



CITY CLERK ORIGINAL

ArcGIS ONLINE COMMUNITY MAPS PROGRAM PARTICIPATION AGREEMENT

C-8213
11/02/2012

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

Agreement No. 2011DAT8705

City of Glendale, Arizona (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 as part of the Community Maps Program, in which Contributor will have its content processed, hosted, published, and redistributed for the use of Esri's 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>.

Contributor's participation in the ArcGIS Online Community Maps Program is conditioned on the following terms:

OVERVIEW

Nature of Transaction. This is a license agreement and not an agreement for sale between Esri and Contributor. This Agreement gives Esri rights to use Contributor's content in Esri's Community Maps program. All rights not specifically granted to Esri in this Agreement are reserved to Contributor.

Descriptions of Sources. Contributor will describe in Exhibit 1 any content that Contributor is making available to Esri through this Agreement. All such descriptions are made part of this Agreement.

DEFINITIONS

"Deliverable(s)" means raw geographic data content in a geographic information system-compatible format that is submitted by Contributor for processing by Esri or Esri's authorized contractors.

"Processed Content" means a pictorial, graphical, or other representation of the Deliverable(s) (including annotation) or similar content to be published to end users and developers. For any data that Contributor processes before submitting it to Esri, Processed Content includes any content marked Processed Content in Exhibit 1.

"Task Service(s)" means any method, process, or procedure in which a host computer(s) or server(s) performs calculations using the Deliverable(s) and returns the results of such calculations to end users or developers in response to client requests. This may include, for example, geocoding services; geometry services; routing functions; network analyses; geoprocessing services; and any other process involving the query, manipulation, comparison, or other analysis of spatial data.

CONTRIBUTOR LICENSE GRANT

Contributor grants to Esri, and Esri accepts, the following license rights to use Contributor's geographic data content:

Deliverable(s). With respect to Deliverable(s), Contributor grants Esri, and Esri accepts, a worldwide, perpetual, nonexclusive, royalty-free license to:

- Copy and store Deliverable(s), generate Processed Content based on the Deliverable(s), and sublicense Esri's contractors to do the same;
- Publish Task Service(s) that utilizes the Deliverable(s);
- Sublicense developers to integrate such Task Service(s) into software applications;
- Sublicense end users to access and make use of the Deliverable(s) through Task Service(s) functionality and store the results, provided that end users will not be permitted to download the Deliverable(s);
- Use the Deliverable(s) for marketing, beta testing, evaluation, and demonstration purposes and for training Esri's distributors, sales representatives, or end users.

Processed Content. With respect to Processed Content, Contributor grants Esri, and Esri accepts, a worldwide, perpetual, nonexclusive, royalty-free sublicense to:

- Copy, store, print, modify, adapt, distribute, transmit, publish, publicly display, publicly perform, broadcast, and otherwise make the Processed Content available to others, by any means and in any medium now known or later developed, and grant a sublicense to others to do the same.

The following list is intended to serve as an illustration of, and not a limitation on, the ways in which Esri will exercise the foregoing grant of rights. Esri may:

- Host the Processed Content as an Internet-based map service to provide users with access to cached map tiles to be used with any Esri software, technologies, or solutions, including ArcGIS products, ArcGIS.com, ArcGIS Online, MapStudio, ArcGIS Web Mapping APIs, Esri's industry solutions and mobile technologies, the Business Analyst family of products, and authorized third-party applications;
- Bundle Processed Content with ArcGIS Data Appliance;
- Use the Processed Content for marketing, beta testing, evaluation, and demonstration purposes and for training Esri's distributors, sales representatives, developers, and end users.

ESRI ACKNOWLEDGMENTS

Esri acknowledges that use of Contributor Deliverable(s) shall be subject to the following Warranties, Disclaimers, and Limitations of Liabilities:

