

## MASTER SOFTWARE SERVICES AGREEMENT

**THIS MASTER SOFTWARE SERVICES AGREEMENT** (this “Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_, 2024, by and between RUBICON GLOBAL, LLC, a Delaware limited liability company (“Rubicon”), and CITY OF RIVERSIDE, a California charter city and municipal corporation with a principal place of business at 3900 Main St, Riverside, CA 92501 (“Client” or “City”). This contract is made pursuant to Sourcewell Contract #020221-RUB by and between Rubicon Global, LLC and Sourcewell, which commenced March 26, 2021 (the “Sourcewell Contracts”). The City of Riverside’s Sourcewell Account number is 2410.

In consideration of the mutual covenants and agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. **Definitions.**

Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

1.1 “Affiliate” means any entity that is controlled by Client, where “control” means the ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares, or interests in an entity.

1.2 “Agreement” means this Agreement, and any Orders, exhibits, Statements of Work and amendments to the foregoing.

1.3 “Client” means the entity entering into this Agreement and any Affiliate designated in this Agreement or an Order which is authorized to receive the Subscribed Services. Client shall be fully responsible for the performance of all of its Affiliates’ obligations under this Agreement.

1.4 “Client Content” means all data, imagery, information and other content (a) transmitted by or on behalf of Client through the System; (b) provided by Client or on Client’s behalf for use in connection with the Subscribed Services; or (c) otherwise processed or stored by Rubicon or its contractors on Client’s behalf pursuant to this Agreement.

1.5 “Documentation” means the then-current, commercially available user manuals, training materials and technical manuals relating to the Subscribed Services provided to Client by Rubicon pursuant to this Agreement.

1.6 “Effective Date” means the date first written above.

1.7 “Intellectual Property Rights” means, on a world-wide basis, any and all (a) rights associated with works of authorship, including without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (b) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (c) rights in confidential information and trade secret; (d) patents and patentable rights; (e) all rights with respect to inventions, discoveries, improvements, know-how, formulas, algorithms, processes, technical information and other technology; (f) all other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (g) all international, national, foreign, state and local registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).

1.8 “Marks” means the trademarks, service marks or trade names of Client.

1.9 “Order(s)” means the order(s), and any amendments thereto, executed by the parties and which references this Agreement. Each Order shall specify the Subscribed Services being subscribed for, the licensing parameters, the term of the Order, the applicable fees, billing period, and other charges, as well as payment terms. Each Order with the terms of this Agreement, and any exhibits and amendments to such Order, is a separate and independent contractual obligation of Rubicon from any other Order. In the event of any conflict between the terms of this Agreement and the terms of any such Order, the terms of such Order shall prevail.

1.10 “Professional Services” means implementation, consulting and training services, including without limitation, technical services to facilitate setup and deployment of the Subscribed Services specified in a Statement of Work.

1.11 “Rubicon Software” means Rubicon’s proprietary software programs used by Rubicon to provide the Subscribed Services (including, without limitation, all source code, object code, designs, copyrightable works, ideas, inventions, technology and other Intellectual Property Rights therein), as modified, enhanced or replaced by Rubicon from time to time. For the avoidance of doubt, Rubicon Software does not include Client Content.

1.12 “Statement of Work” means a document executed by both parties that describes the Professional Services to be performed by Rubicon pursuant to the Professional Services Terms (as defined in Section 2.6), including without limitation, the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference this Agreement and be sequentially numbered. Each Statement of Work with the Professional Services Terms, and any exhibits, change orders and amendments to such Statement of Work, is a separate and independent contractual obligation of Rubicon from any other Statement of Work.

1.13 “Subscribed Services” means Rubicon’s proprietary, web-based services set forth in an Order which are provided to Client on a subscription basis and enable use of the Rubicon Software through the System.

1.14 “System” means the Rubicon Software and the server grade computers and related networks maintained by or on behalf of Rubicon and its third-party providers to host the Rubicon Software and provide the Subscribed Services to Client, all as hereafter modified, enhanced or replaced by Rubicon.

1.15 “Third Party Offerings” means services delivered or performed by third parties independently of Rubicon related to the Subscribed Services, or other online, web-based CRM, ERP, or other business application subscription services, and any associated offline products provided by third parties, that interoperate with the Subscribed Services.

1.16 “Work Product” means any software, data, documentation, graphics, text, code, inventions, pictures, audio, video, animations, enhancements, improvements, methods, processes, works of authorship, work-flow methods or other deliverables or any portions of the foregoing that Rubicon creates, whether alone or jointly, while performing Professional Services or any other services hereunder. Work Product excludes: (a) the Subscribed Services; (b) the System; (c) any generic routines or code that have general application to the Rubicon Software or System; and (d) all modifications, alterations, derivative works and enhancements to the foregoing, and all copies thereof.

## **2. Services.**

2.1 Subscribed Services. Subject to the terms and conditions set forth herein, including without limitation, Client’s payment of all applicable fees, Rubicon hereby agrees to provide the Subscribed Services, and in connection therewith, Rubicon hereby grants to Client during the term of the applicable Order a non-exclusive, non-transferable, non-sublicensable, limited right and license to (a) access and use of the Subscribed Services subject to the terms specified in the Statement of Work and as specified in the applicable Order, solely for Client’s internal use; (b) to transmit and receive Client Content to and from the System; and (c) use the Documentation in connection with such rights. The rights granted to Client pursuant to any Order shall terminate upon the termination or expiration of this Agreement or the applicable Order for any reason. All rights not expressly granted to Client are reserved by Rubicon and its licensors.

2.2 Limitations. Client shall not: (a) access or use any portion of the Subscribed Services or System except as expressly authorized pursuant to an Order; (b) cause or permit decompilation, reverse assembly or reverse engineering of all or any portion of the Subscribed Services or System; (c) copy any ideas, features, functions or graphics of the Subscribed Services or System or modify or make derivative works based upon the Subscribed Services or System; (d) delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Subscribed Services, System or Documentation; or (e) directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Subscribed Services or System, or any portion thereof, for third party use, third party training, facilities management or time-sharing, or use as an application service provider or service bureau. Without limiting the foregoing, Client may not use the Subscribed Services or System to: (i) send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity or performance of the Subscribed Services, System or the data contained therein; or (iii) attempt to gain unauthorized access to the Subscribed Services or System.

2.3 Support. Client will be responsible for providing first line maintenance and support to its authorized end users in connection with the Subscribed Services. Qualified employees of Client who have been trained on use of the Subscribed Services (the “Designated Employees”) to contact Rubicon with technical questions or issues with respect to the

Subscribed Services and to report System outages or failures. Rubicon shall respond to the technical support questions from the Designated Employees and commence the process of responding to System or Subscribed Services outages or failures in accordance with Rubicon's standard procedures. The Designated Employees shall assist Rubicon in resolving issues with the Subscribed Services and System as Client resources allow. Rubicon acknowledges that limited availability of Designated Employees does not, under any circumstance, waive Rubicon's obligations described in Addendum A. Rubicon is under no obligation to provide functional updates, enhancements or upgrades to the System or Subscribed Services by any time certain.

2.4 System Availability. Rubicon will use commercially reasonable efforts to enable and maintain access to the Subscribed Services. Updates to the System will be scheduled for evenings and/or weekends to minimize disruption. Client acknowledges and agrees that certain portions of the Subscribed Services, including without limitation, data storage, hosting, and System hardware management, may be provided by third party service providers. Rubicon will provide ongoing management of the System, located at the third-party provider's location, in accordance with Rubicon's agreement with the third-party provider(s), in order to maintain the best practical availability of the Subscribed Services. Rubicon may change its third-party data hosting provider to another hosting provider, in Rubicon's sole discretion, from time to time. Additional system availabilities can be found in Addendum A.

2.5 Browsers. Client acknowledges and agrees that the Subscribed Services will only be compatible with and support use with the most recently superseded version for one year from the date of the general release of the then-current version, of the following browsers: Edge, Firefox, Safari and Google Chrome.

2.6 Professional Services. If requested and as available, Rubicon will provide Client with Professional Services pursuant to mutually agreeable Statements of Work in accordance with the Professional Services Terms attached hereto as Exhibit A ("Professional Services Terms").

2.7 Provisioning of the Subscribed Services. Rubicon may update the functionality and user interface of the Subscribed Services from time to time in its sole discretion as part of its ongoing improvement of the Subscribed Services. Client agrees that its subscription to the Subscribed Services is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Rubicon regarding future functionality or features.

