

**SOFTWARE MAINTENANCE
A G R E E M E N T**

THIS AGREEMENT is made and entered into this _____ day of _____, 2011, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **MANATRON, INC.**, a Michigan corporation registered to do business in Colorado, whose address is 510 E Milham Ave, Portage, MI 49002 ("Vendor").

1. **MAINTENANCE AND SUPPORT TO BE PROVIDED:** Vendor, under the general direction of, and in coordination with, the City's Chief Information Officer or other designated supervisory personnel (the "Manager") agrees to provide the software support and maintenance services described in the attached **Exhibit A**.

2. **TERM:** The term of the Agreement is from February 15, 2011 through February 14, 2016.

3. **COMPENSATION AND PAYMENT:**

A. **Fee:** The fee for the software support and maintenance is described in Exhibit A (the "Fee"). The Fee shall be paid pursuant to the City's Prompt Payment Ordinance.

B. **Reimbursement Expenses:** The fees specified above include all expenses, and no other expenses shall be separately reimbursed hereunder.

C. **Invoicing:** Vendor must submit an invoice which shall include the City contract number, clear identification of the deliverable that has been completed, and other information reasonably requested by the City. Payment on all uncontested amounts shall be made in accordance with the City's Prompt Payment Ordinance.

D. **Maximum Contract Liability:**

(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment for services rendered and expenses incurred by Vendor under the terms of this Agreement for any amount in excess of **SIX HUNDRED NINETY-THREE THOUSAND SIX HUNDRED SIXTY SIX DOLLARS** (\$693,666.00). Vendor acknowledges that any work performed by Vendor beyond that specifically authorized by the City is performed at Vendor's risk and without authorization under this Agreement.

(ii) It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. Vendor acknowledges that (a) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (b) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

==
1
==
==

4. **STATUS OF VENDOR:** It is understood and agreed that the status of Vendor shall be that of an independent Vendor and a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.2(C) of the Charter of the City; and it is not intended, nor shall it be construed, that Vendor or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. Vendor agrees that during the term of this Agreement it shall fully coordinate all services that it has been directed to proceed upon and shall make every reasonable effort to fully coordinate all such services as directed by the Manager with any City agency, or any person or firm under contract with the City doing work which affects Vendor's work.

5. **TERMINATION:**

A. The City has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice. However, nothing herein shall be construed as giving Vendor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Manager.

B. If this Agreement is terminated by the City, Vendor shall be compensated for, and such compensation shall be limited to, (1) the sum of the amounts contained in invoices which it has submitted and which have been approved by the City; (2) the reasonable value to the City of the work which Vendor performed prior to the date of the termination notice, but which had not yet been approved for payment; and (3) the cost of any work which the Manager approves in writing which he determines is needed to accomplish an orderly termination of the work. The City shall be entitled to an immediate prorate refund of any prepaid fees for services not provided as of the date of termination.

C. Upon termination of this Agreement by the City, Vendor shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

6. **EXAMINATION OF RECORDS:** Vendor agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of Vendor, involving transactions related to this Agreement. Such examination shall be limited to Vendor's normal business hours, at Vendor's premises, and upon reasonable prior notice to Vendor.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by either Party hereunder constitute or be construed to be a waiver by the other Party of any breach of covenant or default which may then exist on the part of the Party alleged to be in breach, and the non-breaching Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more

covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

8. INSURANCE:

A. General Conditions: Vendor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Vendor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating, "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Vendor. The Vendor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. Proof of Insurance: Vendor shall provide a copy of this Agreement to its insurance agent or broker. Vendor may not commence services or work relating to the Agreement prior to placement of coverage. Vendor certifies that the certificate of insurance attached as **Exhibit B** preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Vendor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds: For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Vendor and sub-contractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. Waiver of Subrogation: For all coverages, Vendor's insurer shall waive subrogation rights against the City.

E. Subcontractors and Sub-consultants: All subcontractors and sub-consultants (including independent Vendors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Vendor. Vendor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and sub-consultants maintain the required coverages. Vendor agrees to provide proof of insurance for all such subcontractors and sub-consultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Vendor executes this Agreement.

G. Commercial General Liability: Vendor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. Business Automobile Liability: Vendor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

I. Technology Errors & Omissions: Vendor shall maintain Technology Errors and Omissions insurance including network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate.

J. Additional Provisions:

(a) For Commercial General Liability and Excess Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(b) For claims-made coverage:

(i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(c) Vendor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Vendor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

9. DEFENSE AND INDEMNIFICATION:

A. Vendor hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Vendor or its sub-contractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Vendor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Vendor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Vendor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Vendor under the terms of this indemnification obligation. The Vendor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

F. Vendor will, at Vendor's expense, indemnify, defend and hold harmless the City, its officers, agents and employees from and against any loss, cost, expense or liability (including but not limited to attorney’s fees and awarded damages) arising out of a claim that the Software, services, or their use by the City, infringe, violate or misappropriate a patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third

party. The City will promptly notify Vendor in writing of any claim and cooperate with Vendor and its legal counsel in the defense thereof. Vendor may in its discretion (i) contest, (ii) settle, (iii) procure for the City the right to continue using the Software, or (iv) modify or replace the infringing Software so that it no longer infringes (as long as the functionality and performance are not degraded as reasonably determined by the City). The City may participate in the defense of such action at its own expense. If Vendor concludes in its reasonable judgment that none of the foregoing options are commercially reasonable, then Vendor will refund a pro rata portion (based on a 5 year straight line depreciation running from City's final acceptance of the Software) of the Software license fee(s) paid by the City under this Agreement and reimburse the City for all reasonable expenses for removal and replacement of the Software.

