

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT made as of the [] day of April, 2019 (the “Effective Date”).

BETWEEN:

SYSTEMS & SOFTWARE, INC.
 (“S&S”)

- and -

**CITY OF RIVERSIDE, A CALIFORNIA CHARTER CITY
AND MUNICIPAL CORPORATION**
 (“Organization”)

RECITALS:

1. S&S owns the Software (as defined below);
2. The Organization wishes to acquire a license to utilize the Software; and
3. S&S wishes to grant the Organization a license to utilize the Software.
4. The Organization and S&S agree to enter into three (3) separate agreements each dealing with a separate aspect of the Software: this Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this License Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

INTERPRETATION

Section 1.01 Definitions

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) **“Active Account”** means each discrete billing unit or customer that requires a bill to be generated from the System. Active Account does not include each discrete billing unit or Customer that no longer receives a bill generated from the System but for historical data reporting purposes require account information to be maintained or manipulated through the System. Accounts with multiple services are considered to be a single account.
- (b) **“Agreement”** and similar expressions mean this Software License Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this

Agreement. All references to “Articles” or “Sections” mean and refer to the specified Article or Section of this Agreement except where a different agreement is explicitly identified.

- (c) **“Completion of Services”** shall have the definition ascribed to it in the Software Implementation Services Agreement.
- (d) **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be establish by evidence that would be acceptable to a court of competent jurisdiction.
- (e) **“Designated Computer System”** shall mean the Organization’s platform and operating system environment which is operating the Software.
- (f) **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.
- (g) **“License”** means the license rights granted to the Organization pursuant to Section 2.01(a) hereof and includes both an Active Account License and a Site License.
- (h) **“Release”** means an Update and an Upgrade.
- (i) **“Site”** means solely at the production environment described in Schedule “A” and at an unlimited number of non-production environments.
- (j) **“Site License”** means a license that restricts the Software such that it can reside in one production environment and unlimited non production environments.
- (k) **“Software”** means the software products that are listed in Schedule “A” and includes any Update(s) or Upgrade(s) that have been provided to Organization. Third Party Software is not included in the definition of Software except where this License Agreement explicitly states otherwise.
- (l) **“Third Party Software”** means the third party software product licensed to Organization by the applicable licenses or as listed in Schedule “A”. Future Releases of the Software may require alternate third party software to be licensed by Organization, which will be subject to a third party license agreement between Organization and the relevant third party software licensor. In such case Schedule “A” shall be amended in accordance with Section

6.08 to add any such third party software and it shall be deemed "Third Party Software" for the purposes of this Agreement.

- (m) **"Update"** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or regulatory changes. An Update is designated by a change in the digits to the right of the second decimal in the version number (for example, a change from 7.9.3.001 to 7.9.3.002).
- (n) **"Upgrade"** means a major release of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is designated by a change in the number to the left of the decimal point in the version number (for example, a change from 7.9 to 8.0).
- (o) **"User"** means any employee of Organization or any of Organization's agents who are authorized by S&S pursuant to the terms of this Agreement to have access to the Software.

Section 1.02 Currency

Unless otherwise specified, all references to amounts of money in this Agreement and the related Schedules refer to U.S. currency.

Section 1.03 Schedules

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

- Schedule "A" - Description of Software, License Fees & Payment Schedule
- Schedule "B" - Third Party Software License and Third Party Software Terms

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this License Agreement shall control unless otherwise expressly stated in the provision giving rise to the conflict or inconsistency.

SOFTWARE LICENSES

Section 2.01 Grant of Licenses

- (a) Subject to the terms and conditions of this Agreement including without limitation the payment of the License Fees, S&S hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Designated Computer System at the Site and for the number of Active Accounts specified in Schedule "A" ("Description of Software, License Fees and Payment Schedule"). All Releases installed by Organization are subject to this License. This License and the other terms and conditions related to this License do not apply to Third Party Software except as this License Agreement may state otherwise.