### **3. Client Obligations.**

3.1 Resources. Except as expressly set forth herein, Client and its end users shall be solely responsible for providing all resources, equipment and software at its or their respective facilities which are necessary for them to access the System and/or receive the Subscribed Services. Client and its end users must provide all equipment and licenses necessary to access and use the Internet, and pay all fees associated with such access and use. To the extent Rubicon's provision of the Subscribed Services requires data, documents, information or materials of any nature to be furnished, in whole or in part, by Client or its employees, agents, contractors, representatives or authorized users, Client will cause such employees, agents, contractors, representatives and authorized users to furnish such data, documents and information in a manner which permits Rubicon to perform the Subscribed Services as contemplated herein.

3.2 Third Party Coordination; Required Consents. To the extent the Subscribed Services require access to a third party service provider who is under contract with Client, or access or use of such provider's information or interconnection with such provider's services, facilities, technology or systems in order to receive or transmit Client Content, Client shall be responsible for obtaining any required third party licenses or consents necessary for Rubicon to access and use such information, services, facilities, technology or systems.

3.3 Third-Party Web Sites, Products and Services. The Subscribed Services may rely on or require that Client access Third Party Offerings. If Client elects to use the Subscribed Services with Third Party Offerings, Client agrees that: (a) its use of Third Party Offerings must at all times comply with the terms of service governing such offerings; and (b) Rubicon has the right to export and import Client Content to and from such Third-Party Offerings for purposes of delivering the Subscribed Services purchased by Client. Client's or its user's use of third-party websites must at all times comply with the terms of service governing such websites. Client understands and agrees that the availability of the Subscribed Services, or certain features and functions thereof, is dependent on the corresponding availability of Third-Party Offerings or specific features and functions of Third-Party Offerings. Rubicon will not be liable to Client or any third party in the event that changes in Third Party Offerings cause the unavailability of the Subscribed Services or any feature or function thereof. Rubicon may also refer Client to third party service providers that offer Third Party Offerings. Rubicon does not make any representations

or warranties regarding any such Third Party Offerings, whether or not such Third Party Offerings or services are designated by Rubicon as “certified,” “approved,” “recommended” or otherwise, or the services are provided by a third party that is a member of a Rubicon partner program. To the extent that Rubicon requires that Client grant Rubicon authorizations, passwords or other user credentials to a Third-Party Offering (“Rubicon Access Codes”) to retrieve Client Content or to enable interoperability with the Subscribed Services, Client shall promptly provide such Rubicon Access Codes.

3.4 Integrated Third-Party Software. Rubicon may integrate third-party computer software into the Subscribed Services. In such an event, Rubicon will obtain, at no additional charge to Client, all rights necessary for Client to use such third-party computer software with the Subscribed Services. All free software is distributed to Client WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. A copy of the free software is included with the Subscribed Services. Rubicon disclaims on behalf of all individuals or entities that distributed such free software to Rubicon (the “Contributors”) all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose; and Rubicon excludes on behalf of all such Contributors (i) all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits; and (ii) any provisions which differ from this Agreement which are offered by any particular Contributor alone and not by any other party.

3.5 Compliance with Laws. Client will comply with all applicable laws, rules and regulations relating to Client’s or its authorized user’s receipt or use of the Subscribed Services. Without limiting the foregoing, Client will be solely responsible for determining the extent to which the design or provision of the Subscribed Services is subject to any privacy laws or regulations (“Privacy Laws”) or the oversight of any regulatory agency charged with the enforcement thereof (“Regulatory Oversight”). To the extent that the design and operation of the Subscribed Services is subject to any Privacy Laws or Regulatory Oversight, Client will specify any procedures to be taken by Rubicon during the customization and provision of the Subscribed Services to cause the Subscribed Services to be in compliance with such Privacy Laws and Regulatory Oversight. Client shall not export the Subscribed Services, System or Documentation in violation of U.S. Department of Commerce export administration regulations.

3.6 Activity. Rubicon will provide Client access to the Subscribed Services by issuance of a confidential site address and passwords to Client. Client is responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address and passwords. Client shall: (a) notify Rubicon immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Rubicon immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Client Content that is known or suspected by Client; and (c) not impersonate another Rubicon client or user or provide false identity information to gain access to or use of the Subscribed Services.

#### **4. Prices; Ordering; Payment.**

4.1 Invoicing and Payment. Except as otherwise specified in an Order or Statement of Work: (a) Client shall pay to Rubicon all fees, charges and expenses due and owing pursuant to an Order or Statement of Work in U.S. dollars to the address designated on the invoice within thirty (30) days following Rubicon’s invoice date; and (b) all payment obligations are non-cancellable, non-refundable and non-contingent. Client may not set-off any amounts owing to Client against any payments owing to Rubicon hereunder. Payments which are not received when due shall bear interest at the lesser of the maximum amount chargeable by law or one and a half percent (1½%) per month commencing with the date payment was due. In addition, in the event Client fails to timely pay any fees or charges when due, Rubicon may, in its discretion, suspend or terminate any Subscribed Services or other services hereunder in accordance with Section 5.4. Client will continue to be charged for all Subscribed Services and other services during any period of suspension.

4.2 Taxes and Duties. Excluding taxes based on Rubicon’s net income, Client is liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties and customs fees relating to Client’s receipt or use of the Subscribed Services, whether or not Rubicon invoices Client for such taxes, duties or customs fees, unless Client timely provides Rubicon with a valid tax exemption or direct pay certificate showing Client is exempt from such payments. If Rubicon is required to pay any such taxes, duties or customs fees, Client shall reimburse Rubicon for such amounts in accordance with Section 4.1, and Client further agrees to indemnify, defend and hold harmless Rubicon for any such taxes, duties and customs fees and any related costs, interest and penalties paid or payable by Rubicon with respect thereto.

4.3 Audits. During the Term, upon thirty (30) days prior written notice to Client, Rubicon may audit Client's facilities, records and use of the Subscribed Services to determine Client's compliance with the terms and conditions of this Agreement. Such audits shall occur during regular business hours and shall be conducted in a manner designed to limit disruption to Client's business.

## **5. Term and Termination.**

5.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall continue for a period of five years, with option to extend for two additional one-year terms at the City's discretion, unless earlier terminated in accordance with the provisions hereof. The Term shall allow for unlimited one-year extensions at additional cost.

5.3 Termination. Either party may terminate this Agreement or the applicable Order or Statement of Work if the other party breaches this Agreement or such Order or Statement of Work, as applicable, and fails to correct the breach within thirty (30) days following receipt of written notice from the non-breaching party. In addition, Rubicon may terminate this Agreement immediately if Client files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or if a trustee is set up to administer a substantial portion of Client's assets or business.

5.4 Suspension of Services. In the event (a) Client fails to timely pay any fees when due; or (b) Rubicon believes, upon advice of counsel, that any element of the Subscribed Services, or Client's receipt or use thereof, violates any applicable law, rule or regulation, Rubicon may in its sole discretion suspend or terminate any Subscribed Services and other services immediately upon notice to Client.

5.5 Effect of Termination. Upon termination of this Agreement or an Order or Statement of Work for any reason, all payment obligations shall become immediately due and owing and Client shall immediately cease using the applicable Subscribed Services and return all Documentation to Rubicon. In addition, in the event this Agreement or any Order is terminated early, before completion of the applicable term, for any reason other than due to Rubicon's breach, Client shall pay to Rubicon (in addition to any other amounts due under this Agreement) as liquidated damages within thirty (30) days following any such termination, (a) any non-refundable costs incurred by Rubicon in connection with such termination including, but not limited to, hardware costs and licensing fees paid to third party licensors; and (b) fifty percent (50%) of the remaining annual recurring fees (including, without limitation, the subscription fees paid to use and access the Subscribed Services) that would have been charged for the then remaining term of the Agreement or Order(s), as applicable, all of which shall be immediately accelerated. Client acknowledges and agrees that (i) the payment of such fees does not constitute a penalty, but is due to the difficulty in estimating actual damages for early termination; (ii) such fees are a reasonable estimate of the amounts required to fairly compensate Rubicon in such events; and that (iii) such fees have taken into consideration Rubicon's cost savings due to the termination of this Agreement and the present value of accelerated payments. Upon termination of this Agreement, Client shall also return to Rubicon or destroy all copies of Rubicon's Trade Secrets and Confidential Information in every form. Upon request of Rubicon, Client agrees to certify in writing to Rubicon that it and each of its Affiliates have performed the foregoing obligations. Sections 1, 4, 5.5, 6.2, 6.3, and 7, 8, 10 and 11 shall survive any termination of this Agreement in accordance with their respective terms. In the event of any termination hereunder, Client shall not be entitled to any refund of any payments made by Client.

