CITY CLERK
ORIGINAL

C-9550
12/18/2014

STANDARD SUPPORT SERVICES AGREEMENT

PARADIGM SOFTWARE, L.L.C. ("PARADIGM"), by its acceptance of this Standard Support Services Agreement (this "Agreement") 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 in Schedule A hereto, all in accordance with the TERMS AND CONDITIONS included in this agreement, each of which is incorporated herein.

THIS AGREEMENT, INCLUDING ALL OF ITS TERMS AND CONDITIONS IS THE ENTIRE AGREEMENT AND CANNOT BE MODIFIED EXCEPT BY WRITING SIGNED BY THE DULY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES. CUSTOMER UNDERSTANDS THAT THE FEES CHARGED BY PARADIGM IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISKS EXPRESSED BY THE LIMITED WARRANTY, THE EXCLUSIVE REMEDY FOR BREACH OF THAT LIMITED WARRANTY, AND THE LIMITATIONS OF LIABILITY AND DAMAGES WHICH ARE SET FORTH ON THE REVERSE SIDE OF THIS PAGE. 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 CONTRACT.

TERMS AND CONDITIONS

1. CHARGES AND PAYMENT. (a) CUSTOMER agrees to pay the charges as provided in the Software Support Schedule to this Agreement to PARADIGM on an annual basis. The fee shall be paid annually prior to the anniversary date of the Effective Date of this Agreement, for each year this Agreement remains in effect. CUSTOMER will pay a late charge of one and one half percent (1 1/2%) of the amount not paid within sixty (60) days of the due date or date of invoice, whichever is later. Prices and fees are exclusive of all current or future excise, sales, use, occupational, or like taxes, if applicable, and CUSTOMER agrees to pay any such tax PARADIGM may be required to collect or pay which are imposed upon the sale or delivery of items purchased or licensed or any services rendered hereunder. Exemption from such taxes, if any, shall be the responsibility of CUSTOMER to pursue.

(b) If this Agreement remains in effect for all years of the Initial Term and Renewal Term contemplated in Paragraph 4 below, the amount CUSTOMER may pay for the services identified in the Software Support Schedule attached hereto shall not exceed $89,375.20. Pursuant to Section 6 below, the City may also request additional work outside the scope of the Software Support Schedule. This additional work shall not exceed $5,000 per year any year this Agreement remains in effect. If this Agreement remains in effect for all years of the Initial Term and Renewal Term contemplated in Paragraph 4 below, the amount CUSTOMER may pay for the additional work or services beyond the scope of the Software Support Schedule shall not exceed $50,000.00. **The total cost of all Standard Software Support Services as identified in Section 5 of this Agreement and the attached Software Support Schedule and any additional services or work the City may require during the term of this Agreement shall not exceed $139,375.20.**

2. CUSTOMER RESPONSIBILITIES. CUSTOMER agrees to test, 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 high-speed, modem or 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.

3. COVERAGE. The computer programs and software eligible for Standard Support Services (as defined below) are those programs described on the Software Support Schedule or attached hereto, as updated with all current amendments, alterations, enhancements, improvements and updates furnished to CUSTOMER under warranty (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.

4. TERM AND RENEWAL. The initial term of this Agreement is five (5) years, commencing with the date it is executed by the CUSTOMER. The Agreement remains in full force and effect until the expiration of the five (5) year term unless terminated earlier as provided herein. If CUSTOMER is not in default under this Agreement or any other agreement with PARADIGM, the term of this Agreement may be renewed upon the same terms and conditions upon a written, signed agreement of both parties, for one (1) additional five (5) year term. Such renewal is not automatic and may only occur if the CUSTOMER gives notice of its election to renew the license at least ninety (90) days prior to the expiration of the initial term. The cost of services may be adjusted at the time of renewal in the manner described herein, in accordance with changes in the Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Statistics [All Urban Consumers (CPI-U), U.S. City Average, All items, 1982-84=100] (the "CPI").

