

ITEM #22-0259**MASTER SOFTWARE SERVICES AGREEMENT**

THIS MASTER SOFTWARE SERVICES AGREEMENT (this "Agreement") is made and entered into by and between RUBICON GLOBAL, LLC, a Delaware limited liability company ("Rubicon"), and the CITY OF SANTA FE, NEW MEXICO with a principal place of business at 200 Lincoln Ave Santa Fe, NM ("City").

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 City, 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 "City" 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. City shall be fully responsible for the performance of all of its Affiliates' obligations under this Agreement.

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

1.6 "Effective Date" means the earlier of (a) the date this Agreement and the first Order are accepted and signed by Rubicon and the City;

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 City.

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 City 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 City 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 City, 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, City’s payment of all applicable fees, Rubicon hereby agrees to provide the Subscribed Services, and in connection therewith, Rubicon hereby grants to City 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 SOW and as specified in the applicable Order, solely for City’s internal use; (b) to transmit and receive City Content to and from the System; and (c) use the Documentation in connection with such rights. The rights granted to City 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 City are reserved by Rubicon and its licensors.

2.2 Limitations. City 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, City 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. City will be responsible for providing first line maintenance and support to its authorized end users in connection with the Subscribed Services. Qualified employees of City 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 City 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. City 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. City 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 City 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. City 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. City Obligations.

3.1 Resources. Except as expressly set forth herein, City 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. City 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 City or its employees, agents, contractors, representatives or authorized users, City 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 City, 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 City Content, City 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 City access Third Party Offerings. If City elects to use the Subscribed Services with Third Party Offerings, City 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 City Content to and from such Third-Party Offerings for purposes of delivering the Subscribed Services purchased by City. City's or its user's use of third-party websites must at all times comply with the terms of service governing such websites. City 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 City 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 City 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 City grant Rubicon authorizations, passwords or other user credentials to a Third-Party Offering ("Rubicon Access Codes") to retrieve City Content or to enable interoperability with the Subscribed Services, City 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 City, all rights necessary for City 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. City will comply with all applicable laws, rules and regulations relating to City's or its authorized user's receipt or use of the Subscribed Services. Without limiting the foregoing, City 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, City 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. City 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 City access to the Subscribed Services by issuance of a confidential site address and passwords to City. City is responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address and passwords. City 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 City Content that is known or suspected by City; 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) City 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. City may not set-off any amounts owing to City 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 City 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 5.3.

4.2 Taxes and Duties. Excluding taxes based on Rubicon's net income, City 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 City's receipt or use of the Subscribed Services, whether or not Rubicon invoices City for such taxes, duties or customs fees, unless City timely provides Rubicon with a valid tax exemption or direct pay certificate showing City is exempt from such payments. If Rubicon is required to pay any such taxes, duties or customs fees, City shall reimburse Rubicon for such amounts in accordance with Section 4.1,

4.3 Audits. During the Term, upon thirty (30) days prior written notice to City, Rubicon may audit City's facilities, records and use of the Subscribed Services to determine City'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 City's business.

5. Term and Termination.

5.1 Term. The term of this Agreement (“Term”) shall not become effective until approved in writing by the City, and shall continue for a period of four (4) years unless earlier terminated in accordance with the provisions hereof.

5.2 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, the City or Rubicon may terminate this Agreement immediately if the other party 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 the other party’s assets or business.

5.3 Suspension of Services. In the event (a) City fails to timely pay any fees when due; or (b) Rubicon believes, upon advice of counsel, that any element of the Subscribed Services, or City’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 without notice.

5.4 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 City shall immediately cease using the applicable Subscribed Services and return all Documentation to Rubicon. Upon termination of this Agreement, City shall also return to Rubicon or destroy all copies of Rubicon’s Trade Secrets and Confidential Information in every form. Upon request of Rubicon, City agrees to certify in writing to Rubicon that it and each of its Affiliates have performed the foregoing obligations. Sections 1, 4, 5.4, 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, City shall not be entitled to any refund of any payments made by City.

6. Representations and Warranties.

6.1 Services Warranty. Provided that City 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 City’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 City’s deviation from applicable operating instructions or failure to perform City’s obligations set forth in this Agreement; or (ii) City or any other person or entity (other than Rubicon) has modified the Subscribed Services.

6.2 City Acknowledgment. City 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 City 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 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 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 City Content provided by, or on behalf of, City. Upon request, City 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 City 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 **City Content.** City shall own all City Content. City shall have sole responsibility for the accuracy, completeness, quality, integrity, legality, reliability, timeliness, appropriateness, and intellectual property ownership and right to use all City Content, and Rubicon shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store City Content for any reason. Rubicon does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any City Content. In the event this Agreement is terminated (other than by reason of City’s breach), Rubicon will make available to City a file of the City Content in its possession, if any, within thirty (30) following City’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 City Content in its possession, if any, in the event City breaches this Agreement, including, without limitation, non-payment of fees and charges; and (b) purge and delete City 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 City Content. City hereby grants to Rubicon the non-exclusive right and license to (a) receive, retrieve, process, use and transmit any City Content necessary or reasonably desirable to perform the Subscribed Services or other services; (b) use, copy, manipulate and store any City Content that will be archived, stored or otherwise transmitted in connection with the Subscribed Services or other services; and (c) to aggregate City Content and data with content and data from other clients ("Data Aggregations") for purposes including, without limitation, product and service development and commercialization and quality improvement initiatives. Rubicon will redact City Content in such a way as to not divulge City's Confidential Information or Trade Secrets. All Data Aggregations will be the sole and exclusive property of Rubicon.