1. CONTRIBUTOR REPRESENTS AND WARRANTS (1) THAT CONTRIBUTOR HAS THE RIGHT TO ENTER INTO THIS AGREEMENT AND TO CONVEY TO ESRI THE DELIVERABLE(S) AND/OR PROCESSED CONTENT LICENSED HEREIN AND (2) THAT THE DATA DESCRIBED IN EXHIBIT 1 IS ACCURATE TO THE BEST OF ITS KNOWLEDGE. IF CONTRIBUTOR SUBSEQUENTLY LEARNS THAT ANY INFORMATION SET FORTH IN ANY EXHIBIT(S) IS NOT ACCURATE, CONTRIBUTOR SHALL PROMPTLY NOTIFY ESRI OF ANY SUCH INACCURACY.
2. CONTRIBUTOR DOES NOT WARRANT THAT DELIVERABLE(S) WILL MEET THE NEEDS OR EXPECTATIONS OF ESRI OR ITS END USERS, THAT THE OPERATION OF DELIVERABLE(S) WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. EXCEPT AS EXPRESSLY STATED HEREIN, CONTRIBUTOR DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES REGARDING ITS DELIVERABLE(S) INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
3. 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.
4. IN NO EVENT SHALL CONTRIBUTOR OR ESRI 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 OR LOSS OF ANY GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR USE OF DELIVERABLE(S), 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.
5. Esri and Contributor agree that the liability of each hereunder for damages to the other party, regardless of the form of action, shall not exceed the total amount paid for the licenses granted herein. This limitation shall not apply to damages sustained by Esri that arise from (1) any reckless or deliberate misrepresentation by Contributor concerning its authority to enter into this Agreement or to convey the licenses granted herein or (2) failure by Contributor to promptly notify Esri of known material inaccuracies in the information supplied or described in Exhibit 1.

ESRI CONSIDERATIONS

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

1. Esri or its contractors will review Contributor's datasets and evaluate their suitability for use in the Community Maps Program. Esri reserves the right, at its sole discretion, not to use or publish the Deliverable(s) or Processed Content.
2. Esri will provide, in a manner and place that it determines practical, attribution to Contributor as a source of the Deliverable(s) or Processed Content for the service or dataset in which the Deliverable(s) or Processed Content is published or distributed.

MISCELLANEOUS TERMS

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 three (3) years upon providing written notice to the other party at least ninety (90) days prior to the end of the first three (3)-year term. In the event of termination, Esri will have a period of six (6) months after termination to remove Contributor's Deliverable(s) and Processed Content from its future product and service offerings.
2. **Governing Law.** This Agreement will be governed by the laws of the state of California, without reference to conflict of laws principles. Any dispute arising out of or relating to this Agreement, or the breach thereof, which cannot be settled first through negotiation, shall be finally settled by arbitration administered by the American Arbitration Association (for US Deliverable[s] providers), or under the Rules of Arbitration of the International Chamber of Commerce (for all other Deliverable[s] providers). 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.** Esri and Contributor agree that each is an independent contractor with respect to this Agreement and that nothing in this Agreement creates or is intended to or should be construed to create an agency, franchise, partnership, or joint venture relationship. 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 Deliverable(s) or data thereto. Contributor shall cooperate with Esri and provide reasonable and necessary documentation to allow Esri to comply with US Export Control Law or Regulations concerning the classification of any Contributor's Deliverable(s) prior to Esri making any Deliverable(s) available on the ArcGIS Online Community Maps website.
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 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 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:

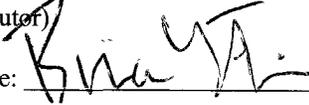
Esri
380 New York Street
Redlands, CA 92373-8100
Attn.: Contracts Manager
Phone: 909-793-2853
Fax: 909-307-3020

If to Contributor:

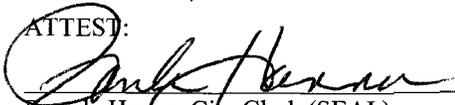
City of Glendale
5850 W Glendale Ave Ste 315
Glendale AZ 85301-2599
Attn.: Michael Conlin, GIS Coordinator
Phone: 623-930-3195
Fax: _____

- 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 Exhibit 1, which is 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 Deliverable(s) 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.

CITY OF GLENDALE
 (Contributor)
 Signature: 
 Printed Name: Brian Friedman
 Title: Community & Economic Dev Dept Exec Dir
 Date: 11/2/12

ENVIRONMENTAL SYSTEMS
 RESEARCH INSTITUTE, INC.
 (Esri)
 Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

ATTEST:

 Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

 Craig Tindall, City Attorney

ADDENDUM NO. 1
TO ARCGIS ONLINE COMMUNITY MAPS PROGRAM
PARTICIPATION AGREEMENT NO. 2011DAT8705

The ArcGIS Online Community Maps Participation Agreement with the City of Glendale, Arizona is modified as follows:

- A. On page 3 of Agreement, under the heading **MISCELLANEOUS TERMS**, Article 2, **Governing Law**, is deleted in its entirety and replaced with:

This Agreement will be governed by the laws of the state of Arizona, without reference to conflict of laws principles. Any dispute arising out of or relating to this Agreement, or the breach thereof, which cannot be settled first through negotiation, shall be finally settled by arbitration administered by the American Arbitration Association (for US Deliverable[s] providers), or under the Rules of Arbitration of the International Chamber of Commerce (for all other Deliverable[s] providers). 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.

