

LICENSE AGREEMENT

This License Agreement (“Agreement”), effective as of the date of the last signature below, is by and between Valley of the Sun United Way, a non-profit corporation, located at 3200 E. Camelback Road, Suite 375, Phoenix, AZ 85018 (“VSUW”) and the City of Glendale, Community Revitalization (“City”), located at 5850 West Glendale Avenue, Suite 107, Glendale, AZ 85301.

The City wishes to license from VSUW certain software known as the “e-Clmpact software” that allows third parties to organize and facilitate the administration and management of their annual grants cycle and will be administered by the City via the Internet. VSUW is willing to license such software to the City under the terms and conditions below in order to assist with the City funding to charitable organizations located in Maricopa County (“Agencies” or “Agency”). 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:

AGREEMENTS

1. **License and Ownership.**

1.1 **License and Restrictions.** VSUW hereby grants to the City a non-exclusive, non-transferable, non-sublicensable limited license to access and use solely for the City’s internal business purposes one (1) copy of the e-Clmpact software, as the e-Clmpact software shall be configured by VSUW or its suppliers to perform the functions as defined in Exhibit A (the “Software”). The City will not have access to any other functions of the e-Clmpact software, other than the Software as defined in Exhibit A, unless otherwise mutually agreed upon in writing by the parties. VSUW or its suppliers shall provide The City access to the Software via an Internet website provided for the City of by VSUW or its suppliers (the “Software Site”). The 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. The 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 The City any ownership or other rights in the Software or the Software Site beyond the limited license granted in Section 1.1 above. As between the City and VSUW, VSUW is the sole and exclusive owner of all intellectual property rights in the Software and the Software Site. VSUW 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 **Changes to the Software.** VSUW 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 City shall pay the license fees for use of the Software and access to the Software Site as set forth in Exhibit B. The City's use of the Software may not exceed the number of users and profiles set forth in Exhibit B. Any use of the Software by the City in excess of the use limitations set forth in Exhibit B may be the subject of additional fees.

2.2 **Payment Terms.** The City shall pay the fees due to VSUW under **Section 2.1** on an annual basis, with the first payment due and payable on the first day the Software is accessible by the City via the Software Site. In the event the City should exceed in a given year the use limitations identified in Exhibit B, additional fees incurred as well as any other fees due VSUW under this Agreement, shall be invoiced monthly in arrears; all such invoices are due and payable within thirty (30) days from the date of the invoice. VSUW reserves the right to charge interest on late payments at the rate of 1.5% per month or the highest rate permitted by law. VSUW may suspend the City's access to the Software if the City's payment of fees is ten (10) or more business days delinquent. VSUW is entitled to recover any reasonable sums, including without limitation attorneys' fees, expended in connection with the collection of sums not paid when due.

2.3 **Fee Adjustments.** VSUW may, upon at least thirty (30) days' prior written notice to the City, adjust the fees paid by the City for the Software. The City shall have the option, within fifteen (15) days of receiving such notice from VSUW 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**.

2.4 **Taxes.** The City shall be responsible for paying all taxes imposed by any federal, state or local government as a result of products or services provided under this Agreement.

3. **City's Responsibilities**

3.1 **Administrative Account.** The City is responsible for its use of the Software Site. The City is responsible for maintaining the confidentiality of all usernames and passwords necessary to access the Software via the Software Site. The City shall immediately notify VSUW of any unauthorized use of the Software or the Software Site of which The City becomes aware.

3.2 **Content and Use.** The City is solely responsible for the content of its visual, written, audible, or any other communications on the Software Site. The City shall not use the Software or the Software Site to send unsolicited e-mails outside The City's organization in violation of applicable law. The 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 VSUW is not responsible for any such communications, VSUW may suspend any such communications of which VSUW is made aware. The City shall indemnify and hold VSUW harmless from any and all third party claims, liability, damages and costs (including, but not limited to attorneys' fees) arising from the 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”). 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 and use reasonable best efforts to obtain or assist the disclosing party in obtaining a protective order or take other actions as shall prevent or limit, to the fullest extent possible, public access to, or disclosure of, such Confidential Information.