## **6. Representations and Warranties.**

6.1 Services Warranty. Provided that Client notifies Rubicon of the non-conformance within the warranty period, and subject to the limitations set forth herein, Rubicon warrants that the Subscribed Services will be provided substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date such Subscribed Services are first provided. No specific result from the provision of Subscribed Services is assured or guaranteed. In the event of any breach of the foregoing warranty, Rubicon shall, at its option and as Client's sole and exclusive remedy, (a) re-perform the Subscribed Services which were not performed as warranted at no additional charge; or (b) in the event Rubicon is unable to re-perform such Subscribed Services after exercising commercially reasonable efforts to do so, refund the fees paid to Rubicon for the Subscribed Services which were not performed as warranted. Notwithstanding the foregoing, Rubicon shall have no obligation to provide the warranty services described in this Section 6.1 if: (i) the performance failure is at least partially attributable to Client's deviation from applicable operating instructions or failure to perform Client's obligations set forth in this Agreement; or (ii) Client or any other person or entity (other than Rubicon) has modified the Subscribed Services.

6.2 Client Acknowledgment. Client acknowledges and agrees that it has made its own evaluation in deciding to subscribe for the Subscribed Services. The warranties provided in this Agreement extend solely to Client and to no other person

or entity whatsoever. Without limiting the foregoing, Rubicon is not responsible for the results that may be obtained from use of the Subscribed Services.

6.3 **DISCLAIMERS.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, RUBICON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SUBSCRIBED SERVICES, THE SYSTEM OR ANY OTHER SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PROFESSIONAL SERVICES. RUBICON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. RUBICON DOES NOT WARRANT THAT THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR ISSUES WITH THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES CAN OR WILL BE CORRECTED.

## **7. Confidentiality.**

7.1 **Confidentiality.** Each party (the “Receiving Party”) acknowledges that it will have access to Confidential Information and Trade Secrets of the other party (the “Disclosing Party”). For purposes of this Agreement, “Trade Secrets” means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and “Confidential Information” means information, other than Trade Secrets, that is of value to Disclosing Party and is treated as confidential. Rubicon’s Trade Secrets and Confidential Information include, without limitation, the Subscribed Services, the System, the Documentation and object and source code for the Rubicon Software. The Receiving Party agrees to use the Trade Secrets and Confidential Information of the Disclosing Party solely for purposes of performing its obligations or exercising its rights under this Agreement. The Receiving Party agrees to discuss the Trade Secrets and Confidential information of the Disclosing Party only with, and to transmit the Trade Secrets and Confidential Information only to, those officers, employees and consultants of the Receiving Party who have a need to know the Trade Secrets or Confidential Information for the purposes set forth herein and who have agreed in writing to treat such information as confidential on terms no less restrictive than as set forth in this Agreement. The parties acknowledge and agree that the terms of any previously executed confidentiality or nondisclosure agreements shall remain in effect with respect to the information exchanged thereunder.

7.2 **Security Precautions.** The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Trade Secrets and Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Trade Secrets and Confidential Information, but in no event less than a reasonable standard of care. The Receiving Party shall not permit unauthorized access to the Trade Secrets or Confidential Information of the Disclosing Party.

7.3 **Duration and Exceptions.** With regard to Confidential Information, the obligations in this Section 7 shall continue for the Term (including all extensions thereto) and for a period of five (5) years thereafter. With regard to Trade Secrets, the obligations in this Section 7 shall continue for so long as such information constitutes a trade secret under applicable law, but in no event less than the Term (including all extensions thereto) and for a period of five (5) years thereafter. The Receiving Party’s obligations with respect to Trade Secrets and Confidential Information of the Disclosing Party shall not apply to the extent such Trade Secrets or Confidential Information: (a) are previously known to the Receiving Party without restriction on disclosure; (b) cease to be secret or confidential except by reason of a breach of this Agreement by the Receiving Party; (c) are independently developed by the Receiving Party without reference to the Trade Secrets or Confidential Information of the Disclosing Party; or (d) were received from a third party without obligations of confidence and without breach of this Agreement. In addition, the Receiving Party may disclose Trade Secrets and Confidential Information of the Disclosing Party to the extent such disclosure is required by applicable law or by any governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.

## **8. Intellectual Property Rights.**

8.1 **Rubicon’s Intellectual Property.** Rubicon (or its licensors) retains title to the Subscribed Services, System, and Documentation, and all modifications, alterations, derivative works, and enhancements thereto, and all copies thereof and Intellectual Property Rights therein. Except as specified herein, Client does not acquire any rights, express or implied, in the

Subscribed Services, System or Documentation, and has no right to commercialize or transfer the Subscribed Services, System or Documentation, in whole or in part. No license, right or Intellectual Property Right in any Rubicon trademark, trade name or service mark is granted pursuant to this Agreement. Subject only to the following, title to all Work Product will at all times remain the sole and exclusive property of Rubicon or its licensors; provided that Rubicon shall not obtain any ownership rights in any Client Content provided by, or on behalf of, Client. Upon request, Client agrees to execute such documents as may be reasonably requested by Rubicon to secure Rubicon's rights in and to the foregoing. Rubicon hereby grants Client during the term of the applicable Order a non-exclusive, royalty free (subject only to the fees provided for in a Statement of Work), limited right and license to copy, use, modify and sub-license all Work Product.

8.2 Client Content. Client shall own all Client Content. Client shall have sole responsibility for the accuracy, completeness, quality, integrity, legality, reliability, timeliness, appropriateness, and intellectual property ownership and right to use all Client Content, and Rubicon shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store Client Content for any reason. Rubicon does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Client Content, and Client shall hold Rubicon harmless from any and all third-party claims arising out of Client's use or dissemination of any such Client Content. In the event this Agreement is terminated (other than by reason of Client's breach), Rubicon will make available to Client a file of the Client Content in its possession, if any, within thirty (30) following Client's request; provided such request is made within thirty (30) days following termination of the Agreement. Rubicon reserves the right to (a) withhold, remove and/or discard Client Content in its possession, if any, in the event Client breaches this Agreement, including, without limitation, non-payment of fees and charges; and (b) purge and delete Client Content, if any, in its possession if Client fails to request such Client Data within thirty (30) days following termination of this Agreement.

8.3 License to Client Content. Client hereby grants to Rubicon the non-exclusive right and license to (a) receive, retrieve, process, use and transmit any Client Content necessary or reasonably desirable to perform the Subscribed Services or other services; and (b) use, copy, manipulate and store any Client Content that will be archived, stored or otherwise transmitted in connection with the Subscribed Services or other services.

8.4 License to the Marks. Client hereby grants to Rubicon the worldwide, non-exclusive limited right and license during the Term to use the Marks in connection with performance of the Subscribed Services and its other obligations under this Agreement.

## **9. Defense and Indemnification.**

9.1 Limited Covenant to Defend. Rubicon will defend any third party claim brought against Client in the United States to the extent that the claim, if true, would constitute an infringement or misappropriation by the Subscribed Services of any valid and subsisting patent or copyright (a) recognized under the laws of the United States; and (b) of which Rubicon had actual knowledge; provided, however, that: (i) Client immediately advises Rubicon of the claim upon learning of the assertion of the claim; and (ii) Rubicon is given the sole right to control the defense and/or settlement of the claim, in litigation or otherwise.

9.2 Injunctions Obtained by Third Parties. If a third-party infringement claim, of which Rubicon is notified in accordance with Section 9.1 (or of which Rubicon is otherwise aware or believe is likely) results, or in Rubicon's opinion is likely to result, in an injunction prohibiting Client from continued use of the Subscribed Services that is the subject matter of the claim, then Rubicon may, in its sole discretion and at its expense: (a) procure for Client the right to continue to use the Subscribed Services that are the subject matter of the claim; (b) replace or modify the Subscribed Services that are the subject matter of the claim to make them non-infringing, but, where reasonably possible, preserving the functionality of such Subscribed Services; or (c) if the foregoing remedies are not commercially practical, suspend or terminate access to the infringing Subscribed Services.

