

CITY CLERK ORIGINAL

C-8141
07/01/2012

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of July 1, 2012 ("Effective Date"), between Valley of the Sun United Way, an Arizona non-profit corporation ("Agency"), and the City of Glendale, an Arizona municipal corporation ("City").

RECITALS

- A. City includes in its mission of providing projects, programs and services for the benefit of the public's efforts to identify, advocate, research, educate, and plan for necessary public services and physical improvement programs in the Glendale community.
- B. Agency is a non-profit organization that focuses resources on the most critical human care needs in Maricopa County, Arizona. To further its mission of addressing critical human care needs, Agency funds many programs and community services offered by non-profit organizations listed in Maricopa County, Arizona.
- C. Agency is willing to license such software to City under the terms and conditions below in order to assist the City in funding charitable organizations located in Maricopa County, Arizona.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. License, Ownership and Modifications.

- 1.1 License and Restrictions. Agency hereby grants to City a non-exclusive, non-transferable, non-sublicensable limited license to access and use solely for City's internal business purposes one (1) copy of the e-CImpact software, as the e-CImpact software shall be configured by Agency or its suppliers to perform the functions as defined in Exhibit A, attached hereto (the "Software"). City will not have access to any other functions of the e-CImpact software, other than the Software as defined in Exhibit A, unless otherwise mutually agreed upon in writing by the parties. Agency or its suppliers shall provide City access to the Software via an Internet website provided by Agency or its suppliers (the "Software Site"). City shall not reverse engineer, mirror, re-publish, disassemble, decompile, modify, sublicense, resell, distribute, lease, make any commercial use of, use on a timeshare or service bureau basis, or otherwise generate revenue from the Software or the Software Site. City shall not remove or alter any trademark, logo, copyright or other proprietary notice, label or symbol in or on the Software or the Software Site.
- 1.2 Intellectual Property Ownership. Nothing in this Agreement shall be construed to grant City any ownership or other rights in the Software or the Software Site beyond the limited license granted in Section 1.1 above. Agency is the sole and exclusive owner of all intellectual property rights in the Software and the Software site. Agency retains all right, title and interest (including trademark, copyright, patent, trade secret and all intellectual property rights) in the Software and the Software Site.
- 1.3 Software Modifications. Agency may, at its sole discretion, modify, enhance and/or expand, or have its suppliers modify, enhance and/or expand, the features of the Software and the

Software Site from time to time. Such modifications shall be at no additional cost to the City, unless otherwise mutually agreed upon by the parties.

2. **Fees.**

- 2.1 **Fees.** The compensation will be \$1,500 for the initial set-up fee and an additional annual fee of \$2,500, which shall be paid by the City in one lump sum payment (Exhibit B) attached hereto.
- 2.2 **Payment Term.** Agency shall invoice City \$1,500 on the Effective Date for the initial set-up fee under Section 2.1. Agency shall also invoice City \$2,500 on the Effective Date (and each year thereafter) for annual fee costs due under Section 2.1 at least thirty (30) days prior to due date. City shall pay the fee due to Agency under Section 2.1, as well as any training and support fees due Agency under Section 6.1, within thirty (30) days from the date of the invoice.
- 2.3 **Fee Adjustments.** At each renewal date pursuant to Section 5.1, Agency may, upon thirty (30) days' prior written notice to City, adjust the fees paid by City for the Software. City shall have the option, within fifteen (15) days of receiving such notice from Agency, to either (i) modify the terms of this Agreement upon mutual written agreement of the parties, or (ii) terminate this Agreement in accordance with Section 5.2 paying the previous rate during the termination period.
- 2.4 **Taxes.** City shall be responsible for paying all taxes imposed on the annual compensation by any federal, state or local government as a result of products or services provided under this Agreement.