8.4 License to the Marks. City 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 City 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) City 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 City 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 City 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 City for any third party claim pursuant to this Section 9, nor be required to pay losses, damages or expenses under this Section 9, if City 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) City's negligence or willful misconduct.

9.4 Sole Obligation. This Section 9 states Rubicon's sole obligation, and City'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 City 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 .

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 New Mexico shall govern this Agreement, without giving effect to its choice of law provision. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMCA 1978, § 38-3-1 (G). By execution of this Agreement, Rubicon acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

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 City 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, and the City agrees in writing to be bound by the terms and conditions of this Agreement; provided, however, that any such assignment by City shall be subject to any fee adjustments specified in an Order, or that may be necessary because of City'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 City, to it at: 1142 Siler Road, Santa Fe, NM 87507 attention Environmental Services Division Director; (ii) if to Rubicon, to it at: Rubicon Global, LLC, 950 East Paces Ferry Road, Ste 1900, Atlanta, GA 30326. 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. City agrees that Rubicon may reference City’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 City’s Marks in connection with such usage upon written approval by the City.

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 City 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.

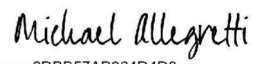
CITY OF SANTA FE, NEW MEXICO



Authorized Signature
Alan Webber, Mayor

Printed Name and Title
Date: Jun 22, 2022

RUBICON GLOBAL, LLC

DocuSigned by:


6DBB57AB864D4D0...
Authorized Signature
Michael Allegretti Chief Strategy Officer

Printed Name and Title
Date: 5/23/2022 | 11:01 AM EDT

ADDENDUM A

This agreement incorporates the additional terms and conditions in the addendum between RUBICON (RUBICON) and the CITY OF SANTA FE (CITY).

TERMINATION

This Agreement may be terminated by City upon 30 days written notice to the RUBICON.

INDEMNIFICATION

RUBICON shall indemnify, hold harmless and defend CITY from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from RUBICON's performance under this Agreement as well as the performance of RUBICON's employees, agents, representatives and subcontractor.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by CITY in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. CITY and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

APPLICABLE LAW; CHOICE OF LAW; VENUE

RUBICON shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of CITY of Santa Fe. In any action, suit or legal dispute arising from this Agreement, RUBICON agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by CITY for the performance of this Agreement. If sufficient appropriations and authorization are not made by CITY, this Agreement shall terminate upon written notice being given by CITY to RUBICON. The CITY's decision as to whether sufficient appropriations are available shall be accepted by RUBICON and shall be final.

RELEASE

RUBICON, upon acceptance of final payment of the amount due under this Agreement, releases the CITY, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. RUBICON agrees not to purport to bind CITY to any obligation not assumed herein by CITY unless RUBICON has express written authority to do so, and then only within the strict limits of that authority.

INSURANCE

RUBICON shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. RUBICON shall furnish CITY with proof of insurance of RUBICON's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than CITY and RUBICON. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

Signature Lines required:

City of Santa Fe:

AW
Alan Webber, Mayor

Date: Jun 22, 2022

DocuSigned by:
Michael Allegretti
6DBB57AB864D4D0
NAME & TITLE Michael Allegretti Chief Strategy Officer
Date: 5/23/2022 | 11:01 AM EDT
CRS# 03-396297-00-9
City of Santa Fe Business
Registration # _____

Attest:

Kristine Mihelcic
Kristine Bustos Mihelcic, City Clerk
GB MTG 06/08/2022 *KB*

City Attorney's Office:

Marcos Martinez
Marcos Martinez (May 23, 2022 08:14 MDT)
Senior Assistant City Attorney

Approved for Finances:

Alexis Lotero
Alexis Lotero (Jun 22, 2022 09:49 MDT)
Alexis Lotero, Interim Finance Director

Org/Obj 5100331.510310 *AH*
AH

Exhibit A
Professional Services Terms

These Professional Services Terms are hereby annexed to and made a part of the Master Software Services Agreement (the "Agreement") between Rubicon and City. 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 approval by the City, 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 City Project Coordinator, as identified in each Statement of Work. City shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. City 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 City 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, City shall provide Rubicon with access to its facilities, software, systems, data, information and support materials to perform the Professional Services. City acknowledges that Rubicon's performance hereunder is contingent on City's timely and effective performance of City's responsibilities and City's timely decisions and approvals. If City 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, City 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.
6. Additional Services. Any services performed by Rubicon at the request of City 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. All required services by Rubicon outside the scope of any Professional Services will need to be approved in writing by the City and follow City procurement requirements.

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

This independent Order Number 1 (“Order”) to the Master Software Services Agreement is made, and shall not become effective until approved in writing by the City, by and between Rubicon Global, LLC (“Rubicon”) and the CITY OF SANTA FE, NEW MEXICO (“City”). This Order is part of the Master Software Services Agreement between the parties, dated when signed by the City (“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.

DESCRIPTION	COST
Year 1 Cost	\$128,883.20
Year 2 Cost	\$128,883.20
Year 3 Cost	\$128,883.20
Year 4 Cost	\$128,883.20
Total Cost (48-month contract)	\$515,532.80

The complete pricing proposal has been included in this package as Addendum B.