- (b) Any Software furnished by S&S in machine-readable form may be copied in whole or in part by Organization for use on the Designated Computer System, access to which by Users can be from any computer terminal, whether internal to or external to Organization's facility incorporating the Designated Computer System. To the extent that any temporary files associated with the Software are created during such use on terminals those temporary files are permitted under this License but only for such time that the temporary files are actually required. Organization agrees that the original copy of all Software furnished by S&S and all copies thereof made by Organization are and at all times remain the sole property of S&S.
- (c) Any License granted under this License Agreement permits the Organization to use the Software for its municipal or corporate purposes including, but not limited to, performing testing, disaster recovery, disaster testing, training, archival and backup as the Organization deems necessary. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality and have been approved by S&S in advance of the independent contractors' access to the Software; S&S reserves all rights in approving such access by independent contractors. The Organization shall be responsible for all of the actions of and any misuse of the Software by any independent contractor.
- (d) The Organization may duplicate Documentation, at no additional charge, for the Organization's permitted uses so long as all required proprietary markings are retained on all duplicated copies.
- (e) For further clarification, the Software is licensed to the Organization on multiple levels. The Software is licensed on a "Active Accounts" and "Site License" basis as set forth in Schedule "A".
 - i) A Site License permits the Organization to use the Software on the Designated Computer System in one (1) production environment and unlimited non-production environments for the purposes of disaster recovery, disaster testing, training, archival and backup. Organization requires a separate Site License for each production environment into which the Software or any portion thereof is read in machine-readable form.
 - ii) An Active Account License permits the Organization to use the Software under the terms of the Site License for each Active Account the organization is billing. The Organization requires additional licenses when the number of Active Accounts exceeds the amount stated in Schedule "A".

The Organization may purchase additional licenses to use the Software at the time such licenses become necessary at S&S's then current prices and terms.

- (f) As between S&S and Organization, S&S reserves all rights, title and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.

Section 2.02 Term of License

This Agreement commences on the Effective Date. The License is perpetual and of indefinite duration and shall continue to be in force unless terminated pursuant to the terms hereof (the "Term").

Section 2.03 Restrictions on Use

- (a) Without limiting the generality of Section 2.01 and in addition the other restrictions listed therein, Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software for any purpose other than in connection with Organization's primary business or operations; (ii) disassemble, de-compile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivative works of the Software; (iv) rent, lease, lend, or use the Software for timesharing or bureau use or to publish or host the Software for others to use; or (v) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement. Organization shall be wholly liable to S&S for any misuse of the Software and these restrictions are absolute except as and only to the extent that this Agreement may expressly permit Organization to do otherwise.
- (b) The Software and related materials supplied by S&S are protected by copyright and trademark laws. The Software is licensed and may not be resold by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by S&S.

Section 2.04 Ownership of Software and Confidential Information

- (a) The Organization acknowledges that the Software contains proprietary information and Confidential Information of S&S which shall, at all times, remain the property of S&S and, in addition to its obligations outlined in Section 2.03, the Organization agrees to treat such Confidential Information in accordance with Subsections (b) and (c) herein.
- (b) The Organization will take the same care to safeguard the Software as it takes to safeguard its own Confidential Information of a like nature and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
- (c) In order to assist S&S with the protection of its proprietary information and Confidential Information and to enable S&S to ensure that the Organization is complying with its obligations, Organization shall permit S&S to visit during normal business hours any premises at which the Software is used or installed and shall provide S&S with access to its Software. S&S shall provide Organization with reasonable notice of any such audit.

Section 2.05 Ownership and Disposition of Documents

- (a) The parties agree that no materials or documents are being created for Organization by S&S under this Agreement. All materials and documents which were developed or prepared by S&S for general use and which are not the copyright of any other party or

publicly available, including educational materials, shall continue to be the property of S&S.