- B. On page 4 of Agreement, under the heading **MISCELLANEOUS TERMS**, Article 8, **Successors and Assigns**, is deleted in its entirety.
- C. On page 4 of Agreement, under the heading **MISCELLANEOUS TERMS**, Article 9, **Equitable Relief**, is deleted in its entirety.
- D. On page 4 of Agreement, under the heading **MISCELLANEOUS TERMS**, Article 10, **Agreement; Amendments**, is deleted in its entirety and replaced with:

The ArcGIS Online Community Maps Program Participation Agreement, Exhibit 1, Addendum No. 1 and Addendum No. 2, 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 Deliverable(s) to Esri by Contributor, Contributor is deemed to have agreed to all of these terms. Except as otherwise expressly provided herein, any other Amendment(s) and/or Addendum(s) to this Agreement must be in writing and signed by an authorized representative of each party.

This Addendum No. 1 is hereby executed by the parties' authorized representatives and shall be effective as of the date of the last party to sign below.

CITY OF GLENDALE
(Contributor)

Signature: _____



Printed Name: Brain Friedman

Title: Community & Economic Dev Dept Exec Dir

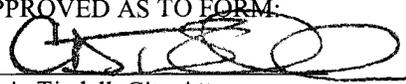
Date: _____

11/2/12

ATTEST:


Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:


Craig Tindall, City Attorney

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ADDENDUM NO. 2
TO ARCGIS ONLINE COMMUNITY MAPS PROGRAM
PARTICIPATION AGREEMENT NO. 2011DAT8705

Esri further agrees as follows as of the Effective Date:

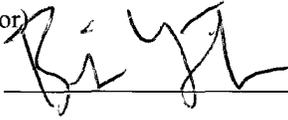
- I. Immigration Law Compliance.
 - A. ESRI warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to its employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the EVerify Program.
 - B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination.
 - C. ESRI's warranty and obligations under this Section I to Contributor are continuing throughout the term of this Agreement or until such time as Contributor determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
 - D. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
- II. Prohibitions. ESRI certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
- III. Conflicts. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

By signing below, the Contributor and Esri acknowledge the contents of this Addendum No. 2, the changes made in paragraphs 2, 8, 9, and 10 of the "ESRI ArcGIS Online Community Maps Program Participation Agreement," that are identified in Addendum No. 1 and are attached and incorporated herein.

CITY OF GLENDALE

(Contributor)

Signature: _____



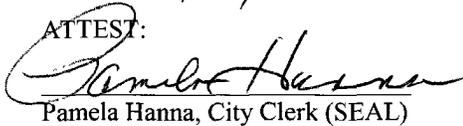
Printed Name: Brain Friedman

Title: Community & Economic Dev Dept Exec Dir

Date: _____

11/2/12

ATTEST:



Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney

ENVIRONMENTAL SYSTEMS

RESEARCH INSTITUTE, INC.

(Esri)

Signature: _____

Printed Name: _____

Title: _____

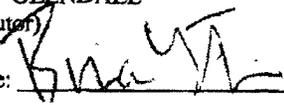
Date: _____

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 Exhibit 1, which is 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 Deliverable(s) 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.

CITY OF GLENDALE

(Contributor)

Signature: 

Printed Name: Brain Friedman

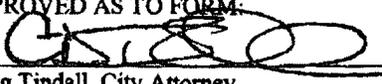
Title: Community & Economic Dev Dept Exec Dir

Date: 11/2/12

ATTEST:


Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:


Craig Tindall, City Attorney

ENVIRONMENTAL SYSTEMS

RESEARCH INSTITUTE, INC.