3. **City Responsibilities.**

- 3.1 **Administrative Account.** City is responsible for ensuring the City's authorized use of the Software Site. City is responsible for maintaining the confidentiality of all usernames and passwords necessary to access the Software via the Software Site. City shall immediately notify Agency of any unauthorized use of the Software or the Software Site of which City becomes aware.
- 3.2 **Content and Use.** City is solely responsible for creating the content of the City's visual, written, audible or any other communications on the Software Site. City shall not use the Software or the Software Site to send unsolicited, unauthorized e-mails outside City's organization in violation of applicable law. City shall not use the Software or the Software Site to communicate any message or material (i) that is harassing, libelous, threatening, or obscene, (ii) that would violate the intellectual property rights of any party, (iii) that would give rise to civil liability, (iv) that would constitute or encourage criminal conduct under applicable law, or (v) that is otherwise unlawful. Although Agency is not responsible for any such prohibited communications, Agency may suspend any such communications of which Agency is made aware. City shall indemnify and hold Agency harmless from any and all third party claims, liability, damages, and costs (including, but not limited to attorneys' fees) arising from City's violation of this Section.

4. **Confidential Information.**

- 4.1 **Confidentiality Obligations.** Each party is the owner of certain information that it deems to be confidential and proprietary in nature ("Confidential Information"). Subject to A.R.S. § 39-121, *et seq.*, neither party will, during or subsequent to the term of this Agreement,

directly or indirectly (a) use any of the disclosing party's Confidential Information for the benefit of anyone other than disclosing party, or (b) disclose any of the disclosing party's Confidential Information to anyone other than an employee, representative or agent of the receiving party, to whom it is necessary to disclose such Confidential Information for the purposes permitted under this Agreement and who is obligated to protect the confidentiality thereof in a manner no less stringent than provided in this Agreement. Confidential Information does not include information (a) known to the receiving party at the time of disclosure to the receiving party by disclosing party, (b) publicly known through no wrongful act of receiving party, (c) rightfully received by receiving party from a third party authorized to make such disclosure, or (d) independently developed by receiving party.

- 4.2 Required Disclosure. The receiving party may disclose Confidential Information if required pursuant to applicable law, or under a government or court order; provided, however, that (i) the obligations of confidentiality and non-use shall continue to the fullest extent not in conflict with such law or order, and (ii) if and when the receiving party is required to disclose Confidential Information pursuant to any law or order, the receiving party shall promptly notify the disclosing party.
- 4.3 Following Termination. Upon termination or expiration of this Agreement, the receiving party will cease to make use of the Confidential Information received from the disclosing party and, upon the disclosing party's written request, will promptly destroy or return such Confidential Information. In the event that the disclosing party requests destruction, the receiving party shall provide written certification of the destruction within thirty (30) days of such request.

5. **Term and Termination.**

- 5.1 Term. The term of this Agreement shall be for a period of one (1) year, beginning on July 1, 2012 and ending on June 30, 2013. Upon written agreement by the parties, this Agreement may be renewed for subsequent one (1) year terms.
- 5.2 Termination. Either party may terminate this Agreement at any time by providing to the other party thirty (30) days' written notice of a desire to terminate. Such termination shall be effective upon the expiration of the thirty (30) day period unless otherwise agreed to in writing by the parties. In the event of a breach of the terms of this Agreement by either party, the non-breaching party may provide written notice of such breach to the breaching party. The breaching party shall have fifteen (15) days following receipt of such notice to cure the breach complained of. If the breaching party fails to remedy the breach within the fifteen (15) day period, the non-breaching party may terminate this Agreement, with such termination to be effective immediately. If the breaching party fails to remedy the breach within the fifteen (15) day period, the non-breaching party may terminate this Agreement, with such termination to be effective immediately.

6. **Training, Support and Warranties.**

- 6.1 Training and Support. Agency or its suppliers shall provide City training and support for the Software as set forth in Exhibit C, attached hereto. Agency may outsource all or any portion of the services, including without limitation support services, for the Software and the Software Site, and all or any portion of the provision of the Software Site, to a third party supplier at Agency's sole discretion. In the event Agency's suppliers charge Agency a fee for any services provided to City, or if Agency or its suppliers incur expenses in

providing any services to City, Agency may invoice City for such fees and expenses under Section 2.2.