9.3 Exceptions to Duties to Defend and Indemnify. Notwithstanding any other provisions hereof, Rubicon shall have no obligation to indemnify or defend Client for any third party claim pursuant to this Section 9, nor be required to pay losses, damages or expenses under this Section 9, if Client agrees to settle any such claim without the prior written consent of Rubicon, or if the claim arises out of, in whole or in part: (a) a modification of the Subscribed Services by anyone other than Rubicon; (b) use of the Subscribed Services other than in accordance with the Documentation or the terms of this Agreement; (c) use of a release of the Subscribed Services without having implemented updates, the use of which would have cured the alleged infringement; (d) any third party software or service; (e) use of the Subscribed Services in combination with Third Party Offering or any other third party hardware, software, database or materials where, absent such combination, the Subscribed Services would not be infringing; or (f) Client's negligence or willful misconduct.

9.4 **Sole Obligation.** This Section 9 states Rubicon's sole obligation, and Client's sole and exclusive remedy, with respect to infringement of proprietary and Intellectual Property Rights. Notwithstanding anything else in this Section 9, Rubicon's aggregate liability for indemnification pursuant to this Section 9 shall not exceed the original subscription fees paid by Client to Rubicon for the infringing Subscribed Services.

**10. Limitation on Liability.**

10.1 **EXCLUSION OF DAMAGES.** IN NO EVENT SHALL RUBICON OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE, DELAY OR MALFUNCTION), EVEN IF RUBICON HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

10.2 **LIMITATION OF LIABILITY.** RUBICON TOTAL AGGREGATE LIABILITY TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT TO RUBICON DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO CLIENT'S FIRST CLAIM. THE TOTAL AGGREGATE LIABILITY LIMITS UNDER THIS SECTION 10.2 DO NOT APPLY TO CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE INCURRED BY CLIENT RELATED TO THIS AGREEMENT OR ANY OF THE PRODUCTS OR SERVICES HEREUNDER.

10.3 **EXCEPTIONS.** THE FOREGOING LIMITATIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

**11. Miscellaneous.**

11.1 **Dispute Resolution; Governing Law.** The laws of the State of Delaware shall govern this Agreement, without reference to conflicts of law rules or principles. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement. Client hereby consents and submits to the exclusive jurisdiction and venue over any action, suit or other legal proceeding that may arise out of or in connection with this Agreement, by any state or federal court located within or about New York, New York, USA. Client shall bring any action, suit or other legal proceeding to enforce, directly or indirectly, this Agreement or any right based upon it exclusively in such courts.

11.2 **Force Majeure.** Neither party will be liable for any loss, damage or delay resulting from any event beyond such party's reasonable control (a "Force Majeure Event"), and delivery and performance dates will be extended to the extent of any delays resulting from any such Force Majeure Event. Each party will promptly notify the other upon becoming aware that a Force Majeure Event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. Notwithstanding any other provision of this Section 11.2, a Force Majeure Event shall not relieve Client of its obligations to pay monies due and owing to Rubicon hereunder.

11.3 **Assignment.** Neither party shall assign, transfer, or otherwise delegate any of its rights, duties, or obligations under this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any attempted assignment (whether by operation of law or otherwise) shall be void; except that Rubicon may delegate any of its rights, duties, or obligations under this Agreement to one or more of its affiliates. Notwithstanding the foregoing, either party may assign its rights, duties, and obligations hereunder, without approval of the other party, to a party that succeeds to all or substantially all of its assets or business (whether by sale, merger, operation of law or otherwise), so long as the assignee agrees in writing to be bound by the terms and conditions of this Agreement; provided, however, that any such assignment by Client shall be subject to any fee adjustments specified in an Order, or that may be necessary because of Client's use of the subscribed Services beyond the licensing parameters specified in the applicable Order; and further provided that no such assignment may be to a competitor of Rubicon. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

11.4 **Independent Contractors.** Nothing in this Agreement shall be construed to create an agency, joint venture, partnership or other form of business association between the parties. Neither party has the right or authority to make any contract, representation or binding promise of any nature on behalf of the other party, and neither party shall hold itself out as having such right or authority.



11.5 No Waiver. The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

11.6 Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

11.7 Counterparts. This Agreement may be executed in duplicate and either copy or both copies are considered originals.

11.8 Notices. All official notices (including any notices regarding breach, termination, renewal, etc.) required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified, registered mail or next day express mail or courier, postage prepaid. Any such notice shall be deemed given (a) when so delivered personally; (b) three (3) days after, when sent by certified or registered mail; or (c) the day after, when sent by next day express mail or courier, as follows: (i) if to Client, to it at: Riverside Public Works - Solid Waste Division Attn: Archie Washington 8095 Lincoln Ave., Riverside, CA 92504; (ii) if to Rubicon, to it at: Rubicon Global, LLC, 335 Madison Avenue, 4th Floor New York, NY 10017. In addition, routine, non-contractual notices, consents and approvals (including support) given under this Agreement may be delivered in writing as provided above or through electronic mail or other electronic record addressed to the parties identified herein.

11.9 Marketing. Client agrees that Rubicon may reference Client’s execution of this Agreement and its status as a user of the Subscribed Services in marketing materials and in sales presentations. Rubicon may use Client’s Marks in connection with such usage.

11.10 Entire Agreement. This Agreement (including any Orders, Exhibits, Statements of Work and attachments, which are hereby incorporated herein by reference) constitute the final and entire agreement between the parties, and supersedes all prior written and oral agreements, understandings, or communications with respect to the subject matter of this Agreement.

11.11 Cooperative Purchasing. Rubicon and the Client agree that other government entities (including but not limited to municipalities, counties, states, public utilities, non-profit hospitals, educational institutes, special governmental agencies, and non-profit corporations) that allow cooperative purchasing may utilize the terms of this agreement to procure Rubicon’s software and services.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Master Software Services Agreement and to bind their respective party hereto.

**CITY OF RIVERSIDE, CA**

**RUBICON GLOBAL, LLC**

\_\_\_\_\_  
Authorized Signature

Kevin Schubert  
Kevin Schubert (Jan 19, 2024 10:37 PST)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
City Manager

Kevin Schubert - President

\_\_\_\_\_  
Printed Name and Title

Date: \_\_\_\_\_

Date: 1/19/2024

Attest: \_\_\_\_\_

City Clerk

Conor Riffle  
Conor Riffle (Jan 19, 2024 14:14 EST)

\_\_\_\_\_  
Authorized Signature

Certified as to Availability of Funds:

Conor Riffle, SVP

By: \_\_\_\_\_

Chief Financial Officer

\_\_\_\_\_  
Printed Name and Title

Approved as to Form:

Date: 1/19.2024

By: Tom A. Tom

Deputy City Attorney

## EXHIBIT A

### PROFESSIONAL SERVICE TERMS

These Professional Services Terms are hereby annexed to and made a part of the Master Software Services Agreement (the “Agreement”) between Rubicon and Client. In the event any provisions of these Professional Services Terms contradict or are inconsistent with the provisions of the Agreement, the provisions these Professional Services Terms shall prevail and govern.