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 FIVE HUNDRED FIFTEEN THOUSAND, FIVE HUNDRED THIRTY-TWO DOLLARS AND EIGHTY CENTS (\$515,532.80) payable as follows (“Fee”):

a. US\$10,740.27 due monthly as described in Section 4 Paragraph 4., for services rendered during the term of the agreement described in Section 5, Paragraph 5.1, and 5.2.

4. Renewal. **This agreement shall begin on the date approved by the City, and end on June 30, 2027** In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

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. City 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. City 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.

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 SANTA FE, NM

Authorized Signature

Printed Name and Title

ACCEPTED BY:

RUBICON GLOBAL, LLC

Authorized Signature

Printed Name and Title

ADDENDUM B

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.

- 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:
 - First month in any rolling six (6) month period: 10% of the Subscription Fee paid for the applicable month for the affected Service
 - Second month in any rolling six (6) month period: 20% of the Subscription Fee paid for the applicable month for the affected Service
 - Third month in any rolling six (6) month period: 30% of the Subscription Fee paid for the applicable month for the affected Service
 - Fourth month in any rolling six (6) month period: 40% of the Subscription Fee paid for the applicable month for the affected Service
 - 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

Statement of Work – RUBICONSmartCity™

Rubicon will outfit **56** of the City’s solid waste and recycling vehicles with the appropriate number of In-Cab-Interface (ICI) devices in order to provide insights into the City’s waste, recycling, yard waste, and bulk pick-up collection operations (the ICI total includes an additional allotment for Supervisor use). Rubicon can either provide all hardware and accompanying accessories for the ICI devices for all vehicles, or provide download licenses which allow the department to utilize existing City owned ICI devices.

- Monitor and collect real time data on the City’s solid waste, recycling, and bulk operations, capturing vehicle position, associated driver, route details & progress, and vehicle breadcrumbs on the Portal;
- Provide data insights on service verification, vehicle telematics, and driver performance;
- Log and photograph exceptions at the curb including, but not limited, cart not out, cart blocked, and bulk before /after photos;
- Report critical community issues – such as potholes, graffiti, branches, damaged public litter cans - via the In-Cab-Interface. Issues will be associated with a location and time stamp.
- Optimize bulk and other ad hoc, point to point routing, increasing the number of pick-ups per day;
- Provide overview of all routes, route progress, and route details through the Portal;
- Provide dynamic route information to City drivers via in-truck technology, including route progress, turn by turn directions, and voice over directions;
- Digitize existing operations including electronic pre / post-trip inspections, scale tickets, and route details;
- Improve accuracy and responsiveness to customer service requests in “real time”;
- Gather, review, and export data on route mileage, route start and stop time, percentage of completed stops, miles driven, stationary time, and more;
- Identify cost savings by optimizing routes, improving driver performance, and identifying efficiencies;

Rubicon’s team will work hand in hand with the Environmental Services Division to install (if necessary), instruct, and successfully deploy our solution. Rubicon will outfit the City’s solid waste and recycling vehicles with ICI devices and any required accessories. We will closely coordinate with City staff to ensure installation does not disrupt daily operations. In addition, our Customer Success team will conduct a series of stakeholder specific trainings onsite or remotely to ensure all necessary and applicable City drivers, dispatchers, supervisors, and managers all know how to use our technology. Our Customer Success team will be available to do additional remote and onsite training as needed by the City.

Rubicon will provide the City of Santa Fe with ongoing support delivered by our Customer Success Manager, whose mission is to deliver on our commitments to meet or exceed the City’s expectations. Rubicon will provide the City with numerous ways to contact the Customer Success Manager (i.e. phone, email, online help desk). This advocate is responsible for contract adherence, relationship health and continuous improvement, and will serve as an escalation point. The Customer Success Manager will also conduct consistent update calls with the City and provide support and training as needed throughout the lifetime of the contract.

Rubicon Deliverables:

- Provide all necessary hardware, software, installation, and training.
- Install all equipment or, in the case of City-led installation, advise the City on best method to install the equipment.
- Provide training to City staff on the equipment and portal and any maintenance required throughout the lifetime of the contract, where necessary.
- Monitor and service the hardware as needed to ensure it continues to function effectively for the lifetime of the contract.

- Provide analysis on this data as needed to deliver insights to the Environmental Services Division.

Pricing Details

The parties agree that the fees for the above services shall be a total of **\$515,532.80** payable as follows (“Fee”):

- a. **\$128,883.20.**
- b. **\$128,883.20 due upon the first anniversary of the agreement.**
- c. **\$128,883.20 due upon the second anniversary of the agreement.**
- d. **\$128,883.20 due upon the third anniversary of the agreement.**

30-days prior to the due dates Rubicon will provide an invoice to the City, and support the city in creating a purchase order.

Rubicon uses a Software-as-a-Service (SaaS) model for pricing. SaaS service models provide several advantages for the customer:

- Solution upgrades become available for customers automatically. Costs and effort associated with upgrades and new releases are lower than the traditional model that usually forces the user to buy an upgrade package and install it or pay for specialized services to get the environment upgraded.
- Reduce the costs for hardware and software licenses compared with the traditional model because service usually resides in shared or multi-user environments.
- Reduce the time spent on installation and configuration reducing issues that complicate software deployment.
- Reduce maintenance costs since Rubicon owns the environment and costs are split among all customers that use the solution.
- No hidden costs for additional services or features.

