



Chandler · Arizona
Where Values Make The Difference

**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

16

2. Council Meeting Date:
February 23, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: February 6, 2012

THROUGH: CITY MANAGER

4. Requesting Department: City Manager

5. **SUBJECT:** Approve amendment #5 to extend the Enterprise License Agreement (ELA) No. 2008ELA6895 with ESRI for citywide Geographic Information System (GIS) software in an amount not to exceed \$108,800.

6. **RECOMMENDATION:** Recommend approval of amendment #5 to extend the ELA No. 2008ELA6895 with ESRI for citywide GIS software in an amount not to exceed \$108,800.

7. **HISTORICAL BACKGROUND/DISCUSSION:** The City's GIS system is based on ESRI GIS products. Several years ago, the City expanded its use of these products in current and planned City applications. This expansion of GIS services resulted in a need for additional product licenses. Rather than continue to purchase licenses and maintenance for each application, the City consolidated all GIS software needs citywide into an Enterprise License Agreement (ELA). Through this agreement, the City has incurred a lower cost-per-unit for licensed software. A City GIS Advisory team recommended this purchase and the Information Technology Oversight Committee approved the recommendation in 2009. The ELA includes instructor led and on line training GIS classes for City staff. The ELA allows City departments to deploy software products from the GIS system as needed to support its growth. The GIS Advisory Committee considers each request for additional software installations to determine validity and also monitors software installed to not adversely affect future costs of the ELA.

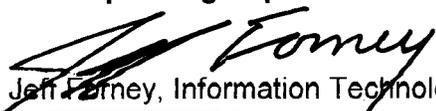
8. **EVALUATION PROCESS:** In February 2009, Council approved an ELA with ESRI. They are the sole provider of their GIS products and the City's GIS system is based on ESRI GIS products. This amendment allows the contract to be extended for one year with the option to extend two additional one-year periods. This contract provides: a lower cost per unit for all of the licensed GIS software based on the fact that it allows unlimited citywide use of the ESRI products rather than purchasing single-user licenses; annual support and maintenance on the licensed software; flexibility to deploy ESRI products whenever and wherever they are needed; and includes annual training credits. If unused, these training credits will roll over toward next year's fee of the ELA. The annual fee remains the same as it has been for the last three years.

9. **FINANCIAL IMPLICATIONS:** Funds for this project are available in 101.1200.5419.0.0.0 General Funds, IT Applications, Other Equipment R&M, in an amount not to exceed \$108,800.

10. **PROPOSED MOTION:** Move to approve amendment #5 to extend the ELA No. 2008ELA6895 with ESRI for citywide GIS software in an amount not to exceed \$108,800.

APPROVALS

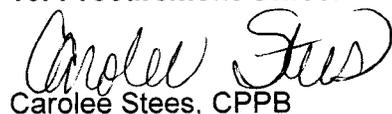
11. Requesting Department


Jeff Forney, Information Technology GIS Coordinator

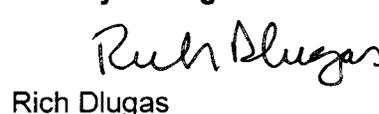
12. Department Head


Steven Philbrick, Chief Information Officer

13. Procurement Officer


Carolee Stees, CPPB

14. City Manager


Rich Dlugas

AMENDMENT NUMBER FIVE
TO ENTERPRISE LICENSE AGREEMENT NO. 2008ELA6895
BETWEEN THE CITY OF CHANDLER
AND
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (ESRI)

This Amendment #5 to that certain Enterprise License Agreement No. 2008ELA6895 between the City of Chandler (CITY) and ESRI (CONTRACTOR) dated March 12, 2009 and is entered into this _____ day of February, 2012.

WHEREAS, the parties have agreed;

NOW THEREFORE, the parties agree as follows:

1. Section 2.3, Consultant Access shall be changed to read: "Section 3.4, Consultant Access, in the License Agreement is modified use of any Enterprise License Software is restricted to use by consultants and contractors for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely using/accessing Enterprise License Software from Licensee's on-site computers or machines; or (iii) remotely accessing or using Enterprise License Software from a third party's computers or machines under contract to Licensee. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise License Software upon completion of work for Licensee."
2. Section 5.1, Purchase Orders, Delivery, and Deployment, Subsections b. and c. shall be replaced with:
 - b. "Upon receipt of a purchase order from City, ESRI shall authorize City to download Enterprise License Software listed in Appendix A. Delivery of updates/new versions of Enterprise License Software will be made in the same manner. If requested by City, ESRI will deliver a limited number of sets of backup media as provided in Appendix B to the ship-to address identified in Appendix D, ELA Points of Contact, FOB destination with shipping charges prepaid. City may purchase additional backup media sets at the prices in effect at the time of purchase. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. City acknowledges that ESRI has a right to invoice, and City agrees to pay any such sales or use tax associated with receipt of tangible media."
 - c. "ESRI shall provide registration/authorization numbers or access codes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise License Software to operate or allow access."
3. Section 5.5, Web-Based Training shall be changed to read: "Section 5.5 Training – ESRI will provide City with access to ESRI Virtual Campus Web-based training through an annual \$2,500 Virtual Campus Standard Subscription plus eight (8) days of instructor led training per year. Instructor led training is subject to Appendix F Training Terms and Conditions found attached to this ELA. The subscription includes all asynchronous, self-study courses and Web workshops that are authored by ESRI. The Standard Subscription does not include courses authored by third parties. City must designate a person as the Subscription Administrator. The Subscription Administrator shall receive and control the Subscription Master Code that allows City to select courses and distribute Course Access Codes to employees of participating Licensees. Each time a course access code is issued, the subscription account shall be debited the retail value of that course. Training must be started in the same annual period. The unused annual balance of Virtual Campus dollars or instructor led training days shall be rolled-over and credited toward

the next ELA Year. Upon expiration or termination of this ELA any unused balance of Virtual Campus dollars or instructor led training days shall be forfeited."

4. Section 7.1, Term shall be changed to read: "The term of this ELA is extended from March 12, 2012 through March 11, 2013 with two one-year options to extend. The sole reason City may elect not to extend the term of the ELA each year is for Lack of Funds, as described below in Section 7.5."
5. Section 13.13, Taxes, shall be added to the ELA as follows: "The ELA Fee is exclusive of all state, local, value-added, or other taxes; customs; or duties or other charges (other than income taxes payable by ESRI). In the event such taxes or charges become applicable to ESRI, City shall pay any such applicable tax upon receipt of written notice that such taxes or charges are due."
6. Appendices A, B and C shall be replaced with the Appendices A, B and C attached hereto.
7. Appendix F Training Terms and Conditions, is added to the ELA as attached hereto as Appendix F.
8. All other terms and conditions of the above referenced Agreement shall remain unchanged and in full force and effect. All terms and conditions in the original Agreement not specifically amended herein shall be incorporated by reference in its entirety and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of February, 2012.

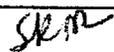
CITY OF CHANDLER:

By: _____
Mayor

CONTRACTOR:

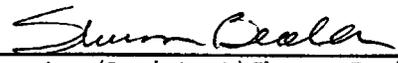
By: 
Title: Manager, Domestic Contracts
Chris Johnson

APPROVED AS TO FORM:

City Attorney 

ATTEST: (If corporation)

ATTEST:


Secretary (Assistant) Sheron Bealer

City Clerk

WITNESS: (If individual or Partnership)

[SEAL]



**APPENDIX A.
SOFTWARE AND DEPLOYMENT SCHEDULE**

City may deploy the Enterprise License Software up to the total quantity of licenses indicated below to Licensees during the term of this ELA.

**Table A-1
Enterprise License Software—Unlimited Quantities**

Product	Total Qty/Seats
Desktop Software	
ArcInfo, ArcEditor, ArcView	Unlimited
Desktop Extension Software	
Spatial Analyst, 3D Analyst, Geostatistical Analyst, Network Analyst, Publisher, Schematics, Workflow Manager, Data Reviewer, ArcScan, Maplex	Unlimited
Server Software and Extensions	
ArcGIS Server Workgroup and Enterprise (Advanced, Standard, Basic), Arc IMS	Unlimited
ArcGIS Server Extensions – 3D Analyst, Network Analyst, Spatial Analyst, Geostatistical, Schematics, Workflow Manager, Image	Unlimited
ArcGIS Engine Runtime Deployments	Unlimited
ArcGIS Engine Runtime Extensions	
3D Analyst, Geodatabase Update, Maplex, Network, Schematics, and Spatial	Unlimited
ESRI Mapping and Charting—ESRI Production Mapping	Unlimited

**Table A-2
Enterprise License Software—Limited Quantities**

Item	Rolled-In Qty.	Qty./Seats to Be Deployed	Total
ESRI Developer Network (EDN) annual subscriptions	0	2	2
ArcGIS Data Interoperability Desktop Extension	1	1	2
ArcPad	5	0	5
CityEngine Advanced Single Use license	0	1	1

**APPENDIX B
ELA FEE SCHEDULE**

The ELA Fee is payable annually as shown below. The ELA Fee is in consideration of the Enterprise License Software, ELA Maintenance, training, and ESRI International User Conference registrations.