1. Services. Upon request by Client, Rubicon will provide consultants to perform implementation, consulting and training services to the extent such Professional Services are identified in any mutually agreed upon Statement of Work more fully describing the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference the Agreement and be sequentially numbered. Any modifications to a Statement of Work shall be made by written change order, in Rubicon’s standard form, executed by both parties to this Agreement (a “Change Order”). Each Change Order complying with this Section shall be deemed to be an amendment to the applicable Statement of Work to which it applies and shall become a part thereof.
2. Cooperation. All Professional Services will be coordinated with the designated Client Project Coordinator, as identified in each Statement of Work. Client shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. Client shall at all times make available its functional and/or information technology personnel as reasonably required or desirable for Rubicon to perform the Professional Services, and Client shall timely fulfill its obligations and responsibilities set forth in each Statement of Work. To the extent required or as specified in any Statement of Work or work plan, Client shall provide Rubicon with access to its facilities, software, systems, data, information and support materials to perform the Professional Services. Client acknowledges that Rubicon’s performance hereunder is contingent on Client’s timely and effective performance of Client’s responsibilities and Client’s timely decisions and approvals. If Client fails to provide required information and/or make decisions as agreed or in a reasonably expeditious and timely manner, and such failure results in a delay in delivery of any deliverables or Work Product or to the overall project, Client agrees to extend the time frame for delivery of the deliverable or project, as applicable, on a day for day basis and compensate Rubicon for any additional work required as a result of such delay.
3. Project Control. Rubicon shall have the sole right to supervise, manage, contract, direct, procure, perform, or cause to be performed, all Professional Services performed by it pursuant to a Statement of Work. Rubicon may subcontract all or a portion of the Professional Services to a qualified third party. In recognition that Rubicon personnel may perform similar services for third parties, this Agreement shall not prevent Rubicon from providing services or developing materials that may be perceived as competitive with those developed or provided hereunder, subject to the confidentiality provisions of the Agreement.
4. Compensation. All Professional Services will be provided by Rubicon on a time, materials and expense basis at Rubicon’s then current rates, unless otherwise agreed by the parties in a Statement of Work.
5. Termination. These Professional Services Terms shall be effective as of the Effective Date of the Agreement and shall remain in effect until (a) terminated by either party upon thirty (30) days prior written notice in the event no Statement of Work is outstanding; or (b) as provided in the Agreement, whichever is earlier. Client shall be liable for payment to Rubicon for all Professional Services provided or performed prior to the effective date of any such termination, including any expenses incurred pursuant to the provision of such Services.
6. Additional Services. Any services performed by Rubicon at the request of Client that are outside the scope of any Professional Services described in the applicable Statement of Work shall be governed by these terms and will be billed at Rubicon’s then current rates.
7. Acceptance Criteria. Each deliverable provided to Client through Professional Services under this Agreement (collectively, the “Client Deliverables”) will be deemed accepted by Client upon delivery, unless Client provides written notice of rejection to Rubicon within five (5) business days of such delivery (the “Acceptance Period”) and such notice specifically identifies the manner in which the applicable Client Deliverables fail to materially comply with their applicable specifications. In the event Client rejects the applicable Client Deliverables within the Acceptance Period, Rubicon shall use commercially reasonable efforts to make such corrections to Client Deliverables, such that the Client Deliverables materially

comply with the applicable specifications, and shall present the same to Client for acceptance pursuant to this paragraph. Any use of Client Deliverables by Client following delivery, other than review and testing of such Client Deliverables to confirm compliance with the applicable specifications, shall constitute acceptance.

**ORDER NUMBER 1 TO THE  
MASTER SOFTWARE SERVICES AGREEMENT**

This independent Order Number 1 (“Order”) to the Master Software Services Agreement is made as of this \_\_\_ day of \_\_\_\_\_, 2024 (“Order Effective Date”), by and between Rubicon Global, LLC (“Rubicon”) and the CITY OF RIVERSIDE, CA (“Client”). This Order is part of the Master Software Services Agreement between the parties dated \_\_\_\_\_ (“Agreement”). Capitalized terms used and not otherwise defined in this Order shall have the respective meanings set forth in the Agreement.

1. The Subscribed Services.

Rubicon shall provide the services and products more particularly described in the complete pricing proposal as Addendum B and Riverside Statement of Work as Addendum C, attached hereto and incorporated herein by this reference.

2. Other Charges. As may be agreed to by the parties in writing from time to time.

3. Payment Terms. The parties agree that the fees for the above services shall be a total of FOUR HUNDRED AND EIGHTEEN THOUSAND EIGHT HUNDRED DOLLARS AND ZERO CENTS, (\$418,800.00) payable as follows (“Fee”):

- a. US\$ 107,760.00 due upon execution of this Agreement.
- b. US\$ 77,760.00 due upon the first anniversary of this Agreement.
- c. US\$ 77,760.00 due upon the second anniversary of this Agreement.
- d. US\$ 77,760.00 due upon the third anniversary of this Agreement.
- e. US\$ 77,760.00 due upon the fourth anniversary of this Agreement.

Optional One Year Extensions

- f. US\$ 69,465.60 due upon the fifth anniversary of this Agreement.
- g. US\$ 69,465.60 due upon the sixth anniversary of this Agreement.

4. Renewal. Unless either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the initial term, upon expiration of the initial terms of the Subscribed Services (as described in Section 3 of this Order, including option to trigger two additional 1-year extensions) and Client’s obligations to pay the applicable fees, the parties shall meet and determine if the Agreement shall be extended by another term. If the parties shall so agree, they will negotiate in good faith terms, conditions and fees associated with any renewal term. For purposes of clarification, the liquidated damages specified in Section 5.5 of the Agreement shall apply to the initial term of the Subscribed Services, or the then-current renewal term, as the case may be.

5. Separate Agreement. Rubicon may provide Professional Services regarding the Subscribed Services provided hereunder pursuant to a Statement of Work to the Professional Services Terms executed between the parties. Client understands and agrees that such Professional Services and associated Statements of Work that may be signed are separate and independent contractual obligations from any Order or amendment thereto relating to the access and use of the Subscribed Services. Client shall not withhold payments that are due and payable pursuant to this Order or any other Order(s) or amendment(s) thereto because of the status of Professional Services performed under any Statement of Work.

[SIGNATURES ON FOLLOWING PAGE]

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Order and to bind their respective party hereto.

**ACCEPTED BY:**

**CITY OF RIVERSIDE**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
City Manager

**ACCEPTED BY:**

**RUBICON GLOBAL, LLC**

*Kevin Schubert*  
Kevin Schubert (Jan 19, 2024 10:37 PST)  
\_\_\_\_\_  
Authorized Signature

**Kevin Schubert - President**  
\_\_\_\_\_  
Printed Name and Title

Attest: \_\_\_\_\_  
City Clerk

Certified as to Availability of Funds:

By: \_\_\_\_\_  
Chief Financial Officer

Approved as to Form:

By: *Tan A. Tuo*  
Deputy City Attorney

*Conor Riffle*  
Conor Riffle (Jan 19, 2024 14:14 EST)  
\_\_\_\_\_  
Authorized Signature

**Conor Riffle, SVP**  
\_\_\_\_\_  
Printed Name and Title

## ADDENDUM A

### SERVICE AVAILABILITY

RUBICONSmartCity software is hosted externally using Amazon Web Services (AWS).

Below please find our standard Service Level Availability Policy (SLA):

Rubicon's Service Availability commitment for a given calendar month is **99.5%**. Service Availability is calculated per month as follows:  $(\text{Total time} - \text{Unplanned Outage} - \text{Planned Maintenance}) / (\text{Total} - \text{Planned Maintenance}) \times 100$

- Definitions:
  - *Total time* is the total minutes in the month
  - *Unplanned Outage* is total minutes unavailable due to an unplanned outage in the month
  - *Planned Maintenance* is total minutes of planned maintenance in the month. Currently, Planned Maintenance is four (4) hours for weekly maintenance, four (4) hours for monthly maintenance, four (4) hours for quarterly maintenance. Rubicon's current weekly maintenance begins at 10 pm (Eastern) on Fridays; monthly maintenance begins at 2:00 am (Eastern) on Saturday; and quarterly maintenance begins at 6:00am (Eastern) on Saturday. All times are subject to change upon reasonable notice. If actual maintenance exceeds the time allotted for Planned Maintenance, it is considered an Unplanned Outage. If actual maintenance is less than time allotted for Planned Maintenance, that time is not applied as a credit to offset any Unplanned Outage time for the month. The measurement point for Service Availability is the availability of the Rubicon Service. Customer may request an availability report once per month.
- Service Response
  - Rubicon Production Support and Service Level Availability Policy (SLA)
  - Rubicon's Service Response commitment is: (1) not less than 50% of (online) transactions in two (2) seconds or less and not more than 10% in five (5) seconds or more.
  - Service Response is the processing time of the Rubicon Production Service in the Amazon Web Service data center to complete transactions submitted from a web browser.
  - The time required to complete the request will be measured from the point in time when the request has been fully received by the encryption endpoint in the Amazon Web Service data center, until such time as the response begins to be returned for transmission to Customer. Customer may request a response time report not more than once per month via email.
- Disaster Recovery
  - Rubicon commits to a recovery time objective of twelve (12) hours - measured from the time that the Rubicon Service becomes unavailable until it is available again. Rubicon commits to a recovery point objective of one (1) hour - measured from the time that the first transaction is lost until the Rubicon Service became unavailable.
  - Rubicon will test the disaster recovery plan once every six months and will make available a written summary of the results of the most recent test available to Customer upon its request made via the Customer Center.
- Severity Level Determination Submittal
  - Customer shall reasonably self-diagnose each support issue and recommend to Rubicon an appropriate Severity Level designation. Rubicon shall validate Customer's Severity Level designation or notify Customer of a proposed change in the Severity Level designation to a higher or lower level with justification for the proposal. In the event of a conflict regarding the appropriate Severity Level designation, each party shall promptly escalate such conflict to its management team for resolution through consultation between the parties' management, during which time the parties shall continue to handle the support issue in accordance with the Rubicon Severity Level designation. In the rare case a conflict requires a management discussion, both parties shall be available within one hour of the escalation.<sup>[1]</sup><sub>[SEP]</sub>

