



ArcGIS ONLINE COMMUNITY MAPS PROGRAM PARTICIPATION AGREEMENT

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

Agreement No. 2010 A3256

Williamson County, TX (hereinafter referred to as "Contributor") is entering into this agreement to participate in the Environmental Systems Research Institute, Inc. (ESRI), ArcGIS Online Community Maps Program. By entering into this agreement, Contributor is confirming its intent to contribute its geographic data content ("Content"), as described in Exhibit 1 to this agreement, and is willing to allow its Content to be processed, hosted, published, and redistributed by ESRI for the use of ArcGIS end users and developers. Contributor acknowledges that it has read the ESRI ArcGIS Online Community Maps Program Description found at <http://www.esri.com/communitymaps> and agrees to be bound by the Program Policies and the Use Terms that are contained on that Web site.

CONTRIBUTOR LICENSE GRANT

In addition to the Program Policies and Use Terms found on the above Web site, Contributor participation in the ArcGIS Online Community Maps Program shall be conditioned on the following terms:

1. This is a license agreement and not an agreement for sale between ESRI and Contributor. This license gives ESRI certain limited rights to use Contributor's Content. All rights not specifically granted to ESRI in this Agreement are reserved to Contributor.
2. Contributor grants to ESRI, and ESRI accepts a nonexclusive, nontransferable, royalty-free license to:
 - a. Use, copy, process, and integrate Content into one (1) or more existing datasets created by ESRI or its authorized partner(s) for publishing purposes; and
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 - c. Use the licensed Content for marketing, beta, evaluation, demonstration, and/or training purposes of its distributors, sales representatives, or end user(s); and
 - d. Provide end user(s) the right to cache processed Content for use within the client-side applications, provided, however, any other storage or redistribution by the end user(s) is not permitted without acquiring additional written license rights; and
 - e. Provide end user(s) the right to make printed copies, or soft copy images, of Content for their own internal business purposes only; and
 - f. Provide developer(s) the right to use, copy, publish, and display processed Content for noncommercial or internal business purposes only.

ESRI ACKNOWLEDGEMENTS

ESRI acknowledges that use of Contributor Content shall be subject to the following Warranties, Disclaimers, and Limitations of Liabilities:

1. Contributor represents and warrants that at the time it has entered into this agreement, Contributor owns or has title to Content and has the right to enter into this agreement and has the power to grant the licenses granted herein.
2. EXCEPT AS EXPRESSLY STATED HEREIN, CONTRIBUTOR DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES REGARDING ITS CONTENT INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRIBUTOR DOES NOT WARRANT THAT CONTENT WILL MEET THE NEEDS OR EXPECTATIONS OF ESRI OR ITS END USERS, THAT THE OPERATION OF CONTENT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.

3. BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT CONTENT HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS ARE NOT GUARANTEED. CONTENT MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS. CONTRIBUTOR IS NOT INVITING RELIANCE ON CONTENT AND THE END USER(S) SHOULD ALWAYS VERIFY ACTUAL CONTENT OR DATA INCLUDING, BUT NOT LIMITED TO, MAP, SPATIAL, RASTER, AND TABULAR INFORMATION.
4. BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (1) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (2) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (3) NEITHER PARTY IS LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SERVICES.

IN NO EVENT SHALL ESRI OR CONTRIBUTOR BE LIABLE TO THE OTHER PARTY 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 THIS AGREEMENT OR USE OF CONTENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT ESRI OR CONTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ESRI CONSIDERATIONS

For its part, in consideration of the licenses granted above, ESRI agrees to cooperate with Contributor and perform or provide the following:

1. ESRI or its authorized partner(s) will review Contributor Content and evaluate its suitability for use with other services datasets. ESRI reserves the right, at its sole discretion, to not use or publish Content that may not be suitable for use with its other datasets or commercially practical to publish or distribute.
2. ESRI will grant Contributor, as an existing ESRI software user, the right to access, at no charge, one (1) or more online services published by ESRI that include Contributor Content. Contributor may access the service(s) for its internal use with licensed ArcGIS Desktop, ArcGIS Explorer, ArcGIS Server, Web Mapping APIs, or other appropriate ESRI software.
3. ESRI will provide, at no charge and upon written request by Contributor, access to Contributor's processed Content created by ESRI or its authorized partner(s) for internal use by Contributor.
4. ESRI will provide, in a manner and place that ESRI determines commercially practical, attribution to Contributor as a source of content for the service or dataset in which its Content is published or distributed.