The proposed RUBICONSmartCity cost is for 56 vehicles in Santa Fe’s sanitation fleet. A breakdown of all costs have been included below:

56 Vehicles - Rubicon Provided Tablets		
	<i>UNITS</i>	<i>COST</i>
Total Annual Recurring		\$128,883.20
Portal & Mobile App Software License	56	\$73,608.00
Y Hardware (Pods)	56	\$10,483.20
X Hardware (Tablets)	53	\$44,792.00
Y1		\$128,883.20
Y2		\$128,883.20
Y3		\$128,883.20
Y4		\$128,883.20
PROMOTIONAL DISCOUNT TOTAL		\$515,532.80

What’s Included in Portal & Mobile App Software License: \$73,608.00 Annually

- Unlimited City of Santa Fe staff access to the RUBICONSmartCity Portal (Software)
- 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, street sweeper, and snow removal Mobile App and Portal developments as they become publicly available

What’s Included in Rubicon Y Hardware (Rubicon Provided Pod): \$10,483.20 Annually

- Pod devices (Geotab GO9 AVL/Telematics devices) for 56 solid waste vehicles.
- All mobile data services and costs
- All hardware maintenance and warranty

What’s Included in X Hardware (Rubicon Provided Tablets): \$44,792.00 Annually

- In-Cab-Interfaces (iPad Mini Tablets) to be used across the entirety of the City’s solid waste operation (53 devices)
- All mobile data services and costs
- All required charging cables, charging stations, iPad cases, and iPad mounts
- Warranty includes up to 10 replacement In-Cab-Interface devices per year

What’s Included in Rubicon Y Installation: N/A

- Rubicon will install 56 in-vehicle GO9 telematics devices in the City of Santa Fe’s solid waste vehicles
- Rubicon will utilize Geotab certified vendor to complete all of the necessary G09 installations

The City can opt to extend this contract at their discretion. Any extensions or renewals beyond the 4th payment will be charged at the recurring annual cost of **\$128,883.20**.

HGAC Add-Ons for RUBICONSmartCity

Should the City wish to add additional technology, devices, or services during the course of the contract, the City may purchase these at their discretion at any time during the lifetime of this agreement. The cost for additional technology, devices, and or services is listed as follows:

Additional Device Costs	
<i>Item/Service</i>	<i>COST</i>
Y Pod	\$187/yr
iPhone w/Software	\$2,3400/yr
Software License Only	\$1,368/yr
Fleet Optimization	\$2,500/vehicle
API Integration	250/hr




City of Santa Fe, New Mexico

Memorandum



DATE: May 23, 2022

TO: Public Utilities Committee

FROM: Shirlene Sitton, Environmental Services Division Director 

VIA: Alexis Lotero, Interim Finance Director
Fran Dunaway, Chief Procurement Officer
Shannon Jones, Public Utilities Department Director 

RE: Rubicon SmartCity Contract

ITEM AND ISSUE:

The Environmental Services Division requests for the approval to enter a four-year contract with Rubicon Global LLC, utilizing the H-GAC Buy cooperative purchasing agreement contract FLO3-21, in the yearly amount of \$128,883.20 plus NMGRT for FY23 (\$515,532.80 Total for a 4 year contract); Shirlene Sitton, Environmental Services Division Director, sesitton@santafenm.gov; 505-955-2209.

BACKGROUND AND SUMMARY:

The Environmental Services Division (ESD) released an RFP in 2018 for a solid waste collection oriented on-board routing and ticketing technology. The contract was awarded to Rubicon Global LLC, a certified B corporation who already had similar technology for the commercial sector, which was oriented to help customers reduce their waste. Rubicon was entering into the municipal residential sector with its SmartCity product, when we chose to partner with them as a Beta city for product development. The partnership has been very successful, as they have improved their product and expanded the types of services offered, in-part based on our requirements and requests. Some of these examples include electronic in-app pre- and post-trips for the operators, a new cart maintenance ticketing system, and specialized graffiti work orders. The four-year contract comes to an end on June 31, 2022.

One of the elements of the RFP and subsequent contract included a route optimization project, which we have been working together on over the past few months. Rubicon has been collecting the data transmitted from our routes over the past four years, and has the information needed to ensure our over-the-road efficiency. We plan to implement the optimized routes in August of this year. With the amount of time and effort already invested to build these databases of addresses and routes, we feel it would not be in the City's best interest to change providers at this time. Rubicon is now represented on the H-GAC Buy cooperative purchasing agreement, enabling us to request a new contract through that method.

An overview of the services provided by Rubicon includes:

- On-board device with unique routes for each driver and turn by turn directions
- Exception reporting so drivers can take pictures of non-compliant set-outs that are geocoded, time-stamped, and linked to customer accounts
- On the fly re-routing to other operators in cases of vehicle breakdown
- Real-time GPS tracking of each vehicle on-route
- Web-based log in program for office staff to see vehicle locations, route completion status, exception pictures and reports, ensuring better customer service
- Ticketing and routing for daily on-call routes, repairs, or complaints
- Large variety of reporting available to download from collected data
-

- Route Optimization functions to save time and money
- Engine interface devices to report malfunctions via automated emails to maintenance staff
- Notes driver behaviors such as speeding, hard braking, and sudden turns
- Provides accountability for both customers and employees
- Reliable cloud-based technology hosted by Amazon

As they have grown and improved this line of business, they have been able to decrease costs, resulting in a cost savings of \$40,000 less over four years for the base price. This includes an upgrade from the iPhones currently in use, to tablets, which will give the operators a larger screen for turn-by-turn directions as they learn the new routes later this summer.