- Support Issue Production Levels - Response and Escalation
  - Response Time is the period from the time the Production case was logged in the Customer Center until Rubicon responds to Customer and/or escalation within Rubicon, as appropriate. Because of the widely varying nature of issues, it is not possible to provide specific resolution commitments.
    - SEVERITY LEVEL 1
      - Definition: The Rubicon Service is unavailable for all users
      - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
      - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
      - Escalation: If the problem has not been resolved within one (1) hour, Rubicon will escalate the problem within the appropriate Rubicon organization. The escalated problem will have higher priority than ongoing support, development or operations initiatives.
      - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 1 issue is logged until such time as it is resolved.
    - SEVERITY LEVEL 2
      - Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more critical business processes with a significant impact and no workaround exists.
      - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
      - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
      - Escalation: If the problem has not been resolved within four {4} hours.; Customer may request that Rubicon escalate the problem within the appropriate Rubicon organization where the escalated problem will have higher priority than ongoing development or operations initiatives.
      - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 2 issue is logged until such time as it is resolved.
    - SEVERITY LEVEL 3
      - Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more important business processes. A workaround exists but is not optimal.
      - Rubicon Response Commitment: Rubicon will respond within four (4) hours of receipt of case.
      - Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
      - Escalation: If the problem has not been resolved within one (1) week, Customer may request that Rubicon escalate the problem to the appropriate Rubicon organization.
      - Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.
    - SEVERITY LEVEL 4:
      - Definition: The Rubicon Service contains an issue that may disrupt important business processes where a workaround is available or functionality is not imperative to Customer's business operations.

- Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hour of receipt of case.
    - Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for a future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
    - Escalation: None.
    - Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.
  - CUSTOMER CARE or OPERATIONS REQUEST (Severity Level 5):
    - Definition: Non-system issues such as Named Support Contact change, requests for SLA reports or business documents, etc. If necessary to open a Support case requesting assistance, Severity 5 should be used.
    - Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hours of receipt of case.
    - Resolution Commitment: Rubicon will respond to request. Customer will be notified of status changes.
    - Escalation: None.
    - Customer Commitment: Customer will respond to Rubicon requests for additional information in a timely manner.
- Rubicon Support Scope
  - Rubicon will support functionality that is developed by Rubicon and under its direct control. For any other functionality, and/or issues or errors in the Rubicon Service caused by issues, errors and/or changes in Customer's information systems and/or third party products or services, Rubicon may assist Customer and its third party providers in diagnosing and resolving issues or errors but Customer acknowledges that these matters are outside of Rubicon's support obligations. Service Level failures attributable to (i) Customers acts or omissions; and (ii) force majeure events shall be excused.
- Rubicon Service Credit
  - In the event of a failure by Rubicon to meet the Service Availability and Service Response minimums as set forth in the SLA, as Customer's sole and exclusive remedy, at Customer's request, Rubicon shall provide service credits in accordance with the following:
  - a) First month in any rolling six (6) month period: 10% of the Subscription Fee paid for the applicable month for the affected Service
  - b) Second month in any rolling six (6) month period: 20% of the Subscription Fee paid for the applicable month for the affected Service
  - c) Third month in any rolling six (6) month period: 30% of the Subscription Fee paid for the applicable month for the affected Service
  - d) Fourth month in any rolling six (6) month period: 40% of the Subscription Fee paid for the applicable month for the affected Service
  - e) Fifth month in any rolling six (6) month period: 50% of the Subscription Fee paid for the applicable month for the affected Service or within thirty (30) days of such failure Customer shall have the option to terminate the entire Agreement and upon such termination Customer shall receive a refund of all prepaid subscription fees that are unearned as of the date such termination is effective.
  - If more than one of the above (a through e) is triggered, Customer will be eligible for the greater amount for the applicable month only. Credits shall be deducted from subsequent invoices for subscription fees or other fees or, upon expiration or termination of the Agreement, paid to Customer directly.



**ADDENDUM B**  
**PRICING PROPOSAL**

The proposed RUBICONSmartCity cost is for 40 vehicles in the City of Riverside’s sanitation fleet. A breakdown of all costs have been included below:

<b>40 Vehicles - City Procured Smart Devices (BYOD)</b>		
	<i>UNITS</i>	<i>COST</i>
<b>Total Upfront</b>		<b>\$30,000.00</b>
Rubicon Y Installation	40 Vehicles	\$3,750.00
Launcher Training/Implementation	140 Hours(**)	\$26,250.00
<b>Total Annual Recurring</b>		<b>\$77,760.00</b>
<b>RUBICONSmartCity Software</b>		<b>\$68,400.00</b>
Portal & Mobile App Software License (Solid Waste Software)	40 Device Licenses	\$68,400.00
<b>Rubicon Y</b>		<b>\$9,360.00</b>
Y Hardware (Telematics)	40 Devices	\$9,360.00
Y1		\$107,760.00
Y2		\$77,760.00
Y3		\$77,760.00
Y4		\$77,760.00
Y5		\$77,760.00
Optional Y6		\$69,465.60
Optional Y7		\$69,465.60
<b>TOTAL CONTRACT VALUE (YRS 1-5)</b>		<b>\$418,800.00</b>
<b>TOTAL CONTRACT VALUE (YRS 1-5 &amp; OPTIONAL YRS 6-7)</b>		<b>\$557,731.20</b>

(\*\*) The pricing above is based on estimated 140 hours required for Launcher Training/Implementation services determined based on the information provided by the City to date. In case the services require additional time to the estimated hours above, Rubicon will invoice the City the overage at the hourly rate of \$187.50 per each additional hour.

**RUBICONSmartCity Software**

**What’s Included in Portal & Mobile App Software License (Solid Waste):**

**Annual Recurring Cost - \$68,400.00 (Years 1-5)**

- Unlimited city staff access to the RUBICONSmartCity Solid Waste Portal (Software)
- Mobile App Licenses
- External hosting in a secure cloud environment
- All personnel training, hardware and software maintenance and warranty
- Access to all currently available features and software updates and upgrades
  - This includes in field supervisor application, as well as all Mobile App and Portal developments as they become publicly available

## **Rubicon Y**

### **What's Included in Rubicon Y:**

**Annual Recurring Cost - \$9,360.00 (Years 1-5)**

- Pod devices (Geotab) for vehicles.
- All mobile data services and costs
- All hardware maintenance and warranty

## **Professional Services**

### **What's Included in Rubicon Y Installation:**

**One Time Cost - \$3,750.00**

- Rubicon will install all in-vehicle devices in the city's vehicles
- Rubicon will utilize an approved certified vendor to complete all of the necessary telematic installations

### **What's Included in Launch/Training/Implementation:**

**One Time Cost - \$26,250.00**

- Rubicon's Customer Success Team will conduct a series of training sessions for participating operators to ensure that they are able to utilize the ICI
- Rubicon will conduct separate Portal training with the city's fleet managers, supervisors, customer service representatives, etc.

## **Extensions**

The fees for any extensions or renewals beyond Year 5 may be adjusted no more than once in twelve (12) months by the percentage change between the Consumer Price Index baseline ("CPI Baseline") and the most recently available Consumer Price Index for all Urban Consumers – U.S. City Average – Services ("CPI") as published by the Bureau of Labor Statistics, at the time of the price review and adjustment. The month and year of the initial CPI Baseline are October, 2023.

As outlined in this contract, the City has the option to trigger two additional 1-year extension terms, priced at \$69,465.60 per year.

## **Line Item Add-Ons for Additional RUBICONSmartCity Technology**

Should the City wish to add additional technology, devices, or services during the course of the contract, the City may purchase these off of the list below, which is also available on Sourcewell.

