

# CITY CLERK ORIGINAL

C-8252  
12/10/2012

PARADIGM SOFTWARE, L.L.C.  
10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255  
(410) 329-1300

## STANDARD SUPPORT SERVICES AGREEMENT

PARADIGM SOFTWARE, L.L.C. ("Paradigm") agrees to sell and provide, and the undersigned customer ("Customer") agrees to purchase and accept, in accordance with the terms and conditions set forth below, Paradigm Standard Support Services as defined herein for the computer programs licensed to Customer pursuant to a separate agreement entered into prior to or simultaneously herewith (the "System Implementation Agreement") and identified on the Software Support Schedule contained in the box below.

THIS AGREEMENT AND THE ATTACHED ADDENDUM, INCLUDING ALL OF THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE OF THIS PAGE, IS THE PARTIES' ENTIRE AGREEMENT AND CANNOT BE MODIFIED EXCEPT BY A WRITING SIGNED BY BOTH PARTIES. CUSTOMER UNDERSTANDS THAT THE FEES CHARGED BY PARADIGM IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISKS EXPRESSED BY THE LIMITATIONS OF LIABILITY AND DAMAGES, WHICH ARE SET FORTH ON THE ATTACHED TERMS AND CONDITIONS. BY SIGNING WHERE INDICATED BELOW, CUSTOMER ACCEPTS THESE TERMS AND AFFIRMS IT UNDERSTANDS THAT TO CHANGE THEM WOULD AFFECT THE ECONOMIC BARGAIN EXPRESSED IN THIS AGREEMENT.

EXECUTED on the date(s) indicated below.

**Customer:**

City of Glendale  
Field Operations  
6210 West Myrtle, Ste. 111  
Glendale, Arizona 85301

By: Horatio Skeete

Horatio Skeete  
(Type or Print Name)

Acting City Manager  
(Title)

Date: 12.10.12

**Accepted by:**

**PARADIGM SOFTWARE, L.L.C.:**

10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255

By: Jackie W. Barlow

Jackie W. Barlow, H  
Vice President

Date: 06 DEC 2012

**Approved as to form:**

By: Craig Tindall

Craig Tindall  
(Type or Print Name)

City Attorney  
(Title)

Date: 12/7/12

**ATTEST:**

[Signature]  
City Clerk

## TERMS AND CONDITIONS

**COVERAGE.** The computer programs eligible for Standard Support Services (as defined below) are those programs described on the Software Support Schedule set forth on the Software Support Schedule, or attached hereto, as updated with all current amendments, alterations, enhancements, improvements and updates furnished to Customer under warranty and Standard Support Services (the "Software"). Standard Support Services shall be rendered only to the currently supported version of Software running with the applicable operating system version supported by Paradigm.

**TERM AND RENEWAL.** Provided payment has been made as required hereunder, the term of this Agreement commences on the date specified on the Software Support Schedule, and continues for six (6) months following the date of commencement. After that, it will renew for successive six (6) month periods, unless either Paradigm or Customer gives written notice to the other of intention not to renew at least 60 days prior to the commencement of any renewal term. The cost of the agreement may increase annually with the Consumer Price Index.

**STANDARD SUPPORT SERVICES.** During the term of this Agreement, Paradigm will provide to Customer its Standard Support Services described in this paragraph. Paradigm will provide technical services to design, code, check out, and deliver for Customer's use subject to the license granted to Customer under the System Implementation Agreement, amendments or alterations of the Software necessary to correct or provide a solution to any programming error attributable to Paradigm which caused the Software not to perform each functions substantially as described in the current, standard editions of manuals delivered to Customer by Paradigm pertaining to the use of the Software (the "Documentation"). Such services will be promptly provided after Customer has identified and notified Paradigm of any such error in accordance with Paradigm's reasonable reporting procedures as in effect from time to time. Paradigm will also provide reasonable telephone consultation in the use and operation of the Software during the hours of 8:15 a.m. through 5:00 p.m. customer's time on weekdays, except Paradigm holidays. For Standard Support Services, Paradigm will accept telephone calls during Standard Support Service hours only from one contact or alternate, designated by Customer in writing from time to time, in advance. Paradigm, after notice to the designated contact, will charge on a time and materials basis, and Customer will pay such charges, for services in response to requests for consultation from any Customer contact not designated as set forth above. In addition, Paradigm will deliver to Customer, without any charge other than as specified on the Software Support Schedule, from time to time updates of the Software, which Paradigm elects to include under its Standard Support Services program and does not market separately to Standard Support Services Customers generally. Paradigm will not, however, charge for corrections or modifications to the Software that is necessary to obtain the functionality described in the current, standard editions of manuals delivered to Customer by Paradigm. Paradigm agrees to provide to Customer all updates to Software that it provides without charge to any other municipality.