4.3 **Injunction.** Because each party’s obligations are personal and unique, and because the parties will have access to and become acquainted with each other’s Confidential Information, each party agrees that its breach of this Agreement will result in irreparable harm to the other party. An injured party may enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief without prejudice to any other rights and remedies that the injured party may have.

4.4 **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 the Effective Date. Upon written agreement by the parties, this Agreement may be renewed for subsequent two (2) 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.

6. **Support and Warranties.**

6.1 **Support.** VSUW shall provide the City the support for the Software as set forth in Exhibit C. VSUW may outsource all or any portion of the those services in Exhibit C, including without limitation support services, for the Software and the Software Site to a third party supplier in VSUW's sole discretion. In the event VSUW's suppliers charge VSUW a fee for any services provided to the City in excess of the fees as described in this Agreement, VSUW will contact the City, in writing, to describe those additional fees. At that time, the City may terminate this Agreement pursuant to Section 5.2 or agree to accept the additional fees, which would be effectuated via an amendment to this Agreement. If the City accepts the additional fees, VSUW may invoice the City for such fees and expenses under Section 2.2.

6.2 **No Warranty.** The City understands and agrees that the Software and the Software Site are provided "AS IS" and "AS AVAILABLE." VSUW and its suppliers expressly disclaim all warranties of any kind, express or implied, including without limitation any warranty of merchantability, fitness for a particular purpose or noninfringement. Neither VSUW 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 VSUW nor its suppliers make any warranty or representation that the Software or the Software Site will meet The City's requirements, or be uninterrupted, timely, secure or error-free. Use of the Software and the Software Site are at The City's sole risk. The City will be solely responsible for any damage to the CITY resulting from use of the Software or the Software Site. Neither VSUW nor its suppliers shall be responsible for problems caused by the City's computer hardware or operating systems.

6.3 **Third Party Supplier.** In VSUW's sole discretion, VSUW 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 VSUW 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, VSUW 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. In any event, VSUW's maximum cumulative liability and the City's exclusive remedy for any claims arising out of or related to this Agreement will be limited to the amount actually paid by the City to VSUW for access to the Software in the previous twelve (12) months, even if such remedy fails its essential purpose. 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.

8. **Indemnity.**

8.1 **Indemnification Obligation.** The City shall indemnify and hold harmless, VSUW and its principals, members, employees, directors, officers and affiliates from and against any and all claims, actions, damages, liabilities, costs, expenses and losses (including, without limitation, reasonable legal fees and expenses) brought against, incurred by or paid by VSUW at any time, in any way arising out of or relating to City's use or misuse of the Software or the Software Site. This indemnification provision shall apply regardless of the form or action, damage, claim, liability, cost, expense or loss, whether in contract, statute, tort (including, without limitation, negligence) or otherwise.

8.2 **Right to Defend.** The 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 the City shall not take any action or agree to any settlement that would adversely affect VSUW without VSUW'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 or representative 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 of, or in the name of, the other.

10. **Dispute Resolution.**

10.1 **Executive Discussions.** In the event of a dispute, VSUW and the City representatives shall meet with their appointed designees, who are knowledgeable about this Agreement, within ten (10) business days of the written request describing the dispute. Within (10) business days thereafter, the appointed designees will use commercially reasonable efforts to resolve the dispute.

10.2 **Mediation/Arbitration.** In the event a controversy or dispute arising out of or relating to this Agreement cannot be resolved as described in Section 10.1, the controversy or dispute shall be resolved by binding arbitration in Maricopa County, Arizona, before a sole arbitrator. Any arbitration proceeding will be governed by the rules and procedures of the American Arbitration Association ("AAA"). The arbitrator shall not be an officer, employee, director, or affiliate of either party or of its affiliates. If the parties are unable to agree on an arbitrator within thirty (30) calendar days of the filing of the demand for arbitration, an arbitrator will be selected pursuant to the rules and procedures of the AAA. Either party may seek from any court interim or provisional relief that is necessary to protect the rights or property of that party, pending the appointment of the arbitrator or pending the arbitrator's determination of the merits of the controversy. Upon the mutual written agreement of the parties, mediation shall be conducted prior to the arbitration pursuant to the Mediation Rules of the AAA. The prevailing party in any dispute resolution proceeding arising out of this Agreement shall be entitled to a recovery of all attorneys' fees and costs incurred in such proceeding.

