

AMENDING AGREEMENT DATED MARCH 3, 2023
(the “2023-03 Amending Agreement”)

TO SOFTWARE AS A SERVICE AGREEMENT DATED FEBRUARY 5, 2019

BETWEEN:

CITY OF RIVERSIDE
(“Customer”)

- and -

SMARTWORKS, A DIVISION OF N. HARRIS COMPUTER
CORPORATION
(“Harris”)

WHEREAS the parties have agreed to certain amendments to the Software as a Service Agreement dated February 5, 2019 between Customer and Harris (the “**SaaS Agreement**”) in accordance with its provisions;

NOW THEREFORE Customer and Harris, each in consideration of the promises and agreements of the other, hereby agree as follows:

1. The SaaS Agreement is amended as follows, such amendment to be effective on October 1, 2023:

A. Schedule “A” is hereby deleted and replaced with the attached Schedule “A” (2023);

B. Section 5 is hereby deleted and replaced with the following:

“5. Term

Subject to earlier termination in accordance with Section 15, this Agreement will commence on October 1, 2023 and shall continue for a period of five (5) years (the “**Initial Term**”). Following the Initial Term, this Agreement shall automatically renew for successive two (2) year periods each (each a “**Renewal Term**”) unless and until notice is provided by one party to the other party of its intention not to renew not less than one hundred and twenty (120) days prior to the end of the then current Term. The Initial Term and Renewal Term(s) shall collectively be referred to as the “**Term**”. Each year of the Term shall be an “**Annum**” the first of which commences on October 1, 2023.”

C. The following is added as Section 15.(b)(vi) immediately following Section 15(b)(v):

“15.(b)(vi). Commencing on the date of the first Renewal Term and subject to Section 14(b), this Agreement may be terminated for convenience by either party on one hundred and twenty (120) days’ prior written notice (“**Termination for Convenience**”).

D. Section 16(e) is hereby deleted and replaced with the following:

“ 16(e). A Termination for Convenience by Customer pursuant to Section 15(b)(vi) prior to the end of a Renewal Term, shall result in the following: an acceleration of the Annual Subscription Fees due for each Annum of the applicable Renewal Term not yet invoiced and/or paid, which amount will be due immediately. Prepaid Fees are non-refundable. This section will not affect Harris’ right to collect any further invoiced amounts for other Professional Service Fees.”

2. Terms used in this 2023-03 Amending Agreement that are not defined herein will have the meanings ascribed to such terms in the SaaS Agreement.
3. Except as expressly amended in this 2023-03 Amending Agreement, the parties ratify and confirm the SaaS Agreement and acknowledge that the SaaS Agreement, as amended by this 2023-03 Amending Agreement, is in full force and effect as of the date first written above.
4. This 2023-03 Amending Agreement may be executed in separate counterparts (whether by facsimile signature, PDF via e-mail, or otherwise), each of which, when so executed, will be deemed to be an original and all of which when together, will constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have caused this **2023-03 Amending Agreement** to be duly executed effective as of the date first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

Certified as to Availability of Funds:

By: 
Chief Financial Officer

Approved as to Form:

By: 
Deputy City Attorney

SMARTWORKS, a division of N.
HARRIS CORPORATION, a Canada
corporation authorized to do business in
the State of California

By: *Cécile Chabot*
Its: Executive Vice President

By: *Marianne Pelletier*
Marianne Pelletier (Aug 14, 2023 11:12 EDT)
Its: Director of Customer Success

**Schedule "A" (2023)
Fees and Payment Schedule ***

Customer shall pay the Annual Subscription Fees set out in the table below

Annual Recurring Fees (includes Support Services)	Amount
Annual Subscription Fees:	\$298,000
(based on the number of Maximum Channels and Maximum Meters)	

The Annual Subscription Fees are based on the maximum meters, channel and Interval lengths set out in the table below

Profile	Bill Config	Channel #	Interval Length	Meter Count
SinglephaseRES	101 134	1	60	101,143
SinglephaseCOM	102	1	60	3,168
SinglephaseTOU	144	1	60	64
SinglephaseNet	110 111	1	60	5,405
SinglephaseNetDemand	162	1	60	11
SinglephaseNetTOU	192	1	60	276
PolyphaseRES	101 134	3	15	889
PolyphaseCOM	102	3	15	7,205
PolyphaseTOU	151	3	15	542
PolyphaseNet	111	3	15	2
PolyphaseNetDemand	162	3	15	98
PolyphaseNetTOU	191	3	15	48
TOTAL				118,851

Professional Services Fees

Type of Professional Services	Gold Services Package (Appendix I attached)	Custom Development
Professional Services Fees	No Fees for first 40 hours	Customer will not be invoiced if Maintenance Fees are less than \$1,000.