**CUSTOMER RESPONSIBILITIES.** Customer agrees to re-test (Paradigm having initially tested and found suitable), and if operable, accept and use all updates, amendments and alterations to the Software furnished to Customer hereunder and to install and maintain for the duration of this Agreement a modem and associated dialup telephone line. Customer shall allow Paradigm continuous access to the Software via this connection for the purpose of providing Standard Support Services and will pay all telephone line use charges. Customer will provide Paradigm with dumps as requested, and with sufficient support and test time on Customer's computer system to duplicate any conditions or problems identified by Customer or Paradigm.

**CHARGES.** The annual fee for Standard Support Services is as set forth on the Software Support Schedule to this Standard Support Service Agreement payable monthly in advance in twelve (12) equal monthly installments to be made on the first day of each calendar month. Customer will pay a late charge of one and one half percent (1 1/2%) of the amount not paid within thirty (30) days of the due date or date of invoice, whichever is later. Paradigm may increase its annual charges for maintenance and support annually, by giving Customer notice of any such increase not later than the first day of March during the term prior to the renewal term for which such price increase is to be effective. Increases shall not exceed five percent (5%) of the prior year's price or CPI (Consumer Price Index) whichever is higher. Customer

shall pay or reimburse Paradigm for all out-of-pocket expenses incurred in connection with Standard Support Services, such as media, telephone, delivery and the cost of pre-approved travel (as set forth in the System Implementation Agreement, executed concurrent with this Agreement). Prices and fees are exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and Customer agrees to pay any tax Paradigm may be required to collect or pay now or at any time in the future (including interest and penalties imposed by any governmental authority) which are imposed upon the sale or delivery of items purchased or licensed or any services rendered hereunder. If a certificate of exemption or similar document or proceeding is to be made in order to except the sale from sales or use tax liability, the Customer will obtain and pursue such certificate, document or proceeding.

**OTHER SERVICES.** Customer agrees to pay Paradigm's charges for services not included in Standard Support Services, computed at Paradigm's regularly scheduled rates, together with all costs incurred in connection therewith. Investigation and research for Customer identified conditions determined by Paradigm not to be attributed to Paradigm programming errors are billable to Customer as such other services. Paradigm shall obtain customer's written approval for these services prior to starting the services, from an authorized representative of the Customer. Customer shall hold Paradigm harmless of any liability in the delay of obtaining such approval during this period, provided Paradigm has in good faith made a diligent effort to secure the necessary approval. Customer shall provide Paradigm with a list of individuals authorized to approve additional services.

**PROPRIETARY RIGHTS.** Any programs, works, manuals, changes, additions, alterations, amendments or enhancements in the form of new or partial programs or documentation as may be provided by Paradigm under this Agreement, and all copies thereof, shall be and remain the sole and exclusive property of Paradigm and shall be available for use by Customer under and subject to the license granted in the System Implementation Agreement. The System Implementation Agreement includes under its proprietary rights restrictions any such additional programming and documentation provided under this Agreement.

**TERMINATION.** In the event of a termination of Customer's license to use the Software due to Customer's default, this Agreement shall terminate immediately. Either party may terminate this Agreement in the event of default by the other, including Customer's failure to pay the monthly installment of the annual charge for Standard Support Services within thirty (30) days notice that the same is thirty (30) days or more delinquent.

Paradigm understands that the continuation of this Agreement after the close of any given fiscal year of Customer, which ends on June 30, shall be subject to the budget of Customer providing for the contract item as an expenditure therein. Customer cannot assure that the budget item for funding this Agreement will be approved in the future, as such assurance would be a legislative and policy determination of the City Council at the time of the adoption of the budget. Should the funding of the Agreement not be approved by City Council, Customer may terminate this Agreement as of the close of its fiscal year.