Section 2.06 Third Party Software

- (a) S&S may distribute to Organization the Third Party Software described as Third Party Software in Schedule "A". If applicable Organization shall pay S&S for the Third Party Software in the amount of the purchase price(s) listed on Schedule "A".
- (b) It is acknowledged by the parties hereto that the Third Party Software provided by S&S to Organization pursuant to this Agreement was developed and delivered to S&S by one or more third party software companies. As such, the Third Party Software is licensed to Organization by the applicable licensor listed in Schedule "A" and subject to the terms and conditions of the applicable license agreement for such Third Party Software included at Schedule "B". S&S makes no warranties, express or implied, with respect to the Third Party Software, including, without limitation, their merchantability or fitness for a particular purpose and S&S accepts no liability of any kind whatsoever with respect to the Third Party Software. Any warranty Organization has with respect to the Third Party Software shall be solely provided by the Third Party Software licensor except where this Agreement expressly states otherwise.
- (c) Organization agrees that it shall not permit any third party to have access to the Third Party Software during the term of this Agreement and that the restrictions as set out in Section 2.03 and the confidentiality obligations set out in Section 6.01 shall equally apply to the Third Party Software, subject to any specific permissions that are provided in the license provided by the third party licensor to the Organization.

REPRESENTATIONS AND WARRANTIES

Section 3.01 Warranty of Performance

S&S warrants to the Organization that:

- (a) The Software will substantially perform as described in the Documentation for a period of ninety (90) days from Completion of Services if the Software is used in accordance with the Documentation and the terms of this License Agreement. The Organization's sole recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software. S&S shall provide such responses and resolutions promptly, but in any event (i) with respect to failures to comply with the foregoing representation and warranty that comprise a Priority 1 issue for Organization (as defined in the Support and Maintenance Agreement), S&S will use best efforts to resolve the failure within fourteen (14) business days from delivery of written notice to S&S by Organization (for clarity, it being understood that if S&S delivers a solution to Organization that renders the Priority 1 issue into a Priority 2 or Priority 3 issue, then S&S shall have fulfilled its obligations under this clause (ii); with respect to failures to comply with the foregoing representation and warranty that comprise a Priority 2 or Priority 3 issue for Organization (as defined in the Support and Maintenance Agreement), S&S will use reasonable and continued efforts to resolve the issue, and in any event will do so within ninety (90) days from delivery of

written notice by Organization to S&S. Notwithstanding the foregoing, responses shall be provided within the time periods specified in Schedule B of the Support and Maintenance Agreement.

- (b) In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by S&S, provided Organization has entered into a valid Support and Maintenance Agreement with S&S, S&S will make reasonable commercial efforts to provide Organization with a correction or suitable workaround in accordance with the terms of such Support and Maintenance Agreement. S&S reserves the right to correct any defects about which it is made aware and to produce Releases at a time of S&S's own choosing and at S&S's discretion.

Section 3.02 Exclusions to Warranty

S&S shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of S&S, including:

- (a) Where the installation, integration, modification or enhancement of the Software has not been carried out by S&S or its authorized agent, or where Organization has taken any action which is expressly prohibited by the Documentation or this Agreement;
- (b) Any use or combination of the Software with any software, equipment or services not supplied by or on behalf of S&S;
- (c) User error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted in this Agreement;
- (d) Organization's failure to install a new Update which has been released to remedy an error or bug, and which S&S has stated to Organization is a required Update necessary for security purposes or for legislative compliance purposes or other reasons as S&S may determine is important in its sole discretion; or

Section 3.03 No Other Warranties

TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED AND ALL OTHER MATERIALS AND SERVICES ARE PROVIDED TO THE ORGANIZATION "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

S&S, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

S&S DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE ORGANIZATION'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF S&S.

Section 3.04 Organization's Network and Infrastructure

- (a) Organization's network and infrastructure must be of reasonably sufficient quality, condition and repair, and the Organization agrees to maintain its current hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of the proper installation and implementation of the Software in accordance with the Software Implementation Services Agreement. If S&S determines that Organization's hardware is no longer of sufficient quality, condition and repair, S&S shall notify Organization in writing of the Hardware deficiencies. Organization will use reasonable efforts to remedy any hardware deficiencies within 30 days of notification.
- (b) Organization shall provide no less than 180 days' notice where the Organization anticipates changing any of the third party software or hardware products in use on the Designated Computer System so that S&S may assess whether the Software will function with the different software or hardware. Where S&S determines that the Software may not function with the alternative software or hardware then any upgrade by Organization to the software or hardware will be at Organization's sole risk. S&S and Organization may be required to enter into a Statement of Work document subject to additional fees in order to make this determination.

