



SOFTWARE EVALUATION AGREEMENT

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

For Use in the United States
ESRI Agreement No. _____

The Term of This Agreement Is 90 Days from the Date of Delivery or Keycode Issuance, Whichever Is Later.

This Software Evaluation Agreement (Agreement) is between the licensee printed below (Licensee) and Environmental Systems Research Institute, Inc. (ESRI). The Agreement includes (i) this signature page and (ii) the Evaluation Agreement Terms and Conditions. The parties acknowledge that they have read and understood this Agreement and agree to be bound by the terms and conditions.

This Agreement may be executed and sent to ESRI in hard copy, facsimile, scanned, or other agreed electronic form, so long as the entire Agreement with all attachments is provided.

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by an authorized representative of each party.

ACCEPTED AND AGREED:

Collin County

(Licensee)

Address: 2300 Bloomdale

Signature: _____

City, State, ZIP: McKinney TX 75071

Printed Name: _____

E-Mail: _____

Title: _____

Telephone: _____

Date: _____

Fax: _____

Customer No.: _____

Software, Data, and Documentation to Be Evaluated: Image Server Software extension.

EVALUATION AGREEMENT TERMS AND CONDITIONS

1. DEFINITIONS

The terms used in this Agreement are defined as follows:

- a. "Data," except as otherwise provided herein, means any ESRI or third party data vendor(s) digital data set(s), including but not limited to geographic, vector data coordinates, raster, reports, or associated tabular attributes.
- b. "Documentation" means all of the printed and digital materials, including but not limited to help files, user reference documentation, training documentation, or technical information and briefings.
- c. "Software" means the actual copy of all or any portion of ESRI's proprietary software technology, computer software code, components, dynamic link libraries (DLLs), underlying organization, object model, and programs delivered on any media, including any release provided in source, object, or executable code format(s), inclusive of backups, updates, service packs, patches, hot fixes, sample code, sample application, sample extension, or merged copies permitted hereunder.
- d. "Web Services" means software services or third party data components that perform GIS functions, tasks, or data services and are accessed over the Internet.

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4. SCOPE OF USE

4.1 Permitted Uses. Licensee may

- a. Use the Software, Data, Documentation, and Web Services as a single package on an individual computer for Licensee's own internal use.
- b. Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use only, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.
- c. Install the Software, Data, and Documentation onto a permanent storage device.
- d. Make a single copy of the Software, Data, and Documentation for backup purposes provided that such copy includes a reproduction of any copyright and trademark notices appearing in or on the copy furnished by ESRI.
- e. Use the Software, Data, and Documentation only for purposes of evaluation by Licensee and only on the designated equipment.

4.2 Uses Not Permitted. Licensee may not:

- a. Transfer to or use the Software, Data, Documentation, or Web Services at another location or in connection with another server or in a time-sharing mode without the prior written consent of ESRI;
- b. Sell, lease, lend, assign, sublicense, publish, disclose, display, or otherwise make available the Software, Data, Documentation, Web Services, or components thereof, in any form, including, but not limited to, flowcharts, logic

- diagrams, object code, source code, or technical documentation, to any person or entity without the written permission of an authorized ESRI representative;
- c. Export or reexport the Software, Data, Documentation, or Web Services from the delivery destination without the appropriate United States Export or foreign government license and ESRI's prior written approval;
 - d. Reverse engineer, decompile, or disassemble the Software for any purpose, or otherwise attempt to unlock or bypass the hardware key used or uncover any ESRI source code;
 - e. Make additional copies of the Software, Data, Documentation, or Web Services beyond those specifically permitted by this Agreement;
 - f. Make modifications to the Software, Data, Documentation, or Web Services to create another computer program or data set or combine the Software, Data, Documentation, or Web Services into another computer program or data set, or materials;
 - g. Publicly disclose results of benchmark testing;
 - h. Use the Software, Data, Documentation, or Web Services as a source or resource for any licensee or other competitive product; or
 - i. Use the Software, Data, Documentation, or Web Services for commercial purposes.

5. WARRANTY

THE SOFTWARE, DATA, DOCUMENTATION, AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE BEARS ALL RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE, DATA, DOCUMENTATION, AND WEB SERVICES.

6. LIMITATION OF LIABILITY

IN NO EVENT WILL ESRI BE LIABLE TO LICENSEE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RELATED TO THE USE BY THE LICENSEE OF THE SOFTWARE, DATA, DOCUMENTATION, OR WEB SERVICES, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

7. TERMINATION

This Agreement terminates upon expiration of this Agreement as set forth on the signature page, or earlier by either party upon written notice to the other. ESRI reserves the right to immediately terminate this Agreement upon breach of any provision of this Agreement by Licensee.

8. RETURN OF MATERIALS

Upon termination of this Agreement, if Licensee does not pay the license fees for the Software, Data, Documentation, and Web Services evaluated, Licensee shall (i) cease access and use of any Web Services and clear Web Services client-side data cache, (ii) uninstall, remove, and return to ESRI all Software, Data, and Documentation, and any whole or partial copies, modifications, or merged portions in any form in accordance with the following procedure. Licensee shall contact ESRI Customer Service and receive a Return Merchandise Authorization (RMA) number prior to returning the Software, Data, and Documentation to ESRI. Licensee shall then return the Software, Data, and Documentation, including all partial and complete copies, along with a written certification that the Software, Data, Documentation, and Web Services have been removed from its computer system or network, affix the RMA number to the shipping carton, and return the shipping carton freight prepaid to ESRI Customer Service at the address above. If Licensee fails to return the Software, Data, and Documentation at the conclusion of this Agreement, ESRI shall invoice Licensee and Licensee agrees to pay the current applicable license fee(s) for the Software, Data, and Documentation, and Licensee will be deemed to have licensed the Software, Data, and Documentation subject to the then-current ESRI License Agreement.

9. RISK OF LOSS AND DAMAGE

Licensee shall bear the risk of loss and damage to the Software, Data, and Documentation media during the license term and during return shipment.

10. ASSIGNABILITY

Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this Agreement without ESRI's prior written consent, and any attempt to do so without consent shall be void.

11. WAIVERS

A failure or delay by ESRI in enforcing any right or remedy under this Agreement shall not be construed as a waiver of such right or remedy by ESRI.

12. SEVERABILITY

The parties mutually agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

13. EQUITABLE RELIEF

Licensee agrees that any breach of this Agreement by Licensee may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, ESRI shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

14. EXPORT CONTROL REGULATIONS

Licensee shall not export, reexport, or provide the Software, Data, Web Services, or Documentation, in whole or in part, to (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control laws or regulations, including amendments and supplemental additions as they may occur from time to time. Licensee shall not export the Software, Data, Web Services, and/or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations, including but not limited to the terms of any export license or licensing provision. Licensee represents and warrants that it or its employees, consultants, or customers who gain access to the Software, Data, Web Services, or Documentation are not a national, resident, located in or under the control of, or acting on behalf of any person, entity, or country subject to such U.S. export controls.

15. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the United States of America and the State of California without reference to conflict of law principles.

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