- 6.2 No Warranty. City understands and agrees that the Software and the Software Site are provided “As Is” and “As Available.” Agency and its suppliers expressly disclaim all warranties of any kind, express or implied, including without limitation any warranty or merchantability, fitness for a particular purpose or noninfringement. Neither Agency nor its suppliers make any warranty or representation regarding the Software, the Software Site, or any information, materials, goods or services obtained through the Software or the Software Site. Neither Agency nor its suppliers make any warranty or representation that the Software or the Software Site will meet City’s requirements, or be uninterrupted, timely, secure or error-free. Use of the Software and the Software Site are at City’s sole risk. Neither Agency nor its suppliers shall be responsible for problems caused by City’s computer hardware or operating systems.
- 6.3 Third-Party Supplier. At Agency’s sole discretion, Agency may outsource all or any portion of the provision of the Software Site and all or any portion of the services for the Software and the Software Site to a third-party supplier. In the event the relationship between Agency and its supplier is severed or the supplier cannot deliver on all or any portion of the provision of the Software Site, or on any services for the Software or the Software Site, Agency may terminate this Agreement in accordance with Section 5.2.
7. Limitation of Liability. In no event shall either party, its principals, members or employees be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, damages for loss of profits, business interruption, loss of business information, and opportunity costs), even if a party has been advised of the possibility of such damages. The provisions of this Section shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise, except such injury or damage as shall have been occasioned by the negligence of that party.
8. Indemnity.
- 8.1 Indemnification Obligation. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify and save the other Party harmless, including any of the Party’s departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability (including, but not limited to, vicarious liability), losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney’s fees. Notwithstanding any other term of this Agreement, this Section shall survive the expiration and/or termination of this Agreement.

- 8.2 Right to Defend. At the cost to the Agency, City shall have the right to take over, settle or defend all claims through counsel of its choice and under its sole direction, except that City shall not take any action or agree to any settlement that would adversely affect Agency without Agency's written approval.
9. Independent Contractor. Each of the parties is an independent contractor and neither party is, nor shall be considered to be, an agent, distributor, representative, or employee of the other. Neither party shall act or represent itself directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf, or in the name of, the other.
10. Dispute Resolution. In the event of a dispute, within ten (10) business days of a written request of either party, the Chief Executive Officer of the Agency and the City Manager, or his designee, shall meet to resolve the dispute. If the parties are unable to resolve the dispute by negotiation within thirty (30) days from the dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the dispute will be decided by binding arbitration in accordance with AAA Rules. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
11. Use of Name. Agency and its suppliers may use City's name and logo to identify City as a customer of Agency for use and reference in Agency's corporate, promotional and marketing materials including without limitation Agency's website. Agency may issue a press release identifying City as an Agency customer and describing the City's intended utilization of the Software and the benefits that City expects to receive from use of the Software. The content of any such press release shall be subject to City's prior approval, which approval will not be unreasonably withheld.
12. Compliance.
- 12.1 Immigration Law Compliance.
- A. Agency, 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 their 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 of this Agreement.
- C. City retains the legal right to inspect the papers of Agency or subcontractor employee who performs work under this Agreement to ensure that Agency or any subcontractor is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, Agency shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Agency agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City 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 12.
- E. Agency 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 the City. Agency 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 the City.

F. Agency's warranty and obligations under this Section 12 to the City are continuing throughout the term of this Agreement or until such time as the City 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.

12.2 **Prohibitions.** Contracting parties and on behalf of any subcontracting party, certify under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that they do 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.

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

13. **Miscellaneous.**

13.1 **Entire Agreement.** This Agreement together with all Exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous representations, understandings or agreements, whether written or oral, relating to the subject matter of this Agreement.

13.2 **Severability.** Should an arbitrator or Arizona court of competent jurisdiction find any provision of this Agreement to be invalid or otherwise unenforceable, that provision shall be severed from the Agreement, with the remaining provisions to be enforced to the maximum extent allowed by Arizona law.