**CUSTOMER ACKNOWLEDGES THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY PARADIGM WITH RESPECT TO STANDARD SUPPORT SERVICES OR SOFTWARE DELIVERED HEREUNDER. PARADIGM DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**PARADIGM SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, SAVINGS, OPPORTUNITY OR ADVANTAGE OF ANY KIND), WHETHER ARISING UNDER CONTRACT, OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PARADIGM'S LIABILITY FOR ANY CAUSE UNDER OR RELATING TO THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO PARADIGM BY CUSTOMER FOR STANDARD SUPPORT SERVICES DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE ON WHICH ANY CLAIM IS MADE.**

Customer shall have the right to cancel this Agreement, cease using the Software, and cease doing any business with Paradigm at any time during the term of this Agreement without any liability or obligation to Paradigm, except for previously incurred charges and for return of the Software and documentation, should Customer, in its sole discretion and for any reason, believe or suspect that Paradigm, its products, its employees, or its subcontractors have, will, or may potentially cause Customer to incur any consequential, special, incidental, punitive, or indirect damages. Should Customer actually incur any consequential, special, incidental, punitive, or indirect damages as result of Paradigm, its products, its employees, or its subcontractors, such damages shall be offset by any amount due to Paradigm at the time of the termination.

**RELATIONSHIP.** Paradigm and Customer are independent of each other. This Agreement does not create in any manner or for any purpose an employee-employer relationship or a principal-agent relationship between Customer and Paradigm. Neither party is authorized to enter into Agreements for or on behalf of the other, to create any obligation or responsibility, express or implied, for or on behalf of the other, to accept payment of any obligations due or owed the other, or to accept service of process for the other. Under no circumstance or interpretation will this Agreement be construed as a work for hire. Paradigm shall not subcontract this Agreement or any portion thereof without the prior written approval of Customer. Approval of any subcontract arrangement shall not be construed as making Customer a party to any subcontract. In no event shall any sub-contract relieve or diminish Paradigm's obligations and liabilities under this Agreement. Customer shall not be deemed an employer of any subcontractors or any employee of a subcontractor. All interaction with sub-contractor and its employees by Customer will be as though the sub-contractor and its employees were employees and, unless and to the extent of specific limitations, agents of Paradigm. Paradigm shall ensure that all subcontractors and their employees are covered by all applicable, proper, prudent, and sufficient insurance and shall indemnify and hold harmless Customer from any and all claims, actions, lawsuits, etc, brought by subcontractor against Customer, except in the event of Customer's own negligence. Paradigm expressly agrees that this indemnification covenant is irrevocable and perpetual. With respect to sub-contractors, Customer shall have no obligations whatsoever to Paradigm for the protection against the disclosure of trade secrets and confidential information; nor shall Customer have any obligation to protect Paradigm's intellectual property rights, including guarding against derivative works

**MISCELLANEOUS.** This Agreement and the attached Addendum comprise the entire agreement and understanding between Paradigm and Customer with respect to the maintenance, support and enhancement of the Software, and the services of Paradigm during the term hereof, in every respect, and as such this agreement supersedes all prior and contemporaneous agreements, negotiations, representations, and proposals, written and oral, relating to the subject matter. Customer expressly acknowledges, agrees and represents to Paradigm that there are no understandings or agreements with respect to the subject matter other than as expressly set forth in this Agreement and Addendum. Customer agrees that no contrary terms and conditions of any subsequent Customer purchase order, no prior course of dealing, trade custom or usage of trade, and no warranty made during the course of performance, will apply, unless expressly agreed to by Paradigm in writing.

Any notice or communication provided or permitted hereunder shall expressly describe its purpose and scope, and shall be in writing and shall be deemed duly given or made if delivered in person or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the party for which it is intended at the address set forth in this Agreement or at any other address specified by a party in writing.

Except as expressly provided to the contrary in this Agreement, the dates and times by which Customer or Paradigm is required to render delivery or performance (but not to make payment) under this Agreement shall be automatically postponed to the extent, and for the period of time, that Customer or Paradigm, as the case may be, is prevented from meeting such dates and times by reason of causes beyond its reasonable control.

Notwithstanding the above, unless specified to the contrary in any schedule, supplement or other attachment, in the event of any conflict or inconsistency between such items and the provisions of this Agreement, or any vagueness that is deemed to exist with respect to this terms and provisions of this

Agreement, the terms and provisions of the following documents, in the order of precedence as listed, shall prevail and govern the interpretation thereof: 1) this Agreement, 2) RFP 01-30, 3) Paradigm's Proposal in response to RFP 01-30. No inference shall be drawn against, and no construction shall be adverse to, the party responsible for drafting or preparing this Agreement or any of its parts, or any addendum hereto, by virtue of such drafting or preparation.