PROCUREMENT METHOD:

H-GAC Buy Cooperative Agreement

CONTRACT NUMBER: Munis Contract #3203377

FUNDING SOURCE:

Fund Name/Number: Environmental Services Enterprise Fund/510

Munis Org Name/Number: Admin/5100331

Munis Object Name/Number: Service Contracts/510310

ACTION REQUESTED: As ESD has been very satisfied with our partnership with Rubicon, and we wish to continue to utilize the technology into the future. ESD respectfully requests your review and approval of a new four-year contract with Rubicon.



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # Pending3203377

Contractor: Rubicon

Description: on-board routing and ticketing

Contract Agreement Lease / Rent Amendment

Term Start Date: Upon approval Term End Date: 6/30/26

Approved by Council Date: Pending

Contract / Lease: \$128,883.20 plus NMGRT for FY23 (\$515,532.80 Total for a 4 year contract)

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

There is no history on this contract.
Contract is new.

3. **Procurement History:** _____

JoAnn Lovato for F.D.
JoAnn Lovato for F.D. (May 24, 2022 16:53 MDT)

May 24, 2022

Purchasing Officer Review: _____ Date: _____
Comment & Exceptions: Reviewed 3.24.22. Original contract procured in 2018 via RFP. CoOp agreement current since 2019.

4. **Funding Source:** ESD Enterprise Fund **Org / Object:** 5100031.510310

Andy Hopkins
Andy Hopkins (May 24, 2022 12:00 MDT)

May 24, 2022

Budget Officer Approval: _____ Date: _____
Comment & Exceptions: _____

Staff Contact who completed this form: _____ Phone # _____

Email: _____

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



City of Santa Fe

Treasury Department
200 Lincoln Ave.
Santa Fe, New Mexico 87504-0909
505-955-6551

BUSINESS REGISTRATION

Business Name: RUBICON GLOBAL, LLC
DBA: RUBICON GLOBAL, LLC

Business Location: 950 E PACES FERRY RD STE. 1900
ATLANTA, GA 30326

Owner: RUBICON GLOBAL, LLC

License Number: 232783

Issued Date: May 19, 2022

Expiration Date: May 19, 2023

CRS Number: 03588295006

License Type: Business License - Renewable

Classification: Out of Jurisdiction Business License

Fees Paid: \$10.00

RUBICON GLOBAL, LLC
100 W MAIN ST STE. 610
LEXINGTON, KY 40507

THIS IS NOT A CONSTRUCTION PERMIT OR SIGN PERMIT.
APPROPRIATE PERMITS MUST BE OBTAINED FROM THE CITY
OF SANTA FE BUILDING PERMIT DIVISION PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION OR THE
INSTALLATION OF ANY EXTERIOR SIGN.

THIS REGISTRATION/LICENSE IS NOT TRANSFERRABLE TO
OTHER BUSINESSES OR PREMISES.

TO BE POSTED IN A CONSPICUOUS PLACE



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: RUBICON

Procurement Title: Cooperative Agreement H-GAC Buy under Contract FL03-21

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K


Department Requesting PUBLIC UTILITIES Staff Name Kayla Conner

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other: 

Kayla Conner Kayla Conner (May 18, 2022 09:42 MDT) PROJECT SPECIALIST 5/10/2022

Department Rep Printed Name (attesting that all information included) Title Date

JoAnn Lovato for F.D. JoAnn Lovato for F.D. (May 24, 2022 16:53 MDT) Contract Supervisor May 24, 2022

Purchasing Officer (attesting that all information is reviewed) Title Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.



RUBICON

April 18, 2022

Kayla Conner
City of Santa Fe, New Mexico
200 Lincoln Ave
P.O. Box 909
Santa Fe, NM, 87504-0909

Dear Ms. Conner,

Rubicon is listed on H-GAC Buy under Contract FL03-21. This contract expires on 02/28/2023, at which time Rubicon will be required to resubmit a bid to continue its listing on H-GAC. Rubicon has been listed on H-GAC since 2019, and it expects to maintain a contractual relationship with H-GAC for the foreseeable future. Per HGAC's policy, the end date of Rubicon's contract with the End User can extend past the end date of Rubicon's contract with H-GAC. The End User can place POs for the duration of its contract with Rubicon even if it is past the end date of Rubicon's current contract with H-GAC.

Rubicon's contract with HGAC contains a "Most Favored Customer" clause, which requires Rubicon to "provide its most favorable pricing and terms to H-GAC." By using HGAC, City of Santa Fe benefits from this agreement.

Sincerely,

DocuSigned by:

6DDB57AB864D4D0...
Michael Allegretti
Chief Strategy Officer
Rubicon Global, LLC

4/18/2022 | 6:54 PM EDT

H-GAC

Houston-Galveston Area Council

P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

Cooperative Agreement - Rubicon Global, LLC - Public Services - ID: 6309

GENERAL PROVISIONS

This Agreement is made and entered into, by and between the Houston-Galveston Area Council hereinafter referred to as H-GAC having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027 and Rubicon Global, LLC, hereinafter referred to as the Contractor, having its principal place of business at 950 East Paces Ferry Road, Suite 1900, Atlanta, GA 30326.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2: APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all federal laws, executive orders, policies, procedures, applicable rules, regulations, directives, standards, ordinances, and laws, in effect or promulgated during the term of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

ARTICLE 3: PUBLIC INFORMATION

Except as stated below, all materials submitted to H-GAC, including any attachments, appendices, or other information submitted as a part of a submission or Agreement, are considered public information, and become the property of H-GAC upon submission and may be reprinted, published, or distributed in any manner by H-GAC according to open records laws, requirements of the US Department of Labor and the State of Texas, and H-GAC policies and procedures. In the event the Contractor wishes to claim portions of the response are not subject to the Texas Public Information Act, it shall so; however, the determination of the Texas Attorney General as to whether such information must be disclosed upon a public request shall be binding on the Contractor. H-GAC will request such a determination only if Contractor bears all costs for preparation of the submission. H-GAC is not responsible for the return of creative examples of work submitted. H-GAC will not be held accountable if material from submissions is obtained without the written consent of the contractor by parties other than H-GAC, at any time during the evaluation process.