<b>RUBICONSmartCity Add-On Line Item Pricing</b>		
<b>Professional Services: One Time Cost</b>		
	<i>UNITS</i>	<i>COST</i>
Rubicon Y Installation	Per Vehicle	\$93.75
API Integration	Per Hour	\$187.50
Launcher Training/Implementation	Per Hour	\$187.50
Fleet Optimization	Per Vehicle	\$1,875.00
<b>Software + Hardware: Annual Recurring Cost</b>		
	<i>UNITS</i>	<i>COST</i>
<b>RUBICONSmartCity Software</b>		
Portal & Mobile App Software License (Solid Waste Software)	Per Device License	\$855.00
Portal & Mobile App Software License (Street Sweeping Software)	Per Device License	\$1,215.00
<b>Rubicon X</b>		
iPhone + Mobile Data	Per Device	\$1,215.00
iPad Tablets + Mobile Data	Per Device	\$1,080.00
<b>Rubicon Y</b>		
Y Hardware (Telematics)	Per Device	\$234.00
<b>Rubicon Z</b>		
Rubicon Z (Vision - AI Models)	Per Device	\$4,050.00
Rubicon Z (Surfsight)	Per Device	\$1,800.00

**ADDENDUM C**  
**SCOPE OF WORK**

City of Riverside, CA Scope of Work



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- 1. Project Overview
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  - 1.3 Scope
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- 2. Project Approach
  - 2.1 Project Change Request Process
  - 2.2 Deliverables and Acceptance Criteria
    - 2.2.1 Project Management
    - 2.2.2 RUBICONSmartCity Application Configuration
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## 1. Project Overview

This Statement of Work ("SOW") defines the scope of work that will be performed by Rubicon and the City of Riverside, CA to implement RUBICONSmartCity. This SOW will provide an overview of the project elements necessary for this endeavor to be successful.

### 1.1 Background

The Department of Public Works, Solid Waste Division, is seeking vendors to help pilot smart trash collection operations in the City of Riverside.

### 1.2 Objectives

This project shall deliver RUBICONSmartCity to the City of Riverside. RUBICONSmartCity will allow Riverside's agencies to support real-time dynamic routing, assignment, driver navigation, and dashboard-based monitoring while analyzing several real-time data streams reflecting existing conditions of the right-of-way and providing a two-way communication system for truck drivers.

The objectives of this project are to deliver a smart trash collection software that will:

- Digitize operations, reducing the need for paper, enabling functionalities like turn-by-turn navigation, and increasing flexibility
- Monitor, collect, and analyze data on the City's operations to assess route efficiency and other opportunities for cost savings
- Utilize RUBICONSmartCity to identify common citizen issues through issue tagging at the curb and reduce unnecessary go back (i.e. not out, contamination, broken containers)

### 1.3 Scope

#### 1.3.1 In scope

The purchase and implementation of RUBICONSmartCity which includes:

- Customer, Vehicle, and Driver data upload into the application for further reporting and analysis
- Utilize with 40 solid waste vehicles and City procured devices with the RUBICONSmartCity application.
- 1 license per device, device management (accessible through manager level in RUBICONSmartCity) portal and can see how many active/credit licenses once driver completes route.
- Field Testing of the In-Cab-Interface (ICI), and Driver App.
- Testing of the Manager Portal, ICI, and Driver App.
- Training for equipment operators, Solid Waste Management (SWM) Customer Service, SWM managers, and 311 staff.

### 1.3.2 Out of scope

- Anything not included in the section 1.3.1 In Scope.

## 2. Project Approach

Project engagements such as this require strong collaboration between Rubicon and the City of Riverside to be successful. The Project Team supported by the Stakeholders will employ a hybrid implementation approach that utilizes both Agile and Waterfall methodologies. SDLC and PMI best practices will be used to ensure the final solution meets Riverside's requirements and achieves the project objectives.

### 2.1 Project Change Request Process

If the Rubicon scope outlined in this SOW must be altered (i.e., scope, schedule, or budget) regardless of if this alteration impacts the costs associated with the project, the following Change Request process will be adhered to.

- Rubicon will provide the City of Riverside with a Rubicon Change Request, that details what the change is and at minimum the impacts to the scope, schedule, and budget. If warranted the Change Request should also include the risks, issues, and dependencies associated with the change
- The City of Riverside Project Team will review the Rubicon Change Request to ensure the full impact of the change is understood. If required the City of Riverside and Rubicon will meet to ensure the City of Riverside completely understands the change being requested.
- Upon the outset of the City of Riverside's Request being identified, the City of Riverside Project Manager will advise the City of Riverside Project Sponsors of the Change and rough order of magnitude (i.e., small, medium, large) the anticipated impact it will have on the project.
- Once the City of Riverside Project Team has confirmed the impact of the change is completely understood, the Riverside Project Manager will present the Change Request to the Riverside Sponsors for formal approval.
- Once a decision is rendered by the Riverside Project Sponsors, the Riverside Project Manager will provide the Rubicon Project Manager with written/electronic notice of the decision and if approved the change will be officially added to the project scope. If the change is not approved, it will be dispositioned as an issue, risk, or closed by the Riverside Project Manager.
- If the Change Request impact on the schedule risks or causes a work stoppage prior to the Change Request process being completed, the Rubicon Project Manager and Riverside Project Manager must work to expedite this process to avoid or at minimum reduce any work stoppage(s).



## 2.2 Deliverables and Acceptance Criteria

### 2.2.1 Project Management

As a part of this contract, Rubicon will provide a Launch Manager, hereby referred to as the Rubicon Project Manager, for Project Management Services to oversee the execution of the deliverables contained within this SOW.

- A Rubicon project manager will manage the timeline, deliverables, and financial components for all Rubicon designated tasks within the project to ensure the timely delivery of items identified as “In scope” within this SOW and all approved change orders.
- A Rubicon project manager will schedule and facilitate, in conjunction with the Riverside project manager, the project kick-off and close-out meetings.
- A Rubicon project manager will prepare meeting minutes for all scheduled meetings in a format defined by the Riverside Project Manager.
- A Rubicon project manager will, in conjunction with Riverside project manager, develop, maintain, and adhere to a mutually agreed upon project timeline that incorporates both Rubicon and Riverside tasks into a single accepted document that can be followed through the life cycle of the project.
- A Rubicon project manager will manage, in conjunction with Riverside project manager where applicable, escalations where needed.
- A Rubicon project manager will assist the Riverside project manager in completing Riverside required deliverables and project artifacts (e.g., Project Charter, Architecture Diagram, etc.).
- A Rubicon project manager will aid in the development of all Riverside PM documentation or project artifacts when requested.
- A Rubicon project manager will ensure that agreed to members of the Riverside staff are sufficiently educated on the Rubicon application to understand the implications of initial design decisions.
- A Rubicon project manager will provide the Riverside project manager with timely descriptions of the items identified as a “City task” within this SOW and the project schedule.
- A Rubicon project manager will advise the Riverside project manager of expected completion dates for items identified as “City task” within this SOW and the project schedule.
- A Rubicon project manager will advise the Riverside project manager of the impact on the expected delivery dates of “City task” items when prerequisite City tasks, such as the completion of configuration decisions or approval of report specifications, are advanced or delayed.
- A Rubicon project manager will monitor the progress of the project and advise the Riverside project manager of risks to its on-time completion.
- Project managers will coordinate the completion and approval of change orders for their corresponding organizations.
- Rubicon will utilize multiple project tools, i.e., MS Project, Jira, etc. so that project plans can be electronically sent and reviewed between Rubicon and

Riverside in a format that can be read by existing Riverside Project Management tools. The project plan will include the following components:

- Project tasks
- Dependencies
- Scheduled start and completion dates
- Project milestones and dates
- Staffing assignments
- Decisions, Actions, Issues and Risks Log
- The Rubicon project manager will be the main point of contact for Rubicon and will assure appropriate resources available to the Rubicon project team as required.
- The Rubicon project manager will perform quality assurance on any deliverables produced, prior to the Riverside project manager's inspection and approval.
- The Rubicon project manager will provide a weekly status report containing the following components, precise format will be decided upon by the Riverside project manager:
  - Project status overview including significant accomplishments and milestones.
  - Tasks completed during the current reporting period.
  - Activities planned for the next reporting period.
  - Hours expended during this reporting period and total hours expended by deliverable for Time and Materials deliverables.

Percentage complete for fixed fee deliverables.