FEES AND PAYMENTS

Section 4.01 Fees and Payments

- (a) The Organization agrees to pay S&S total license fees detailed in Schedule "A" (the "License Fees"), which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule "A". The License is subject to the full payment of the license fees.
- (b) Except for any aspect of the License Fee which is payable on the Effective Date, during the term of this License Agreement Organization shall have thirty (30) days after the date of the invoice as outlined in the payment schedule in Schedule "A" to pay S&S the applicable License Fee.

REMEDIES, LIABILITY AND INDEMNITY

Section 5.01 Remedies and Liability

- (a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and S&S recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of S&S arising from this License Agreement. The parties agree that in all such circumstances the Organization's remedies and S&S's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
 - i) EXCEPT FOR DAMAGES ARISING OUT OF S&S'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 5.03, AND EXCEPT FOR DAMAGES ARISING OUT OF (A) DAMAGE TO TANGIBLE PROPERTY OR (B) INJURY OR DEATH TO PERSONS BOTH PARTIES AGREE THAT S&S'S ENTIRE LIABILITY (UNDER CONTRACT OR IN TORT INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO OR ARISING UNDER THIS LICENSE AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE LICENSE FEES PAID TO S&S BY THE ORGANIZATION UNDER THIS AGREEMENT LESS A USAGE CHARGE BASED ON AN AMORTIZATION PERIOD OF FIVE YEARS.
 - ii) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
 - iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

Section 5.02 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions

expressed throughout this License Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 5.03 Intellectual Property Indemnity

- (a) In the event there is a third party claim against Organization alleging that Organization's use of the Software in accordance with this License Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trade-mark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, S&S shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by S&S on Organization's behalf. This indemnity is only effective where (i) Organization has not made any admissions or begun settlement negotiations either prior to or after providing notice to S&S of the applicable claim except with S&S's prior written consent, (ii) S&S has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iii) Organization assists and provides information to S&S throughout the action or proceeding, and (iv) Organization has not modified the Software in any manner whatsoever except with the prior written consent of S&S.
- (b) S&S' liability for any claims under this Section 5.03 shall be reduced to the extent such claim arises from (i) alterations or modifications to the Software by Organization or a third party in any manner whatsoever except with the prior written consent of S&S; (ii) combination, integration or use of the Software with software, hardware or other materials not approved by S&S where such claim would not have arisen but for such combination, integration or use; (iii) use of the Software other than in compliance with this Agreement; (v) compliance with the Organization's written instructions or specifications; or (vi) use of the Software after notice from S&S that it should cease due to possible infringement.
- (c) Any breach by Organization of its covenants under this Section 5.03 shall nullify this indemnity but not the sole right of S&S to have full and complete authority of the defense to defend such claim or proceeding and of all negotiations related therewith and the settlement thereof. In the event that the Organization's use of the Software is finally held to be infringing or S&S deems that it may be held to be infringing, Organization agrees that the only remedy available to it is that S&S shall be, at S&S's election, for S&S to: (i) procure for the Organization the right to continue use of the Software; or (ii) modify or replace the Software so that it becomes non-infringing.
- (d) The foregoing states S&S's entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade-mark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof.
- (e) Organization may, at Organization's sole cost and expense—which is outside the scope of this indemnity—retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances (except where the court has specifically made an order against such attendance) related to the proceeding.

- (f) The indemnity provisions of this Section 5.03 shall not apply to Third Party Software and S&S shall have the right to substitute the licensor of the Third Party Software to perform S&S's obligations hereunder and the Organization agrees to release S&S from any obligations related to such Third Party Software.