ARTICLE 4: INDEPENDENT CONTRACTOR

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee related disputes and discrepancies, including employee payrolls and any claims arising therefrom.

ARTICLE 5: ANTI-COMPETITIVE BEHAVIOR

Contractor will not collude, in any manner, or engage in any practice which may restrict or eliminate competition or otherwise restrain trade.

ARTICLE 6: SUSPENSION AND DEBARMENT

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3 CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to the Federal Rule above, Respondent certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas and at all times during the term of the Contract neither it nor its principals will be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas Respondent shall immediately provide the written notice to H-GAC if at any time the Respondent learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. H-GAC may rely upon a certification of the Respondent that the Respondent is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the H-GAC knows the certification is erroneous.

ARTICLE 7: GOAL FOR CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (if subcontracts are to be let)

H-GAC’s goal is to assure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible in providing services under a contract. In accordance with federal procurements requirements of 2 CFR §200.321, if subcontracts are to be let, the prime contractor must take the affirmative steps listed below:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller task or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
5. Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6.

Nothing in this provision will be construed to require the utilization of any firm that is either unqualified or unavailable. The Small Business Administration (SBA) is the primary reference and database for information on requirements related to Federal Subcontracting <https://www.sba.gov/federal-contracting/contracting-guide/prime-subcontracting>

NOTE: The term DBE as used in this solicitation is understood to encompass all programs/business enterprises such as: Small Disadvantaged Business (SDB), Historically Underutilized Business (HUB), Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE) and Disabled Veteran Business Enterprise (DVBE) or other designation as issued by a certifying agency.

Contractor agrees to work with and assist HGACBuy customer in meeting any DBE targets and goals, as may be required by any rules, processes or programs they might have in place. Assistance may include compliance with reporting requirements, provision of documentation, consideration of Certified/Listed subcontractors, provision of documented evidence that an active participatory role for a DBE entity was considered in a procurement transaction, etc.

ARTICLE 8: SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in an Attachment to this Agreement.

ARTICLE 9: PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins Mar 01 2021 and ends Feb 28 2023. All services under this Agreement must be rendered within this performance period, unless directly specified under a written change or extension provisioned under Article 21, which shall be fully executed by both parties to this Agreement.

ARTICLE 10: PAYMENT OR FUNDING

Payment provisions under this Agreement are outlined in the Special Provisions. H-GAC will not pay for any expenses incurred prior to the execution date of a contract, or any expenses incurred after the termination date of the contract.

ARTICLE 11: PAYMENT FOR WORK

The H-GAC Customer is responsible for making payment to the Contractor upon delivery and acceptance of the goods or completion of the services and submission of the subsequent invoice.

ARTICLE 12: PAYMENT TERMS/PRE-PAYMENT/QUANTITY DISCOUNTS

If discounts for accelerated payment, pre-payment, progress payment, or quantity discounts are offered, they must be clearly indicated in the Contractor's submission prior to contract award. The applicability or acceptance of these terms is at the discretion of the Customer.

ARTICLE 13: REPORTING REQUIREMENTS

If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may terminate this agreement with notice as identified in Article 29 of these General Provisions. H-GAC has final determination of the adequacy of performance and reporting by Contractor. Termination of this agreement for failure to perform may affect Contractor's ability to participate in future opportunities with H-GAC. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement. Any additional reporting requirements shall be set forth in the Special Provisions of this Agreement.

ARTICLE 14: INSURANCE

Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as outlined and defined in the attached Special Provisions.

ARTICLE 15: SUBCONTRACTS AND ASSIGNMENTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC. The Contractor acknowledges that H-GAC is not liable to any

subcontractor or assignee of the Contractor. The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor. Contractor shall give all required notices, and comply with all laws and regulations applicable to furnishing and performance of the work. Except where otherwise expressly required by applicable law or regulation, H-GAC shall not be responsible for monitoring Contractor's compliance, or that of Contractor's subcontractors, with any laws or regulations.

ARTICLE 16: AUDIT

Notwithstanding any other audit requirement, H-GAC reserves the right to conduct or cause to be conducted an independent audit of any transaction under this Agreement, such audit may be performed by the H-GAC local government audit staff, a certified public accountant firm, or other auditors designated by H-GAC and will be conducted in accordance with applicable professional standards and practices. The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any findings that result in monetary obligations to H-GAC.

ARTICLE 17: TAX EXEMPT STATUS

H-GAC and Customer members are either units of government or qualified non-profit agencies, and are generally exempt from Federal and State sales, excise or use taxes. Respondent must not include taxes in its Response. It is the responsibility of Contractor to determine the applicability of any taxes to an order and act accordingly. Exemption certificates will be provided upon request.

