversary of the Effective Date.

Third-Term Annual Maintenance fees are subject to an annual increase of three percent (3%) over the previous year's fees and are due on the second anniversary of the Effective Date.

Fourth-Term Annual Maintenance fees are subject to an annual increase of three percent (3%) over the previous year's fees and are due on the third anniversary of the Effective Date.

Fifth-Term Annual Maintenance fees are subject to an annual increase of three percent (3%) over the previous year's fees and are due on the fourth anniversary of the Effective Date.

Optional Years of Maintenance

Pursuant to Section 2.1 above, Customer shall have the options to continue this MA for five (5) additional years in periods of twelve (12) months each. Fees for said additional years are payable as follows:

- Sixth-Term Annual Maintenance fees, if Customer exercises its option to renew maintenance coverage, will increase five percent (5%) over the fees for the Fifth-Term Annual Maintenance and will be due on the fifth anniversary of the Effective Date.
- Seventh-Term Annual Maintenance fees, if Customer exercises its option to renew maintenance coverage, will increase five percent (5%) over the fees for the Sixth-Term Annual Maintenance and will be due on the sixth anniversary of the Effective Date.
- Eighth-Term Annual Maintenance fees, if Customer exercises its option to renew maintenance coverage, will increase five percent (5%) over the fees for the Seventh-Term Annual Maintenance and will be due on the seventh anniversary of the Effective Date.
- Ninth-Term Annual Maintenance fees, if Customer exercises its option to renew maintenance coverage, will increase five percent (5%) over the fees for the Eighth-Term Annual Maintenance and will be due on the eighth anniversary of the Effective Date.

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- Tenth-Term Annual Maintenance fees, if Customer exercises its option to renew maintenance coverage, will increase five percent (5%) over the fees for the Ninth-Term Annual Maintenance and will be due on the ninth anniversary of the Effective Date.

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