Customer shall pay Harris' then current Professional Services Fees for Professional Services required in addition to the service package.

* All charges are exclusive of out of pocket expenses for Professional Services performed. Charges for actual and reasonable out-of-pocket expenses including, but not limited to, travel and lodging expenses will be billed monthly as incurred. All pricing is exclusive of applicable sales, use or similar taxes. Customer is responsible for any such taxes that may apply; if Customer is tax exempt, evidence of such tax exemption must be provided. Lapsed payments may lead to denial of access to the Service in accordance with Section 16(b)(ii) of the Agreement.

PAYMENT TERMS:

The Annual Subscription Fees will be due in advance of the Initial Term and each Renewal Term, and is non-refundable.

Professional Services Fees stated above, and any applicable travel and lodging expenses, will be invoiced as incurred and shall be due and payable thirty (30) days from the date of invoice.

ADDITIONAL PROFESSIONAL SERVICE(S) FEES:

Professional Services not detailed in the SOW shall be considered Additional Professional Services and may be provided on-site or via the telephone. Additional Professional Services work provided on-site or via telephone is billed at the rate of two hundred and forty-five dollars (\$245) per hour. Additional Professional Services work performed on-site does not include travel, lodging and per diem expenses. Professional Services performed one year or more after the execution date of this Agreement shall be billed at the then current SmartWorks Professional Services rates. Help line support and Support Services do not include training or other Professional Services.

Customer shall incur a seven-hundred fifty dollar (\$750) daily surcharge for any Professional Services provided on weekends or SmartWorks recognized holidays; plus the corresponding standard Professional Services fees and any applicable travel charges per paragraph 4.

Additional Professional Services may include, but are not limited to, the following: software installation, configuration, data validation, system setup, system balancing, interface setup, interface testing, process training, application training and business requirements gathering.

RESET OF TERM TO MATCH FISCAL YEAR:

Customer may request that SmartWorks match the annual invoicing of the Annual Subscription Fees with Customer's fiscal year. In order for Customer to elect to match annual invoicing with their fiscal year, Customer must make said request to SmartWorks in writing and during the Initial Term of this Agreement. If such election is made SmartWorks shall, a) issue a prorated invoice for any Subscription Fees due for the portion of the year remaining in Customer's current fiscal year, b) extend the then current term to expire at the end of the Customer's subsequent fiscal year, c) issue an annual invoice thereafter on the annual anniversary date of Customer's fiscal year for any Subscription Fees due, and d) reset future annual terms to expire at the end of Customer's fiscal year. Annual Subscription Fees are invoiced in advance of an upcoming annual term. Subscription fees shall be due and payable thirty (30) days from date of invoice.

Third Party Service Provider's Online Privacy Policy: <https://www.ibm.com/privacy/details/us/en/>

Appendix I

SmartWorks Professional Service Package

This Professional Service Package (the “Services Package”) describes the scope of the selected services package offered by the SmartWorks division of N. Harris Computer Corporation (“Harris”) for City of Riverside (the “Customer”), upon written authorization to proceed from Customer.

Customer: City of Riverside
Description of Change: GOLD Services Package

Related Documents

This Services Package is subject to the terms and conditions as defined in the document referenced below.

1. Software as a Service Agreement entered into between City of Riverside and N. Harris Computer Corp.

Scope of Engagement

Description

The SmartWorks Gold Services Package includes forty (40) hours of prepaid remote or on-site assistance, training, or consultation, and one (1) Harris Conference ticket for full-price.

Examples of engagement for these services hours under the Services Package can vary between consultation needs (anywhere from one (1) hour to the maximum), advanced configurations or customizations, refresher or new training, third party integration consultation, business reviews, etc.