In the event any provision hereof shall be deemed invalid or unenforceable by any court or governmental agency, such provision shall be deemed severed from this Agreement and replaced by a valid provision which approximates as closely as possible the intent of the parties. All remaining provisions shall be afforded full force and effect.

This Agreement shall become effective and shall be binding only upon acceptance by Paradigm at its offices in Hunt Valley, Maryland and upon approval by ordinance or resolution of Customer's Council, and it shall be governed by, subject to, and interpreted in accordance with, the laws of the State of Arizona. Any cause or action against Paradigm arising out of or in connection with this Agreement or any schedule or other agreement executed in connection herewith shall be instituted and served upon Paradigm not later than thirty-six (36) months following the discovery of the first event giving rise thereto.

Paradigm certifies and warrants that neither Paradigm, nor any of its agents, representatives or employees which will participate in any way in the performance of Paradigm's obligations hereunder has or will have any conflict of interest, direct or indirect, with Customer. Both parties acknowledge that no member of the governing body of Customer, nor any employee of Customer who exercises any functions or responsibilities in connection with the carrying out of the provisions of this Agreement, has any personal interest, direct or indirect, in this contract.

In the event of any litigation, arbitration or other proceeding between the parties relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other reasonable costs incurred in connection therewith and in pursuing collection, appeals, any other relief to which that party may be entitled.

With respect to all provisions of this Agreement and the attached Addendum, time is of the essence.

PARADIGM SOFTWARE, L.L.C.  
10944 Beaver Dam Road, Suite C  
Hunt Valley, MD 21030-2255  
(410) 329-1300

STANDARD SUPPORT SERVICES AGREEMENT

SCHEDULE "A"

<b>Description:</b>	<b>Quantity:</b>	<b>Annual Service Charge:</b>
WeighStation License	3	
CompuWeigh – Office Set & Reporting (5-user license)	1	
RF Software Module	1	
Traffic Light Module	1	
Interface to PeopleSoft	1	
<b>Annual Service Charge (due 11/28/2012):</b>		<b>\$8,094.67</b>
<b>Or</b>		
<b>Bi-Annual Service Charge (due 11/28/2012)</b>		<b>\$4,047.34</b>
<b>Bi-Annual Service Charge (due 05/28/2013)</b>		<b>\$4,047.33</b>

**ADDENDUM TO THE PARADIGM SOFTWARE LLC AGREEMENT  
BETWEEN PARADIGM SOFTWARE LLC  
AND THE CITY OF GLENDALE, ARIZONA**

Paradigm further agrees as follows as of the Effective Date:

**I. Immigration Law Compliance.**

- A. Paradigm, and on behalf any subcontractor, 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 E-Verify 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. Customer retains the legal right to inspect the papers of Paradigm or subcontractor employee who performs work under this Agreement to ensure that Paradigm or any subcontractor is compliant with the warranty under subsection (A) above.
- D. Customer may conduct random inspections, and upon request of the Customer, Paradigm shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Paradigm agrees to keep papers and records available for inspection by the Customer during normal business hours and will cooperate with Customer in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section I.
- E. Paradigm agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of Customer. Paradigm also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of Customer.
- F. Paradigm's warranty and obligations under this Section I to Customer are continuing throughout the term of this Agreement or until such time as Customer determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. 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.

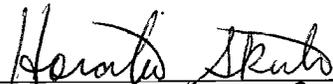
**II. Prohibitions.** Paradigm certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

**III. Conflicts.** This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

*By signing on the following page*, the Customer and Paradigm acknowledge and agree to the contents of this Addendum, the changes made in the paragraph entitled "Miscellaneous" of the Terms and Conditions of the Paradigm Standard Support Services Agreement, all as attached and incorporated herein.

"Customer":

CITY OF GLENDALE, an Arizona  
municipal corporation

  
Printed Name: Horatio Skeete  
Its: Acting City Manager  
Date: 12.10.12

ATTEST:

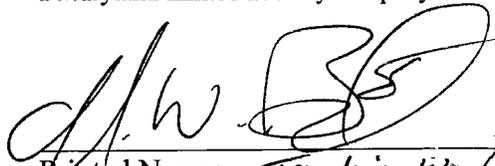
  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

  
Craig Tindall, City Attorney

"PARADIGM":

PARADIGM SOFTWARE LLC,  
a Maryland limited liability company

  
Printed Name: Jackie W. Barlow, Jr  
Its: Representative  
Date: 06 DEC 2012