13.3 **Waiver.** A waiver by either party of any right contained herein shall not constitute a future or continuing waiver of that right, or any other right.

13.4 **Modification.** The provisions of this Agreement may not be waived, amended or modified unless agreed to in writing by both parties.

13.5 **Force Majeure.** Neither party shall be liable for any delays in performance resulting from circumstances or causes beyond its reasonable control, including without limitation, fire or other casualty, act of God, terrorism, strike or labor dispute, war or other violence, the stability or availability of the Internet or any portion thereof, or any law, order or requirement of any government Agency or authority.

13.6 **Governing Law.** This Agreement shall be governed by, and performed in accordance with, the laws of the State of Arizona, without regard to its conflicts of laws provisions.

13.7 **Survival.** The following provisions shall, by their nature, survive any termination or expiration of this Agreement: 1, 2, 3, 4, 6.2, 7, 8, 9, 10, and 13.

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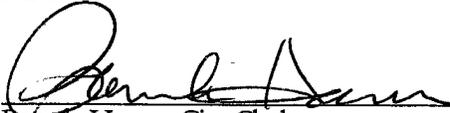
IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the Effective Date above.

CITY OF GLENDALE, an Arizona
municipal corporation



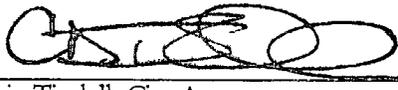
Horatio E. Skeete, Acting City Manager

ATTEST:



Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney

VALLEY OF THE SUN UNITED WAY, an Arizona
non-profit corporation

By: 
Its: Chief Operating Officer
8/28/12

Exhibit A - Software

The Software shall perform the following functions:

1. Provide access to Agency program and volunteer profiles.
2. Provide for online grant applications and responses to inquiries from City staff or volunteers as needed.
3. Generate online reports from template forms and available export.
4. Ability to post events for agencies and volunteers.
5. Ability to post up to five news items per module on the Software Site.

Exhibit B - Fees

Price Structure and Fees			
Price Structure	Services to be Rendered	Fees	Total Fee
One time set-up fee: \$1,500			\$1,500.00
Hosting fees: 1-50 profiles*=\$50 per month - \$600/yr 51-100 profiles=\$100 per month - \$1,200/yr 101-150 profiles=\$150 per month - \$1,800/yr 151-200 profiles=\$200 per month - \$2,400/yr 201-250 profiles=\$250 per month - \$3,000/yr 251-300 profiles=\$300 per month - \$3,600/yr 301-350 profiles=\$350 per month - \$4,200/yr 351-400 profiles=\$400 per month - \$4,800/yr Admin. User fee: \$40 per administrative user \$20 per year for discounted administrative user *profiles include total number of agencies + programs + volunteers	Website Set-up • 51-100 profiles (includes 39 agencies, 55 program applications) • 5 Admin. Users: 2 main users and 3 discounted users	12-month profile services @ \$100 per month: \$1,200 12-month administrative user service @ \$80 per month: \$960 3 discounted annual administrative user service: \$60	\$1,200.00 \$960.00 \$60.00 \$2,220.00
Overage Fees			
Additional Active Profiles		Per Profile/Per Month	\$5.99
Additional Administrative Users		Per User/Per Month	\$40.00
Training Fees after 12 hours		32.50 hour/additional	
Technical Support Fees after 40 hours		32.50 hour/additional	

Exhibit C - Technical Support and Training

Technical Support

Agency shall make available reasonable technical support via telephone and email. Such technical support will be provided directly to City, during normal business hours. Any technical support in excess of forty (40) hours per year may be subject to additional fees described in Exhibit B and invoiced to City. Support may be contacted by calling Mary Beth Lawler at 602-631-4856 or by email at mblawler@vsuw.org.

Training

Agency shall make available instructor led web-based Fundamentals of Software training classes at no additional charge to each Administrative User assigned by City in accordance with this Agreement and to other City volunteers and partner agencies as reasonably requested by City. Any training in excess of twelve (12) hours per year may be subject to additional fees described in Exhibit B and invoiced to City.