Assumptions and Constraints

1. Customer will provide the appropriate remote access to its network, facilities, and systems as may be required to perform activities from one of Harris's locations. Harris shall abide by all rules and directions of Customer when accessing Customer's network, facilities or systems. A Change Order may be created if appropriate remote access to its network is not available, resulting in project delays.
2. Customer agrees to facilitate any required Customer-side logistics for the fulfillment of this agreement.
3. If the scope of work, defined in a Statement of Work that utilizes this service offering, exceeds the hours defined in section 2.1 above, Customer can upgrade to the next level, if applicable. Alternately, Customer can pay for the additional hours at the then current effective rate of SmartWorks
4. SmartWorks may increase the Hourly Rate from time to time on sixty (60) days' notice to Customer.
5. Customer will secure the appropriate staff in a timely fashion according to the agreed schedule. Harris accepts that there can be challenges in coordinating meetings with multiple resources. Customer accepts that limitations in access to the optimum personnel may result in compromising the content of the deliverables.
6. Customer will be responsible for the continued operation of any Test or Development environments required by Harris and ensure that proper backups are being maintained. In the event of an environment outage, any additional costs required by Harris to retrieve data, configurations or customizations due to an unforeseen outage will be the responsibility of Customer.
7. The discounted conference tickets are limited to the number described in section 2.1 above and additionally limited to the annual term of this contract. The discounted conference tickets do not include pre-conference sessions.
8. It is the responsibility of the Customer to ensure that the conference registrant(s) register(s) prior to early bird deadline each year.
9. The Services Package defined in section 2.1 above cannot be applied to or used to pay a statement of work that has been approved by Customer prior to the submission date in Section 1 of this Services Package.
10. To utilize the hours in the purchased Services package defined in section 2.1 above, the Customer will submit a service request each time through the SmartWorks Customer Hub.
11. Customer can only purchase one Services Package in a year but if purchased, Customer can upgrade their Services Package after six (6) months in current term of the year. A change order will be provided for the upgrade request.
12. On-site services are available at an additional service charge plus travel expenses.
13. There is no charge to reschedule the date of service (or a part of it) provided that Harris is informed five (5) business days or more prior to the scheduled start date of the scheduled work.
14. Conference tickets are non-refundable if unused or if a force majeure circumstance causes the conference to be cancelled or modified.
15. Conference options will be sent to Customer contacts for Service Package each year.

16. This service package covers professional services engagement, and does not include Infrastructure work (such as database upgrade, migrations, etc.) and new development by R&D.
17. This statement of work only covers work done during regular business hours. Any work needed during a holiday, the weekend or after 8pm ET during the week is considered after-hours and a separate quote will be required.
18. Implementation of new modules are included as long as the number of hours in the Service Package is sufficient, otherwise a new quote will be issued at the current standard rate for additional hours. License, maintenance and SaaS costs cannot be covered by the service package, and will be part of a separate quote.

Utilization Approach

Customer will submit all requests for this services package within the SmartWorks Customer Hub ticketing system. Upon receipt of a request to utilize the Services Package, Harris will reach out to finalize start date and the scope of work.

1. Work will be scheduled to commence approximately 90 calendar days from receipt of signed contract or 90 calendar days upon receipt of new project request, unless otherwise mutually agreed upon between Harris and the customer.
2. Customer will be contacted to finalize scheduled start date for their engagement and when they will be needed to provide feedback to Harris.
3. Approximately 1 week prior to beginning the work, Customer will be contacted by Harris to confirm that they will be beginning the work.
4. An estimated completion date for each service request will be provided.
5. Upon completion of the various tasks used by the hours detailed in the Statement of Work, Customer will be contacted by the Harris assigned to the Statement of Work to walk through the steps required for testing, if applicable.
6. Issues requiring support following acceptance of this work will be logged by Customer through Customer Hub system, and will be addressed accordingly to the terms Support and Maintenance Agreement between Customer and Harris.

Term and Termination

Any unused hours expire on the annual renewal date of this Service Package.

The Services Package will become effective the date that it is executed by Customer (the “Effective Date”) for a term of one (1) year.

The Services Package will automatically renew, matching the annual invoicing of the Support and Maintenance Agreement

This Services Package will automatically terminate upon termination of the Support and Maintenance Agreement.

Harris shall not refund any fees paid for any Services Package.

In the event Customer fails to pay all or any portion of an invoice on or before sixty (60) days after the date it becomes due, Harris shall have the option to suspend or terminate this Services Package.

Suspension or termination of the Services Package for any reason shall not relieve the Customer of its obligation to pay:

- Its outstanding invoices, including any applicable late charges;
- Any fees for services performed through the terminate date which have not yet be invoiced; and
- Any approved Travel and Living costs.

Pricing

Fees

Professional Services

This is a fixed price quote for a Services Package.

Support and Maintenance

This Services Package cannot be used to pay the annual Support and Maintenance Fees.

Taxes

Fees exclude any applicable taxes.

Payment Schedule

Customer will be invoiced based on the following payment fees and schedule. All prices are in USD.

Description	Payment	
Contract Signing (Quote)	100%	\$0.00
Total	100%	\$0.00

Invoices are payable on a net 30-day basis.

Travel and Living Expenses

- Fees mentioned in this Services Package do not include any travel and per diem expenses incurred for the Harris on-site visit required for any Statement of Work generated as a result of this Services Package.
- Customer shall also pay or reimburse travel expenses plus a per diem reasonably incurred in furtherance of Harris duties associated with any Statement of Work generated as a result of this Services Package.