Section 5.04 Remedies

Where remedies are expressly afforded by this License Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of S&S arising out of or in connection with this License Agreement, notwithstanding any remedy otherwise available at law or in equity.

GENERAL

Section 6.01 Confidentiality

- (a) Duty Owed to the Organization -- S&S acknowledges that it may receive information from the Organization or otherwise in connection with this License Agreement. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, S&S agrees:
 - (a) To maintain this information in confidence;
 - (b) Not to use this information other than in the course of this License Agreement;
 - (c) Not to disclose or release such information;
 - (d) Not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of S&S; and
 - (e) To take all reasonable actions, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with S&S, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this License Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.
- (b) Duty Owed to S&S -- The parties agree that if the Organization breaches any term of Section 2.03 or Section 2.04 then S&S shall have the right to terminate this Agreement and the grant of Licenses herein forthwith without giving notice as set forth in Section 6.02(a).

Section 6.02 Termination

- (a) If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party, or issue a written notice of its own disputing the alleged default, in

either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to (i) issue a written notice disputing the alleged default within such thirty (30) day period; or (ii) to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, the other party may terminate this Agreement effective upon written notice to the other party to that effect.

- (b) If Organization has failed to pay the license fees in accordance with Article IV then S&S shall have the right to terminate the license rights granted herein and this Agreement effective immediately upon written notice to Organization.

Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favourably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

Section 6.03 Procedure on Termination

- (a) If this Agreement is terminated prior to the Completion of Services, then within thirty (30) days following such termination, the Organization shall either return to S&S or delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify, under the hand of a duly authorized officer of the Organization, that all copies of the Software or any part thereof, in any form, within the possession or control of the Organization have either been returned to S&S or deleted.
- (b) If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- (c) Despite Subsection (d) below, all warranties related to the Software automatically terminate upon the termination of this License Agreement.
- (d) The following sections and articles shall survive the termination of this Agreement: Section 3.02, **Error! Reference source not found.**, Section 5.01, Section 5.02, Section 5.04, Article IV and Article VI.

Section 6.04 Mediation

Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator, a mediator appointed by mediation services mutually

agreeable to the parties, or principals-only escalation meeting. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorney's fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

Section 6.05 Addresses for Notice

All notices, demands, and requests, required to be given under this Support and Maintenance Agreement by either party to the other shall be in writing and delivered by hand, or by registered or certified mail, postage prepaid, to the respective parties at the following addresses, or to such other address as may be given by a party to the other pursuant hereto:

SYSTEMS & SOFTWARE, INC.
Attention: Cameron Mahbubian
10 E Allen Street, Suite 201
Winooski, VT 05404
and by e-mail at: CMahbubian@harriscomputer.com

and in the case of the Organization, to:

CITY OF RIVERSIDE
Attention: General Manager, Riverside Pubic Utilities
3900 Main Street
Riverside, California 92522

Notice shall be deemed to have been given upon receipt thereof as to communications that are delivered by hand, or by registered or certified mail, and as to communications made by United States mail, on the third (3rd) day after mailing.

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.05.

Section 6.06 Assignment

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to

the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns

Section 6.07 Reorganizations

The Organization acknowledges that the License Fee set out in this License Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the Organization amalgamates, consolidates or undergoes any similar form of corporate reorganization or transition (a "Reorganization"), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional Active Accounts or sites, S&S shall be entitled to receive, and the Organization shall pay, an additional License fee based on the then prevailing License fee in effect. The provisions of this Section 6.07 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 6.07 shall not apply where the Organization undergoes a Reorganization involving only other organizations that have already have a valid License to use the same Software. For purposes of this Agreement, any corporate changes undergone by the Organization will be characterized as either an assignment, in which case Section 6.06 will apply, or a Re-organization, in which case Section 6.07 will apply, but it is not intended that Section 6.06 and Section 6.07 will apply to any single sequence of events, if such application would result in a duplication of the fees provided for in those provisions. Any changes to the License Fees as a result of Reorganization will be documented via Change Order or otherwise through signed written amendment.