(Esri)

Signature: 

Printed Name: William C. Fleming

Managing Business Attorney

Title: _____

Date: NOV 09 2012

ADDENDUM NO. 1
TO ARCGIS ONLINE COMMUNITY MAPS PROGRAM
PARTICIPATION AGREEMENT NO. 2011DAT8705

The ArcGIS Online Community Maps Participation Agreement with the City of Glendale, Arizona is modified as follows:

- A. On page 3 of Agreement, under the heading **MISCELLANEOUS TERMS, Article 2, Governing Law**, is deleted in its entirety and replaced with:

This Agreement will be governed by the laws of the state of Arizona, without reference to conflict of laws principles. Any dispute arising out of or relating to this Agreement, or the breach thereof, which cannot be settled first through negotiation, shall be finally settled by arbitration administered by the American Arbitration Association (for US Deliverable[s] providers), or under the Rules of Arbitration of the International Chamber of Commerce (for all other Deliverable[s] providers). 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.

- B. On page 4 of Agreement, under the heading **MISCELLANEOUS TERMS, Article 8, Successors and Assigns**, is deleted in its entirety.
- C. On page 4 of Agreement, under the heading **MISCELLANEOUS TERMS, Article 9, Equitable Relief**, is deleted in its entirety.
- D. On page 4 of Agreement, under the heading **MISCELLANEOUS TERMS, Article 10, Agreement; Amendments**, is deleted in its entirety and replaced with:

The ArcGIS Online Community Maps Program Participation Agreement, Exhibit 1, Addendum No. 1 and Addendum No. 2, 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 Deliverable(s) to Esri by Contributor, Contributor is deemed to have agreed to all of these terms. Except as otherwise expressly provided herein, any other Amendment(s) and/or Addendum(s) to this Agreement must be in writing and signed by an authorized representative of each party.

This Addendum No. 1 is hereby executed by the parties' authorized representatives and shall be effective as of the date of the last party to sign below.

CITY OF GLENDALE
(Contributor)

Signature: _____

Printed Name: Brain Friedman

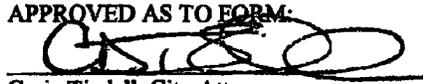
Title: Community & Economic Dev Dept Exec Dir

Date: 11/2/12

ATTEST:


Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:


Craig Tindall, City Attorney

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: _____

Printed Name: William C. Fleming
Managing Business Attorney

Title: _____

Date: NOV 09 2012

EXHIBIT 1
DESCRIPTION OF DELIVERABLE(S)/PROCESSED CONTENT

The following gives a brief summary of content to be made available through this Agreement. This information should include a description of Deliverable(s) or Processed Content as applicable and any required copyright attribution notices. If you are contributing multiple Deliverables or layers of Processed Content, you may submit multiple pages for this exhibit as needed. Contributor should provide complete metadata information with Deliverable(s) that is delivered to Esri. Please indicate in the check box below whether this particular form will apply to a Deliverable(s) or to Processed Content that you have prepared for submission.

DELIVERABLE(S)/PROCESSED CONTENT SUMMARY

Category of contributed content to which this form applies:

- Deliverable (i.e., raw data)*
- Processed Content (i.e., prerendered map tiles)*

Type of Deliverable(s)/Processed Content (e.g., imagery, streets, buildings): _____

Description: Airport, Buildings, City Limits, Contours, Golf Course, Lakes, Parks, Railroad, Streets

Source of Deliverable(s)/Processed Content: City of Glendale, AZ

Coverage Area (e.g., city, county, state/province): City of Glendale, AZ

Resolution or Scale (e.g., one [1] m resolution, one to ten thousand [1:10,000] scale): _____

Coordinate System (e.g., UTM, state plane): Arizona Central State Plane NAD 83

Data Format (e.g., TIFF with world file, shapefiles, JPEG): Shape files

Approximate Data Size (e.g., ten [10] GB, one hundred [100] GB): _____

Update Frequency (e.g., annual): Semi-annual

Deliverable(s)/Processed Content Info URL: _____

Additional Info (Optional): _____

INTELLECTUAL PROPERTY NOTICES

For online services and/or materials, attribution for Esri and other Deliverable(s) contributors will be provided as follows. Provide the contributor name(s) to be used for attribution of the Deliverable(s) described above.

"Source [Esri, Contributor]"

or

"Copyright © [year(s)] [Esri, Contributor]."

Preferred Type of Attribution: XX Source _____ Copyright

Name of Contributor: City of Glendale, AZ