ARTICLE 18: EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas, and United States Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by H-GAC. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

Contractor agrees that H-GAC will have the right, with reasonable notice, to inspect its records pertaining to purchase orders processed and the accuracy of the fees payable to H-GAC. The Contractor further agrees that the examination of records outlined in this article shall be included in all subcontractor or third-party agreements.

ARTICLE 19: RETENTION OF RECORDS

The Contractor and its subcontractors shall maintain all records pertinent to this Agreement, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than seven (7) years from the later of the date of acceptance of the final payment or until all audit findings have been resolved. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the seven (7) years, whichever is later, and until any outstanding litigation, audit, or claim has been fully resolved.

ARTICLE 20: DISTRIBUTORS, VENDORS, RESELLERS

Contractor agrees and acknowledges that any such designations of distributors, vendors, resellers or the like are for the convenience of the Contractor only and the awarded Contractor will remain responsible and liable for all obligations under the Contract and the performance of any designated distributor, vendor, reseller, etc. Contractor is also responsible for receiving and processing any Customer purchase order in accordance with the Contract and forwarding of the Purchase Order to the designated distributor, vendor, reseller, etc. to complete the sale or service. H-GAC reserves the right to reject any entity acting on the Contractor's behalf or refuse to add entities after a contract is awarded.

ARTICLE 21: CHANGE ORDERS AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in federal or state law or by regulations, are automatically incorporated without written amendment hereto, and shall become effective on the date designated by such law or by regulation.
- B. To ensure the legal and effective performance of this Agreement, both parties agree that any amendment that affects the performance under this Agreement must be mutually agreed upon and that all such amendments must be in writing. After a period of no less than 30 days subsequent to written notice, unless sooner implementation is required by law, such amendments shall have the effect of qualifying the terms of this Agreement and shall be binding upon the parties as if written herein.
- C. Customers have the right to issue a change order to any purchase orders issued to the Contractor for the purposes of clarification or inclusion of additional specifications, qualifications, conditions, etc. The change order must be in writing and agreed upon by Contractor and the Customer agency prior to issuance of any Change Order. A copy of the Change Order must be provided by the Contractor to, and acknowledged by, H-GAC.

ARTICLE 22: CONTRACT ITEM CHANGES

- A. If a manufacturer discontinues a contracted item, that item will automatically be considered deleted from the contract with no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
- B. If a manufacturer makes any kind of change in a contracted item which affects the contract price, Contractor must advise H-GAC of the details. H-GAC may allow or reject the change at its sole discretion. If the change is rejected, H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item, or take any other action deemed by H-GAC, at its sole discretion, to be in the best interests of its Customers.
- C. If a manufacturer makes any change in a contracted item which does not affect the contract price, Contractor shall advise H-GAC of the details. If the 'new' item is equal to or better than the originally contracted item, the 'new' item shall be approved as a replacement. If the change is rejected H-GAC will remove the item from its program and there will be no penalty to Contractor. However, H-GAC may at its sole discretion elect to make a contract award to the next lowest Respondent for the item or may take any other action deemed by H-GAC at its sole discretion, to be in the best interests of its Customers.
- D. In the case of specifically identified catalogs or price sheets which have been contracted as base bid items or as published options, routine published changes to products and pricing will be automatically incorporated into the contract. However, Contractor must still provide thirty (30) calendar days written

notice and an explanation of the changes to products and pricing. H-GAC will respond with written approval.

ARTICLE 23: CONTRACT PRICE ADJUSTMENTS

Price Decreases

If Contractor's Direct Cost decreases at any time during the full term of this award, Contractor must immediately pass the decrease on to H-GAC and lower its prices by the amount of the decrease in Direct Cost. (Direct Cost means Contractor's cost from the manufacturer of any item or if Contractor is the manufacturer, the cost of raw materials required to manufacture the item, plus costs of transportation from manufacturer to Contractor and Contractor to H-GAC. Contractor must notify H-GAC of price decreases in the same way as for price increases set out below. The price decrease shall become effective upon H-GAC's receipt of Contractor's notice. If Contractor routinely offers discounted contract pricing, H-GAC may request Contractor accept amended contract pricing equivalent to the routinely discounted pricing

Price Increases

Contractors may request a price increase after twelve (12) months from the bid opening date of the bid received by H-GAC. The amount of any increase will not exceed actual documented increase in Contractor's Direct Cost and will not exceed 10% of the previous bid price. Considerations on the percentage limit will be given if the price increase is the result of increased tariff charges, or other economic factors.

Price Changes

Any permanent increase or decrease in offered pricing for a base contract item or published option is considered a price change. Temporary increases in pricing by whatever name (e.g. 'surcharge', 'adjustment', 'equalization charge', 'compliance charge', 'recovery charge', etc.), are also considered to be price changes. For published catalogs and price sheets as part of an H-GAC contract, requests to amend the contract to reflect any new published catalog or price sheet must be submitted whenever the manufacturer publishes a new document. The request must include the new catalog or price sheet.

All Products shall, at time of sale, be equipped as required under any then current applicable local, state, and federal government requirements. If, during the course of any contract, changes are made to any government requirements which cause a manufacturer's costs of production to increase, Contractor may increase pricing to the extent of Contractor's actual cost increase. The increase must be substantiated with support documentation acceptable to H-GAC prior to taking effect. Modifications to a Product required to comply with such requirements which become effective after the date of any sale are the responsibility of the Customer.