5. STANDARD SUPPORT SERVICES. During the term of this Agreement, PARADIGM will provide to CUSTOMER its Standard Support Services described in this paragraph. Subject to the license granted to CUSTOMER under the System Implementation Agreement, PARADIGM will provide technical services to design, code, check out and deliver amendments or alterations of the Software necessary to correct or solve any programming error attributable to PARADIGM which caused the Software not to perform 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 7:00 a.m. through 6:00 p.m. Eastern Time on weekdays, except PARADIGM holidays. In addition, if PARADIGM elects to include them under its Standard Support Services program and does not market them separately to Standard Support Services customers generally, PARADIGM will deliver updates of the Software to CUSTOMER from time to time, without any charge other than as specified on the Software Support Schedule. Calls left in our support mailbox (where the customer determines the call is not an emergency) after hours will be returned by the end of the next business day. Emails to our support inbox are returned within 48 hours of the next business day.

Update management, scheduling, pre-approval and validation of all software updates to maintain the currency of the software (including patches, fixes, etc.) forming part of the Software are included at no additional charge to the Customer provided an active and paid in full Standard Support Services Agreement is in place. The Technical Support under this Agreement will include the following:

5.1 Telephone Support

(a) Support contacts for the Customer prior to full implementation are identified in the Statement of Work (SOW)

(b) The Telephone Support Service is usually immediate from 7:00 a.m. to 6:00 p.m., Eastern Standard Time (EST) Monday to Friday with a one (1) hour maximum call back time. Telephone Support will include help desk support, call tracking and management. After hours emergency support is usually immediate with a one (1) hour maximum call back time will be provided by Paradigm at no additional charge. If an after-hours support call is deemed as standard support, and confirmed by the Customer, additional charges may apply at Paradigm's current, published rates provided PARADIGM has received the prior written authorization of the CUSTOMER to proceed.

5.2 Problem Resolution

Definition — A problem is defined as the failure of unaltered (except by PARADIGM) CompuWeigh™ Software to comply with PARADIGM's customer-level documentation, when operating in conjunction with unaltered (except by PARADIGM) associated hardware, software and within the required operational conditions.

Problem Resolution Technical Support

The Technical Support provided to resolve problems shall include:

(i) Assisting the CUSTOMER in isolating problems and preparing problem documentation, if necessary.

(ii) Following successful implementation and acceptance, and as part of ongoing maintenance and support, Paradigm shall assist the CUSTOMER in resolving problems identified by the CUSTOMER.

(iii) Providing problem resolution by one or more of the following methods:

(a) Corrected executable code.

(b) Corrected documentation.

(c) Published CompuWeigh Software limitations.

5.3 Customer Responsibilities

To receive the services outlined in this Section, the CUSTOMER must provide the following items:

(a) Secure remote access to the Software at the CUSTOMER's site. This is required to allow PARADIGM personnel to access the CUSTOMER's Software and database for problem analysis and resolution. Sufficient information and/or documentation on any problem to allow duplication of the problem on PARADIGM equipment or CUSTOMER test equipment when necessary.

(b) Access to the CUSTOMER's Software site if on-site maintenance activity is required.

5.3.1 Additional Support (Post Implementation)

(a) Should onsite support be necessary to resolve problems, PARADIGM will be reimbursed for the authorized travel and living expenses reasonably and properly incurred in the performance of on-site work not related to Warranty issues, at cost, with no allowance for profit and/or administrative overhead. All payments are subject to CUSTOMER's receipt of proof of payment by PARADIGM and PARADIGM has received prior written authorization of the Customer to proceed. PARADIGM shall follow current CUSTOMER travel reimbursement rates and approval process.

(b) Following successful implementation and acceptance, and as part of ongoing maintenance and support, PARADIGM shall assist the CUSTOMER in resolving problems identified by the CUSTOMER.

6. OTHER SERVICES. CUSTOMER shall pay PARADIGM for any work performed by PARADIGM at CUSTOMER's request that is not covered under this Standard Support Services Agreement or that is in excess of the professional services hours included in the contracted service level. The additional work will be charged at PARADIGM's then current hourly rate provided PARADIGM has received the prior written authorization of the CUSTOMER to proceed for work requests not covered under this Agreement. **This additional work shall not exceed $5,000 per year any year this Agreement remains in effect.**

7. PROPRIETARY RIGHTS. Any programs, works, manuals, changes, additions, alterations, amendments or enhancements in the form of new or partial programs, Software, Source Code or Documentation ("IP")as may be provided by PARADIGM under this Agreement or the System Implementation 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 terms and conditions of which are incorporated herein. As between the parties, PARADIGM retains all right, title and interest in and to the IP, including, but not limited to, copyrights, trademarks, service marks, patents and other proprietary rights, and no such rights are conveyed to CUSTOMER by virtue of this Agreement.