- The Rubicon project manager will participate in a weekly teleconference to review the status of the project with Riverside.
- The Rubicon project manager will develop and communicate updates to, a Training Plan for approval by the Riverside Project Manager.
- The Rubicon project manager will participate in a weekly internal teleconference to review the status of the project with the Rubicon project team.
- The Rubicon project manager will provide a documented punch list of problems and resolutions for all issues owned by Rubicon.
- The Rubicon project manager will take a lead role in tracking and obtaining resolution for obstacles, problems, or bugs that are found within RUBICONSmartCity
- The Rubicon project manager will provide a periodic travel plan during the project to describe the intended dates, affected Rubicon staff, length of stay, activities, and anticipated costs for the trip. Trip length will be limited to no more than 3 days on site per trip.

## **Qualifications/Exclusions**

- Riverside will identify a single point of contact to act as Project Manager (PM) to Rubicon. That individual will have sufficient time available weekly, estimated to be up to 100%, to perform the tasks expected in a timely fashion for the success of this project.
- Riverside's project manager should have a broad-based understanding of the project's goals and objectives.
- Riverside's project manager will be responsible for scheduling all project events with Riverside resources.
- The City of Riverside will make appropriate resources available to the project team to meet the set objectives.
- A mutually agreed upon project timeline will be adhered to that incorporates both Rubicon and Riverside tasks.
- The Riverside project manager will ensure the timely delivery of items identified as "City task" within the project schedule.
- The Riverside project manager will advise the Rubicon project manager of expected delivery dates for items identified as "City task" within this SOW and the project schedule.
- The Riverside project manager will ensure that change orders contain a full specification of the changes required and will coordinate the Riverside completion and approval of change orders.
- The Riverside project manager will ensure that customizations, if necessary, are fully specified and documented.
- The Riverside project manager will ensure that all Riverside team members have a clear understanding of their responsibilities to the project.
- Riverside's project manager will participate in a conference call to review the status of the project at a set interval as deemed appropriate based on the project (i.e., daily, weekly, bi-weekly, etc.).
- Riverside's project manager will ensure timely decision-making regarding alternatives impacting the overall solution.
- Riverside's project manager will ensure that all project deliverables are reviewed and accepted or rejected within 10 business days from receipt, unless otherwise agreed to with the Rubicon project manager.

## **Acceptance Criteria**

- The Project Management services meet the preceding deliverable specifications.
- The Riverside Project Manager obtains Riverside Sponsor final approval and acknowledges this with written/electronic acceptance to Rubicon of the deliverable and any associated costs.

### 2.2.2 RUBICONSmartCity Application Configuration

Application configuration will be determined based on the Solution Design and the resulting deliverable documentation. The designs will be included in scheduled weekly calls with the Smart City Team.

Deliverables will include:

- Rubicon will schedule and perform all necessary application configurations to implement the Riverside approved deliverables within RUBICONSmartCity's existing functionality.
- Rubicon will provide system application configuration recommendations to Riverside to achieve performance requirements.
- Rubicon will manage all configuration efforts using best practices and management procedures.

#### **Qualifications/Exclusions**

- Riverside will prioritize the business requirements to be addressed with Rubicon.
- Application has been configured to ensure that all requirements perform as intended in the Solution Design for the currently existing version of RUBICONSmartCity.
- Rubicon will verify that all required application components are operating in accordance with Riverside approved configuration and requirements.

#### **Acceptance Criteria**

- The Rubicon configurations meet the preceding deliverable specifications.
- The Riverside Project Team reviews and confirms the Rubicon configuration meets the Riverside approved configuration and requirements.

### 2.2.3 Rubicon Training

Training will be conducted by Rubicon's Launch Team. Rubicon will be responsible for training Riverside's core team (both functional and technical roles) in all aspects of the product and assisting with set-up, configuration, and testing. Rubicon will organize comprehensive and specialized training sessions for all Riverside users of the RUBICONSmartCity software and associated interfaces to ensure Riverside staff can successfully use the implemented solution. Rubicon will provide training and support in the following formats:

- In Person, On-Site Training
- Remote, Webinar Trainings
- New Staff Training

#### **Qualifications/Exclusions**

- Riverside will provide users for training.

- Rubicon will provide Driver training in 1-hour Q&A sessions, in-person.
- Rubicon will provide Driver training on the In-Cab-Interface (ICI) and Driver App.
- Rubicon will conduct and schedule training sessions with all app users ahead of launch and supply ICIs with demo routes.
- Rubicon will provide Dispatch and Supervisor training in 1 hour to 1.5-hour Q&A sessions in-person.
- Rubicon will provide Dispatch, Supervisors, and Management training on the Manager Portal.
- Rubicon will provide Riverside appointed System Administrators with 30 minutes to 1-hour Q&A sessions in-person.

### **Acceptance Criteria**

- Riverside's Drivers can utilize and navigate through the ICI confidently with the Rubicon provided demo routes.
- Riverside's Dispatchers and Supervisors can confidently use the Fleet Insights functionality to improve safety, customer service, and operational efficiencies.
- Riverside's Management can confidently use the Manager Portal.
- Riverside's Management can properly utilize the Manager Portal to analyze and understand overall data trends.
- Riverside's appointed Super Users can confidently navigate and utilize all functions of the Driver App and all functionality provided through the Portal.
- Riverside's appointed System Administrators can confidently set-up individual logins for users on the Manager Portal, and assign certain levels of access for users, and add/edit user information.

### **2.3.1 Optional Rubicon Train-the-Trainer Training**

Rubicon can provide Rubicon Subject Matter Experts of Riverside's RUBICONSmartCity to conduct Training classes with Riverside Train-the-Trainers (AKA Super Users). Deliverables will include:

- Rubicon can schedule Training Classes with Riverside's identified Train-the-Trainers.
- Rubicon can provide a class outline to the Riverside Project Team for review at least 1 week prior to the Train-the-Trainer classes beginning.
- Rubicon can provide Train-the-Trainer classes for all Riverside user types that cover all features and functionality of the respective Riverside user types.
- Rubicon can provide Riverside with an electronic Frequently Asked Questions document after the Train-the-Trainer classes are completed that reflects the most common questions asked during the Train-the-Trainer classes for Riverside's use.
- Rubicon can record all Train-the-Trainer classes and provide the recordings to Riverside for their use.

### **Qualifications/Exclusions**

- Riverside can identify the Train-the-Trainers to participate in the Train-the-Trainer Training sessions.
- The type of training sessions (virtual vs. in-person) can be identified early in the Planning phase of the project.
- In-person training can be done at an Riverside Location with the appropriate IT and AV technology.
- In-person training can be completed over a 2–3-day period, during normal Riverside business hours.
- Train-the Trainer activities are to be completed during the implementation project. Any additional request for Rubicon to conduct Train-the-Trainer activities after completion of the implementation project will be managed through the Post Project Change Request process.

### **Acceptance Criteria**

- Riverside Train-the-Trainers can competently navigate through and use the Rubicon application and show an understanding of each user role type.
- The Riverside Project Team confirms the Riverside Train-the-Trainers are prepared to successfully Train Riverside staff.
- The Riverside Project Manager obtains Riverside Sponsor approval and acknowledges this with written/electronic acceptance to Rubicon of the deliverable and any associated costs.

## **3. Assumptions and Dependencies**

The following Assumptions and Dependencies have been identified while developing this SOW. These will be monitored over the project lifecycle and addressed as necessary by Riverside and Rubicon.

### **3.1 Assumptions**

- Riverside, Rubicon, and any necessary contractors/contingency workers will have the availability, skills, and tools necessary to deliver the scope of this project within the estimated duration outlined in the approved, baselined project schedule.
- Riverside, Rubicon, and any necessary contractors/contingency workers will deliver a high-quality RUBICONSmartCity integrated application that meets or exceeds Riverside's requirements, and the objectives outlined in this SOW, the Solution Design Document as well as any supporting project documents (e.g., Interface Requirements Document).
- During User Acceptance Testing Riverside agency users will competently execute the test cases they are assigned and be responsible for approving or reporting defects and re-testing all assigned test cases.

### 3.2 Dependencies

- There are no known external dependencies currently (e.g., other projects).
- Rubicon training alone will not necessarily support proper use of the new application. Organization Change Management activities will be required by the Riverside agencies using RUBICONSmartCity to ensure the application is embraced and properly used by the end users.