MISCELLANEOUS TERMS

Miscellaneous terms to this agreement shall include:

1. **Term and Termination.** The term of this agreement and the license rights contained herein shall be perpetual. Either party may terminate this agreement after one (1) years upon providing written notice to the other party at least ninety (90) days prior to the end of the first one (1) year term. In the event of termination, ESRI will have a period of six (6) months after termination to remove or replace Contributor Content from online services and data appliance updates;
2. **Governing Law.** This agreement will be governed by the laws of the state of Texas, without reference to conflict of laws principles. This license agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
3. **Relationship of the Parties.** The parties hereto agree that each is an independent contractor with respect to this Agreement and that this Agreement does not constitute an agency, partnership, franchise, or joint venture and that nothing herein contained is intended to constitute, nor shall it be construed to constitute, the parties as agents, partners, franchisor/franchisee, of each other. Except as expressly provided in this Agreement, neither party shall

have any power or authority to act in the name or on behalf of the other party except with the prior, express written consent of the other party.

4. **Export Regulation.** The parties acknowledge that this Agreement and the performance thereof may be subject to compliance with any and all applicable United States laws, regulations, or orders relating to the export of Content or data thereto. Contributor shall cooperate with ESRI and provide reasonable and necessary documentation to allow ESRI to comply U.S. Export Control Law or Regulations concerning the classification of any Contributor's Content prior to ESRI making any Content available on the ArcGIS Online Community Maps Web site.
5. **Sales and Use Taxes.** If required by any law or regulation, each party shall assume its respective responsibility for claiming and remitting to its respective taxing authority any and all sales, use, VAT, or other taxes arising from the transaction contemplated by this Agreement.
6. **Force Majeure.** Neither party shall be responsible for any failure to perform or delay in performing any of its obligations hereunder where and to the extent that such failure or delay results from causes outside the reasonable control of the respective party.
7. **Notices.** All notices and communications required or permitted under this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid return receipt requested or by facsimile ("fax") transmission with confirmed answer back to the parties at their respective addresses set forth below or to such other address as either party may from time to time specify by notice to the other given as provided in this Article.

If to ESRI:

ESRI
380 New York Street
Redlands, CA 92373-8100
Attn.: Contracts Manager
Phone: 909-793-2853
Fax: 909-307-3020

If to Contributor:

Williamson County, TX
301 SE Inner Loop, Suite 105
Georgetown, TX 78626
Attn.: Richard Semple
Phone: 512-943-1489
Fax: 512-943-3737

8. **Successors and Assigns.** The Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall not be construed to confer any right, interest, or benefit in favor of any other person. Notwithstanding the foregoing, either party may assign its rights and interests under this Agreement, in whole and not in part, with the prior, express written consent of the other party to this Agreement, and such consent shall not be unreasonably withheld or delayed.
9. **Equitable Relief.** Both parties agree that any breach of this Agreement by the other party will cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, such party shall have the right to seek an injunction, specific performance, or other equitable relief to prevent the continuous violations of these terms.
10. **Agreement; Amendments.** The ArcGIS Online Community Maps Program Participation Agreement and this Attachment, which are incorporated by this reference, constitute the sole and entire agreement of the parties as to the matter set forth herein and supersede any previous agreements, understandings, and arrangements between the parties relating hereto. Upon delivery of any Content to ESRI by Contributor, Contributor is deemed to have agreed to all of these terms. Except as otherwise expressly provided herein, any Amendment(s) and/or Addendum(s) to this Agreement must be in writing and signed by an authorized representative of each party.

This agreement is hereby executed by the parties authorized representatives and shall be effective as of the date of the last party to execute below.

Williamson County, TX
(Contributor)

Signature: [Signature]

Printed Name: DAVID A. LATIMER

Title: County Judge

Date: 05-12-2010

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(ESRI)

Signature: Krista Moreno

Printed Name: Krista Moreno
Manager, Contracts and Legal Services

Title: _____

Date: JUN 01 2010

DESCRIPTION OF CONTENT

The following gives a brief summary of Contributor's Content to be made available through this agreement. This information