	Year 2012	Year 2013	Year 2014	Total ELA Fee
Payments	\$100,000	\$110,000	\$110,000	\$320,000
*Virtual Campus dollar credits per year, plus eight (8) days per year of instructor led training.	\$2,500	\$2,500	\$2,500	
Number of annual ESRI International User Conference Registrations	11	11	11	
Number of Tier 1 Help Desk Individuals	5	5	5	
Number of Sets of Media	1	1	1	

*Applies to standard user license for ESRI authored courses only (third party authored courses not included). Unused credits and instructor led training days will be rolled over each year of the ELA for the three year period. Instructor led training may be at an ESRI training facility or online classroom.

Geoportal Server. The ELA Fee also includes support for ESRI Geoportal Server software that consists only of one (1) technical support caller for the Term of the ELA. ESRI Geoportal Server software is available for download at <http://www.ESRI.com/software/arcgis/geoportal/index.html> and is licensed under the Open Source Apache 2.0 License found at <http://www.apache.org/licenses/LICENSE-2.0.html>.

APPENDIX F TRAINING TERMS AND CONDITIONS

Client wishes to arrange for certain training in the use of GIS software. ESRI is willing to conduct training courses and provide related services regarding the use of GIS software pursuant to the terms and conditions contained herein. The parties therefore agree as follows:

ARTICLE 1—TRAINING DESCRIPTION

ESRI offers a set of instructor-led training and client coaching services related to the use of its proprietary GIS software. Instructor-led training events occur at a client's site, at an ESRI Learning Center, or via the web in a cloud environment. The ESRI software training courses offered, their location, the dates during which the courses are to be conducted, the number of participants, the prices to be paid, and registration requirements are set forth in the *ESRI Training* catalog located on ESRI's Training website (<http://training.ESRI.com>). All courses are conducted in substantial conformity with course descriptions outlined on the ESRI Training website. ESRI reserves the right to modify course content when necessary due to software technical capabilities or limitations. Client coaching services may be provided immediately before or immediately following an ESRI training course to familiarize the Student with the software or to review and practice course concepts with an instructor's guidance.

ARTICLE 2—ESRI'S RESPONSIBILITIES

- ESRI will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. ESRI will provide each Student with a course manual, where applicable.
- ESRI will confirm Learning Center training event scheduled dates approximately ten (10) business days prior to the training event start date.
- ESRI will confirm Client Site scheduled dates upon receipt of the completed Client Site Training Request Form and intended payment method.

ARTICLE 3—CLIENT'S RESPONSIBILITIES

- Client must ensure the protection of ESRI's copyrights. Client shall neither copy or distribute nor permit a third party to copy or distribute any of ESRI's training material(s).
- Client is not authorized to resell seat(s) to an ESRI training event, unless explicitly authorized in writing by ESRI.
- Client must ensure that all Students have received confirmation from ESRI to participate in an ESRI training event. Unregistered Students are not permitted to view or participate in an Online Classroom training event. ESRI reserves the right to disconnect any Students who permit access to unregistered Students.
- Client must confirm that all registered Students meet the minimum prerequisites for the applicable training event set forth on ESRI's Training website.
- Client must submit registrations with a confirmed payment commitment at least seven (7) business days before the training event start date. If Client submits a registration without a confirmed payment, ESRI will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- US government export control laws and regulations prohibit US persons from engaging in transactions with certain denied persons found on various US Government Denied Persons lists (e.g., US Department of the Treasury's Specially Designated Nationals List, US Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Client must submit to the ESRI Training Event Assistant a list of the names of Students that are to attend any training event. Client must submit the list of Student names to ESRI at least three (3) business days before the training event start date. Any Student that is found on any of the various US Government Denied Persons lists will not be permitted to attend training.
- Client is responsible for all Student travel arrangements. ESRI assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to US government export regulation requirements, course scheduling changes, or cancellations.
- Client must provide written notice to ESRI's Customer Service department at service@ESRI.com of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the training event start date.
- Client must complete and submit an ESRI Client Site Training Request Form as well as ensure that it adheres to the course, facility, equipment, and Internet bandwidth and connectivity requirements for ESRI Training as found at <http://training.ESRI.com/gateway/index.cfm?fa=trainingOptions.gateway>.
- Students may not use audio and/or video recording equipment within the classroom without prior written approval from ESRI. ESRI reserves the right to record a classroom training event for future rebroadcast.
- If the ESRI Mobile Lab equipment is utilized at Client's domestic site, then the following terms will apply:

- Upon receipt, Client must immediately report any damage to the Mobile Lab equipment to the Training Event Assistant.
- Client must keep the Mobile Lab equipment in a secure, locked area between training event sessions.
- Client must ensure that only registered Students use the Mobile Lab equipment.
- Client is responsible for any and all loss of, damage to, or theft of the Mobile Lab equipment while in Client's possession.
- Client warrants that it maintains sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law.
- The ESRI instructor will check all Mobile Lab equipment following the completion of training. Any damage to the Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Client by written notice. Client hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
- Client shall make the Mobile Lab equipment available for freight pickup immediately on conclusion of the ESRI course(s).

ARTICLE 4—INSURANCE AND INDEMNIFICATION

4.1 Insurance. ESRI carries, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with minimum coverage of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, including death, and property damage liability, to include the following:
 1. Premises and operations
 2. Blanket contractual liability
 3. Broad form property damage
 4. Independent contractors
 5. Personal injury, with employee exclusion deleted
 6. Completed operations
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

4.2 Indemnification. ESRI will indemnify and hold harmless Client and each of its directors and officers (collectively the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by ESRI or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by ESRI pursuant to this Agreement while on Client's site.

ARTICLE 5—UNIQUE CLIENT COACHING PRIVACY TERMS

In the event Client coaching services are to be ordered, the following terms shall apply:

Client shall not provide to ESRI or disclose to the instructor any personally identified information ("PII") (e.g., GLBA, HIPAA, CII from the US Department of Homeland Security), classified, and so forth, data for use in the coaching session. Notwithstanding anything in this Agreement to the contrary, ESRI retains the right to refuse acceptance of any nonpublic personal information ("NPI") or Customer Information regardless of the form of disclosure. ESRI will only accept receipt of information from Client that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (P.L. 106-102) (15 U.S.C. Section 6809) and implementing regulations thereof.

ARTICLE 6—SOFTWARE LICENSES

The terms of the ESRI license agreement are applicable to all Students and cover all of ESRI's software, data, and documentation licensed for use in any training course to be conducted. ESRI may issue temporary software licenses for Client Site Training where there are an insufficient number of software licenses available at the Client's training facility. Upon conclusion of the training course or event, the Client must uninstall the temporary software licenses and return to ESRI any media provided.

ARTICLE 7—CANCELLATION AND RESCHEDULING POLICY

7.1 Individual Student Seats

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided ESRI's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without three (3) business days' notification, a transfer fee may be assessed.
- A Student may transfer from one (1) scheduled ESRI Learning Center training event to another one (1) time at no additional charge provided ESRI's Customer Service department is notified three (3) business days in advance of the training event start date. Subsequent transfers or transfers that occur without three (3) business days' notification may incur a transfer fee.
- Students may cancel their enrollment in a training event provided ESRI's Customer Service department is notified three (3) business days in advance. If three (3) business days' notification is not provided, Students may be charged the full class fee.

7.2 Client Site/Private Class/Coaching Services (Training Event)

- When a Student's place in a training event is filled by another person from the same organization, a Student substitution is allowed at no cost provided ESRI's Customer Service department is notified three (3) business days in advance of the training event start date. Should a Student substitution occur without notification three (3) business days in advance, a transfer fee may be assessed.
- A training event may be rescheduled by the client, provided ESRI's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of reschedule is provided, Client is responsible for ESRI's reasonable travel expenses and shipping costs incurred.
- A training event may be canceled by the client provided ESRI's Customer Service department is notified three (3) business days in advance of the training event start date. If appropriate notice of cancellation is provided, Client is responsible for any reasonable travel expenses and shipping costs. If a training event is canceled without appropriate notice, client is responsible for the full training event fee.

7.3 If cancellation of a training event is necessary due to Force Majeure as described in Article 11 below, the affected party is released in full from the three (3)-business day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

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

ARTICLE 8—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, ESRI and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

ARTICLE 9—UCC INAPPLICABILITY. Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.