Section 6.08 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. No other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of S&S by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. However, the parties agree that two other agreements are being entered into concurrently with this Agreement which are in addition to any of the third party agreements detailed herein. These two other agreements are the Support and Maintenance Agreement and the Software Implementation Services Agreement, each of which are separate agreements and are binding in their own right and upon their own terms. The terms of this Agreement may not be changed except by an amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by S&S, with such provisions being deemed deleted.

Section 6.09 Section Headings

Section and other headings in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

Section 6.10 Governing Law and Venue

This Agreement shall be governed by the laws of the State in which Organization is located. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that each party will bear their own attorney's fees and costs.

Section 6.11 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed modified to the extent necessary in order to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

Section 6.12 Waiver

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the License Agreement or by law despite such forbearance or notice.

Section 6.13 Counterparts

This Agreement may be executed in counterparts (whether by facsimile signature, in an email PDF or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

Section 6.14 Further Assurances

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

Section 6.15 Allocation of Risk

Organization acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between Organization and S&S and set forth an allocation of risk reflected in the fees and payments due hereunder.

Section 6.16 Relationship

The parties are and shall at all times remain, independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the parties. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is in law responsible. In the performance of this Agreement, S&S, and S&S's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the Riverside Public Utilities. S&S acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to S&S, or to S&S's employees, subcontractors and agents. S&S, as an independent contractor, shall be responsible for any and all taxes that apply to S&S as an employer.

Section 6.17 U.S. Government End-Users

The Software (i) was developed exclusively at private expense; (ii) is a trade secret of S&S for the purposes of the Freedom of Information Act; (iii) is "commercial computer software" subject to limited utilization (Restricted Rights); and (iv) including all copies of the Software, in all respects is and shall remain proprietary to S&S or its licensors. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions for software developed exclusively at private expense as set forth in: (i) for the DoD, the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or 252.227.7014 or any successor clause, and (ii) for all government agencies, the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19 or any successor clause. The U.S. Government must refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it was acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above. The manufacturer/owner is Systems & Software, Inc., 1 Antares Drive, Suite 200, Ottawa, ON K2E 8C4.

Section 6.18 Equitable Relief

Organization acknowledges and agrees that it would be difficult to compute the monetary loss to S&S arising from a breach or threatened breach of this Agreement and that, accordingly, S&S will be entitled to specific performance, injunctive or other equitable relief in addition to, or instead of monetary damages in the event of a breach or threatened breach of this Agreement by Organization.

Section 6.19 Force Majeure

No default, delay or failure to perform on the part of S&S shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

Section 6.20 Survival

The following sections and articles shall survive the termination or expiration of this Agreement: Section 1.01, Section 1.02, Section 2.03, Section 2.04, Section 2.05, Section 2.06, Section 3.04, Section 5.01, Article IV and Article VI and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

SYSTEMS & SOFTWARE, INC.

CERTIFIED AS TO FUNDS AVAILABILITY:

BY: Marie Biri
ASSISTANT CHIEF FINANCIAL OFFICER

Per:

Amara Neale

Name: Amara Neale

Title VP, Finance

Approved as to Form:

By: Ruthann M. Salera
Ruthann M. Salera
Deputy City Attorney

SYSTEMS & SOFTWARE, INC.

Per:

Damir Kavetunovic

Name: Damir Kavetunovic

Title Assistant Secretary

**CITY OF RIVERSIDE, A CALIFORNIA
CHARTER CITY AND MUNICIPAL
CORPORATION**

Per:

Name:

Title:

Schedule "A"
Description of Software, License Fees and Payment Schedule

Description	Price
enQuesta to MDMS Multispeak API License Readings	\$22,500
enQuesta to MDMS Multispeak API License Remote Disconnects	\$22,500
Meter Exchange Vendor Work order Create complete Program	\$10,000
Subtotal License	\$55,000

License fees due upon contract execution.

Schedule "B"
Third Party Software

There are no Third Party Software Licenses associated with this Agreement. The other Third Party as part of this integration project have their own software terms with the Organization.