8. 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. PARADIGM may terminate this Agreement in the event of default by CUSTOMER, including failure to pay the annual charge for Standard Support Services within thirty (30) days' notice that the same is thirty (30) days or more delinquent. CUSTOMER may terminate its obligations under this agreement at any time, with or without cause, upon providing thirty (30) days' written notice to PARADIGM.

9. NO WARRANTIES. 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. THE WARRANTY, IF ANY, AVAILABLE FOR THE SOFTWARE IS AS SET FORTH IN THE SYSTEM IMPLEMENTATION AGREEMENT.

10. LIMITATION OF LIABILITY. PARADIGM SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY OR BUSINESS ADVANTAGE), WHETHER ARISING UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, CONTRIBUTION, INDEMNITY 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 MONETARY 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.

11. MISCELLANEOUS.

A. Complete Understanding. This Standard Support Services Agreement is the entire agreement and understanding between the parties with respect to the subject matter, and as such this Standard Support Services 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 Standard Support Services Agreement. CUSTOMER agrees that no contrary terms and conditions of any subsequent CUSTOMER purchase order, no 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.

B. Notice. 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.

C. Invalidity. 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 Standard Support Services 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.

D. Effective Date. This Agreement shall become effective and shall be binding on both parties on the date it is signed by the authorized representative of the City of Glendale.

E. Choice of Laws. This Agreement shall be deemed to have been formed in the State of Arizona, U.S.A. and shall be governed by, subject to, and interpreted in accordance with, the laws of the State of Arizona. The parties consent to venue in Maricopa County, Arizona.

F. Non-Solicitation. During the term of this Agreement and for twelve (12) months thereafter, neither PARADIGM nor CUSTOMER may employ or solicit to employ persons employed by the other.

G. Force Majeure. 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.

H. Inconsistency. 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, the provisions of this Agreement shall prevail and govern the interpretation thereof. 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.

I. Limitations. 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 eighteen (18) months following the occurrence of the first event giving rise thereto.

J. Independent Contractors. Nothing in this Agreement shall make Paradigm and Customer partners, joint venturers or otherwise associated in or with the business of the other. Neither party shall be liable for any debts, accounts, obligations or other liabilities of the other or their agents or employees. Neither is authorized to incur debts or obligations on the part of the other except as specifically authorized in writing.

K. Cancellation. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

L. E-verify. PARADIGM certifies that it complies with ARIZ. REV. STAT. § 23-214 and agrees to comply with the requirements of ARIZ. REV. STAT § 41-4401.

SCHEDULE "A"

Qty	UM	Description	Annual Service Charge
1	FF	Upgrade to CompuWeigh 6.0 (Includes three (3) WeighStation Program Licenses; 5-concurrent user CompuWeigh Licenses; one (1) lane RF Module; one (1) lane Traffic Light Module; Export to Third Party Accounting System; Customization – WeighStation free tonnage calculation for Glendale residents; Customization – Prevent any modification to transactions ten (10) days after the accounting export file has been generated from the Posting Module other than to the Notes field.)	
1	FF	Insufficient Funds/Split Payments Module (No charge if implemented with CW6)	
1	FF	Upgrade to WeighPay Module	
2	LN	Signature Capture Module	

Annual Service Charge: **$8,937.52/Year**

READ, UNDERSTOOD AND EXECUTED on the date(s) indicated below:

Customer:

ATTEST:

City Clerk (SEAL)

CITY OF GLENDALE, an Arizona municipal corporation:

By: Brenda S. Fischer
Its: City Manager

Date: 12/22/14

APPROVED AS TO FORM:

By: Michael D. Bailey
City Attorney

Date: 12/22/14

Accepted by:

PARADIGM SOFTWARE, L.L.C.:

By: Jackie W. Barlow, II
Its: Vice President

Date: 21 OCT 2014

PARADIGM SOFTWARE, L.L.C.
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(410) 329-1300