Requesting Price Increase/Required Documentation

Contractor must submit a written notification at least thirty (30) calendar days prior to the requested effective date of the change, setting the amount of the increase, along with an itemized list of any increased prices, showing the Contractor's current price, revised price, the actual dollar difference and the percentage of the price increase by line item. Price change requests must include H-GAC Forms D Offered Item Pricing and E Options Pricing, or the documentation used to submit pricing in the original Response and be supported with substantive documentation (e.g. manufacturer's price increase notices, copies of invoices from suppliers, etc.) clearly showing that Contractor's actual costs have increased per the applicable line item bid. The Producer Price Index (PPI) may be used as partial justification, subject to approval by H-GAC, but no price increase based solely on an increase in the PPI will be allowed. This documentation should be submitted in Excel format to facilitate analysis and updating of the website. The letter and documentation must be sent to the Bids and Specifications manager, William Burton, at William.Burton@h-gac.com

Review/Approval of Requests

If H-GAC approves the price increase, Contractor will be notified in writing; no price increase will be effective until Contractor receives this notice. If H-GAC does not approve Contractor's price increase, Contractor may terminate its performance upon sixty (60) days advance written notice to H-GAC, however Contractor must fulfill any outstanding Purchase Orders. Termination of performance is Contractor's only remedy if H-GAC does not approve the price increase. H-GAC reserves the right to accept or reject any price change request.

ARTICLE 24: DELIVERIES AND SHIPPING TERMS

The Contractor agrees to make deliveries only upon receipt of authorized Customer Purchase Order acknowledged by H-GAC. Delivery made without such Purchase Order will be at Contractor's risk and will leave H-GAC the option of canceling any contract awarded to the Contractor. The Contractor must secure and deliver any item within five (5) working days, or as agreed to on any corresponding customer Purchase Order.

Shipping must be Freight On Board Destination to the delivery location designated on the Customer purchase order. The Contractor will retain title and control of all goods until delivery is completed and the Customer has accepted the delivery. All risk of transportation and all related charges are the responsibility of the Contractor. The Customer will notify the Contractor and H-GAC promptly of any damaged goods and will assist the Contractor in arranging for inspection. The Contractor must file all claims for visible or concealed damage. Unless otherwise stated in the Agreement, deliveries must consist only of new and unused merchandise.

ARTICLE 25: RESTOCKING (EXCHANGES AND RETURNS)

There will be no restocking charge to the Customer for return or exchange of any item purchased under the terms of any award. If the Customer wishes to return items purchased under an awarded contract, the Contractor agrees to exchange these items for other items, with no additional charge incurred. Items must be returned to Contractor within thirty (30) days from date of delivery. If there is a difference in price in the items exchanged, the Contractor must notify H-GAC and invoice Customer for increase price or provide the Customer with a credit or refund for any decrease in price per Customer's preference. On items returned, a credit or cash refund will be issued by the Contractor to Customer. This return and exchange option will extend for thirty (30) days following the expiration of the term of the Contract. All items returned by the Customer must be unused and in the same merchantable condition as when received. Items that are special ordered may be returned only upon approval of the Contractor.

ARTICLE 26: MANUALS

Each product delivered under contract to any Customer must be delivered with at least one (1) copy of a safety and operating manual and any other technical or maintenance manual. The cost of the manual(s) must be included in the price for the Product offered.

ARTICLE 27: OUT OF STOCK, PRODUCT RECALLS, AND DISCONTINUED PRODUCTS

H-GAC does NOT purchase the products sold pursuant to a Solicitation or Agreement. Contractor is responsible for ensuring that notices and mailings, such as Out of Stock or Discontinued Notices, Safety Alerts, Safety Recall Notices and customer surveys, are sent directly to the Customer with a copy sent to H-GAC. Customer will have the option of accepting any equivalent product or canceling the item from Customer's Purchase Order. Contractor is not authorized to make substitutions without prior approval.

ARTICLE 28: WARRANTIES, SALES, AND SERVICE

Warranties must be the manufacturer's standard and inclusive of any other warranty requirements stated in the Agreement; any warranties offered by a dealer will be in addition to the manufacturer's standard warranty and will not be a substitute for such. Pricing for any product must be inclusive of the standard warranty.

Contractor is responsible for the execution and effectiveness of all product warranty requests and any claims, Contractor agrees to respond directly to correct warranty claims and to ensure reconciliation of warranty claims that have been assigned to a third party.

ARTICLE 29: TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated for Convenience or Default. H-GAC will not pay for any expenses incurred after the termination date of the contract.

A. Convenience

H-GAC may terminate this Agreement at any time, in whole or in part, with or without cause, whenever H-GAC determines that for any reason such termination is in the best interest of H-GAC, by providing written notice by certified mail to the Contractor. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination.

The Contractor may cancel or terminate this Agreement upon submission of thirty (30) days written notice, presented to H-GAC via certified mail. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC.

B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement, in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or
- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreements that completion of services herein specified within the Agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period often (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.
- (3) In the event of such termination, Contractor will notify H-GAC of any outstanding Purchase Orders and H-GAC will consult with the End User and notify the Contractor to what extent the End User wishes the Contractor to complete the Purchase Order. If Contractor is unable to do so, Contractor may be subject to a claim for damages from H-GAC and/or the End User.

ARTICLE 30: SEVERABILITY

H-GAC and Contractor agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 31: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

ARTICLE 32: CONFLICT OF INTEREST

No officer, member or employee of the Contractor or subcontractor, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or Contractor approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

