



Monarch Bay Software, Inc.
P. O. Box 96126
Houston, TX 77213-6126
713-450-2800
713-451-8312 (fax)

FIVE TECHNICIANS

STANDARD SUPPORT AND ENHANCEMENTS AGREEMENT

Agreement made this 16th day of November, 2013 by and between Monarch Bay Software, Inc. ("Vendor") and Gila County, Globe, AZ ("Customer").

In consideration of the enhancement and support fee paid by Customer to Vendor and in consideration of future required annual "renewal" fees to be paid by the Customer to the Vendor and of the mutual covenants and conditions set forth herein, the parties agree as follows:

Vendor will provide help as needed by Customer by telephone contact or otherwise ("SUPPORT") and will provide updates, new versions, new releases of the computer program ("ENHANCEMENT") related to the computer program ("SOFTWARE" or "LICENSED SOFTWARE") named, sold, and copyrighted as "HelpTrac", Serial Number 1000500221 and including the associated documentation thereto. The definition of SOFTWARE is limited to the base product and modules purchased by Customer.

1. SUPPORT: Vendor will provide five (5) day, eight (8) hour support for the SOFTWARE for the term of this Agreement. Vendor may require that support be routed through designated Customer personnel. Customer agrees that exceptions will be made for national holidays and that support will not be available on such days.

2. ENHANCEMENT: Vendor will provide to the Customer all updates, upgrades, new releases of the SOFTWARE, relative to the modules purchased by the Customer, promptly and as they are made available to the Vendor for the term of this Agreement. Vendor will provide to the Customer copies of the compiled SOFTWARE on computer diskette's or cd and will provide to the Customer copies of the associated documentation in whole or in part (i.e., replacement pages) at the sole discretion of the Vendor.

Customer will have access to a modem for transmitting files to Vendor and for uploading files from Vendor's bulletin board, and/or FTP location on Vendor's web site.

3. TERM: This Agreement remains effective until terminated. The Customer may terminate the Agreement at any time by notifying the Vendor in writing of its intent to terminate the Agreement. The continuation of this Agreement is dependent upon the Customer remitting an annual fee to the Vendor and of the Vendor receiving and accepting such payment in annual payments. The payment is as follows:

Fee shall be \$485.00 plus applicable taxes.

Term shall be for one year beginning November 16, 2013 to November 15, 2014.

4. TERMINATION: In addition to the reasons for termination given in paragraph 3, if Customer fails to perform or observe any covenant, condition or agreement to be performed or observed

hereunder, the Agreement is automatically terminated. Vendor at its sole option, may provide written notification to the Customer of the termination, but is not required to do so under the terms of this Agreement for the termination to be effective.

5. TAXES: Any federal, state, or local excise, use, sales or other taxes (except taxes based on Vendor's net income) imposed in respect or otherwise arising out of this Agreement shall be paid by the Customer. In the event that Vendor is required to pay any such tax, Customer shall promptly reimburse Vendor for the same.

6. GENERAL TERMS: This Agreement shall not be assigned or transferred without the written permission of the Vendor. This Agreement is governed by the laws of the State of Texas.

The Customer acknowledges that he has read this agreement, understands it and agrees to be bound by its terms and conditions. The Customer further agrees that it is the complete and exclusive statement of the Agreement between the Customer and the Vendor and supersedes any earlier proposal or prior arrangement, whether oral or written, and any other communication between Customer and Vendor relative to the subject matter of this Agreement.

Vendor: Monarch Bay Software, Inc.

Customer: Gila County

Name: Sally Phillips

Name: Don E. McDaniel, Jr.

Title: President

Title: County Manager

Signature: 

Signature: 

Date: October 29, 2013

Date: 11/5/13

ONE COPY OF THIS DOCUMENT MUST BE SIGNED AND RETURNED TO MONARCH BAY SOFTWARE, INC. WITHIN THIRTY (30) DAYS FROM RECEIPT; OTHERWISE, IT IS NULL AND VOID.

ATTACHMENT "A" BY MENTION MADE A BINDING PART OF THIS AGREEMENT AS SET FORTH HEREIN.

ATTACHMENT "A"

Gila County Contractor Standard Terms and Conditions Addendum

A. Addendum Applicability: Contractor and Gila County agree that the terms and conditions of this Addendum shall apply to and govern the contractual relationship between Contractor and Gila County and shall supplement any other contract or agreement entered into between the parties. In the event that the terms and conditions in this Addendum conflict with any provision of any other agreement entered into between the Contractor and Gila County (including a superiority provision similar to this provision), the terms and conditions of this Addendum shall control the contractual relationship between the parties and shall supersede any conflicting provisions found in any other contract or agreement. Contractor understands that acceptance of the terms and conditions contained in this Addendum are a condition precedent to entering into a contractual relationship with Gila County.

B. Contract Defined: As used in this Addendum, the term "Contract" shall refer to any written agreement between Gila County and a person, organization, corporation, company or other entity that provides supplies or services to Gila County regardless of the title or other name applied to that written agreement. The term includes by this reference all the terms and conditions of this Addendum.

C. Contractor Defined: As used in this Addendum, the term "Contractor" shall refer to a person, provider, organization, corporation, company or other entity providing supplies or services to Gila County pursuant to a written agreement regardless of the title or other name applied to "Contractor" in that written agreement.

D. Relationship of the Parties: Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. Contractor warrants that he has obtained or will obtain Worker's Compensation Insurance for his employees working on this contract and that any subcontractors will likewise obtain Worker's Compensation Insurance for of their employees working on this contract. It is further agreed by Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

E. Non-Appropriations Clause: Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to circumvent the requirements of this contract, or to enable the County to contract with another Contractor for the same supplies or services covered under this Addendum.

F. Indemnification Clause: Contractor will defend, the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all third party Claims, arising from any personal injuries, death, or damages to tangible property caused, or alleged to be caused, by the negligence or willful misconduct of Contractor or any of its owners, officers, directors, agents, employees or subcontractor, and will pay any final judgment or amounts agreed in settlement. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. This indemnity excludes any Claims related to the functionality or use of, or bugs or errors in, the software provided to the County by Contractor, which shall be governed solely by the terms of the Computer Software License Agreement (as defined in Section G below) > The County shall notify Contractor as soon as reasonably possible if it becomes aware

of any claim for which it may be entitled to indemnification under this section, and the County hereby gives Contractor full and complete authority and control over the defense of the claim, and shall provide such information and assistance as is necessary to enable Contractor to defend, compromise or settle such claim. Contractor will pay all costs and attorney's fees incurred in connection with the claim. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

G. Entire Contract Clause: The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral agreement or oral provision outside this Contract shall have any force or effect.

H. Non-Waiver of Enforceability: Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision.

I. Severability: If any provision of this Agreement is held unenforceable, all remaining provisions of this Contract shall remain in full force and effect.

J. Governing Law: Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

K. Cancellation: This contract is subject to the cancellation provisions of A.R.S. §38-511.

L. Legal Arizona Workers Act Compliance: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. §§ 41-4401 and 23-214(A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

GILA COUNTY



Don E. McDaniel, Jr., County Manager

MONARCH BAY SOFTWARE, INC.



Individual Authorized to Sign

Sally Phillips

Print Name

President

Title