11. **Use of Name.**

VSUW and its suppliers may use the City's name and logo to identify the City as a customer of VSUW for use and reference in VSUW's corporate, promotional and marketing materials, including on VSUW's website, however, each instance must be specifically pre-authorized by the City in writing. VSUW may issue a press release identifying the City as a VSUW customer and describing the City's intended utilization of the Software and the benefits

that the City expects to receive from use of the Software. The content of any such press release shall be subject to the City's prior approval, which approval will not be unreasonably withheld.

12. Miscellaneous.

ASSIGNMENT. Neither party can assign its rights or obligations under this Agreement absent written consent from the other party. **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. **SEVERABILITY.** Should an arbitrator or 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 law. **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. **MODIFICATION.** The provisions of this Agreement may not be waived, amended or modified unless agreed to in writing by both parties. **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. **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 law provisions. **SURVIVAL.** The following provisions shall, by their nature, survive any termination or expiration of this Agreement: 1.2, 2.4, 3, 4, 6.2, 7, 8, 9, 10, 11, and 12.

IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the date of the last signature below.

VALLEY OF THE SUN UNITED WAY

THE CITY OF GLENDALE, Community
Revitalization Division

By: Tanya M. Muñiz
Tanya M. Muñiz
Chief Financial Officer
Date: 8/12/16

By: [Signature]
Name (Print): Thomas F. Downing
Title: Assistant City Manager
Date: 8-24-16

ATTEST:

[Signature]
City Clerk

Approved as to form

[Signature]
City Attorney

Exhibit A – Software

The Software shall perform the following functions:

- Provide access for the City administrator users to Agency, program profiles.
- Provide access for Agencies to submit online grant applications and answers to additional inquiries from the City staff as needed.
- Provide the City the ability to generate online reports from template forms and exports available in the e-CImpact software.
- Provide the City the ability to post events for agencies.
- Provide the City the 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 (FY 2016-2017)	Fees (FY 2016-2017)	Total Fee (FY 2016-2017)
Hosting fees: 1-50 profiles* = \$50 per month 51-100 profiles* = \$100 per month 101-150 profiles* = \$150 per month 151-200 profiles* = \$200 per month 201-250 profiles* = \$250 per month 251-300 profiles* = \$300 per month 301-350 profiles* = \$350 per month Admin. user Fee: \$40 per admin. user \$20 per year for discounted admin user *profiles include total number of agencies + programs + volunteers	<ul style="list-style-type: none"> ▪ Web site set up ▪ 51-100 profiles (includes 39 agencies, 55 program applications built out) ▪ Five Admin Users-2 main users 3 discounted users 	(12) month profile service at \$100 per month: \$1200 (12) month Admin User service at \$80 per month: \$960 (3) discounted yearly Admin User service: \$60	\$1200 \$960 + \$60 \$2,220
Overage Fees			
Additional Active Profiles		Per Profile/Per Month	\$5.99
Additional Administrative Users		Per User/Per Month	\$40

Exhibit C – Support

Technical Support

VSUW shall make available reasonable technical support via telephone and email. Such technical support will be provided directly to the City, during normal business hours. Any such technical support may not exceed forty (40) hours per year and all technical support shall be billed at a rate \$32.50/hour to the City and invoiced annually to the City. Support may be contacted by calling Marybeth Lawler at (602) 631-4856 or by email at mlawler@vsuw.org.

Training

VSUW shall make available instructor led web-based Fundamentals of e-CImpact training classes. Any such training may not exceed twenty-four (24) hours per year and all training will be billed at the rate of \$32.50/hour and invoiced annually to the City. Training may be contacted by calling Marybeth Lawler at (602) 631-4856 or by email at mlawler@vsuw.org.