10. COLORADO GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. (2003).

11. TAXES, CHARGES AND PENALTIES: The City shall not be liable for the payment of taxes, late charges or penalties of any nature other than the compensation stated herein, except for any additional amounts which the City may be required to pay under D.R.M.C. § 20-107 to § 20-115.

12. ASSIGNMENT: Vendor covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Manager. Any attempts by Vendor to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Agreement and all rights of Vendor hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager. A change in control of Vendor shall not constitute an assignment hereunder.

13. NO THIRD PARTY BENEFICIARY: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Vendor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and Vendor that any person other than the City or Vendor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. NO AUTHORITY TO BIND CITY TO CONTRACTS: Vendor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Charter and ordinance.

15. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement, including the exhibit attached hereto (each of which is specifically incorporated herein) is intended as the complete integration of all understandings between the parties. No prior contemporaneous or subsequent addition, deletion, or other amendment hereto shall have

any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

16. SEVERABILITY: The parties agree that if any provision of this Agreement or any portion thereof is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected.

17. CONFLICT OF INTEREST:

A. The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein; and Vendor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. Vendor agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. Vendor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Vendor by placing Vendor's own interests, or the interests of any party with whom Vendor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given Vendor written notice which describes the conflict. Vendor shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

18. NOTICES: Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

By Vendor to: Chief Information Officer
City and County of Denver
201 West Colfax Avenue, Dept. 301
Denver, Colorado 80202

And:
City and County of Denver
201 West Colfax Avenue, Dept. 406
Denver, Colorado 80202

And by the City to:
Attn: John Hansen
Manatron, Inc.
510 E. Milham Avenue
Portage, MI 49002

19. **DISPUTES:** All disputes of whatever nature between the City and Vendor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b), et seq. For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Paragraph 1 hereof.

20. **GOVERNING LAW; VENUE:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

21. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Vendor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor further agrees to insert the foregoing provision in all subcontracts hereunder.

22. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** Vendor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring Vendor from City facilities or participating in City operations.

23. **CONFIDENTIAL INFORMATION; OPEN RECORDS:**

A. **City Information:** Vendor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Vendor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Vendor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Vendor shall be held in confidence and used only in the performance of its obligations under this Agreement. Vendor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent Vendor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential", or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Vendor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

B. Use of Proprietary Data or Confidential Information:

(i) Except as expressly provided by the terms of this Agreement, Vendor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. Vendor further acknowledges that by providing this Proprietary Data or confidential information, the City is not granting to Vendor any right or license to use such data except as provided in this Agreement. Vendor further agrees not to disclose or distribute to any other party, in whole or in part, the Proprietary Data or confidential information without written authorization from the Manager and will immediately notify the City if any information of the City is requested from the Vendor from a third party.

(ii) Vendor agrees, with respect to the Proprietary Data and confidential information, that: (1) Vendor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (2) Vendor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) Vendor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

C. Employees and Sub-Contractor: Vendor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Vendor under this Agreement shall survive the expiration or earlier termination of this Agreement. Vendor shall not disclose Proprietary Data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

D. Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. Vendor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Vendor agrees to contact the City immediately.

E. Vendor's Information: The City shall endeavor, to the extent provided by law, to comply with the confidentiality provisions set out in the End User License Agreement, provided, however, that The City understands and agrees that the Vendor software and documentation including, but not limited to, the Source Code, Object Code, the Interface Requirements Document(s) Acceptance Test Procedures, the Statement of Work, the software design, structure and organization, software screens, the user interface and the engineering know-

how implemented in the software (collectively "Vendor Confidential Information") constitute the valuable properties and trade secrets of Vendor, embodying substantial creative efforts which are secret, confidential, and not generally known by the public, and which secure to Vendor a competitive advantage. The City agrees during the term of this Agreement and the license granted hereunder, and thereafter, to hold the Vendor Confidential Information including any copies thereof and any documentation related thereto, in strict confidence and to not permit any person or entity to obtain access to it except as required for the City's exercise of the license rights granted hereunder, and except as required by the parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. (2003). In the event of a request to the City for disclosure of such information, the City shall advise Vendor of such request in order to give Vendor the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Vendor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Vendor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of Vendor's intervention to protect and assert its claim of privilege against disclosure under this Article including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

24. LEGAL AUTHORITY:

A. Vendor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken to enter into this Agreement.

B. The person signing and executing this Agreement on behalf of Vendor does hereby warrant and guarantee that he has been fully authorized by Vendor to execute this Agreement on behalf of Vendor and to validly and legally bind Vendor to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Vendor or the person signing the Agreement to enter into this Agreement.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY: Each of the Parties acknowledge that they and their respective counsel have had the opportunity to review this Agreement, and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. SURVIVAL OF CERTAIN PROVISIONS: The parties understand and agree that all terms and conditions of this Agreement together with the exhibits and attachments hereto

which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Vendor's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

28. **INUREMENT:** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

29. **TIME IS OF THE ESSENCE:** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

30. **FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of war, fire, strike, riot or insurrection, natural disaster, unreasonable delay of carriers, governmental order or regulation, complete or partial shutdown of plant, unreasonable unavailability of equipment or software from suppliers, default of a subcontractor or vendor (if such default arises out of causes beyond their reasonable control), the actions or omissions of the other party or its officers, directors, employees, agents, Vendors or elected officials and/or other substantially similar occurrences beyond the party's reasonable control ("Excusable Delay") herein. In the event of any such Excusable Delay, time for performance shall be extended for a period of time as may be reasonably necessary to compensate for such delay.

31. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

32. **CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

33. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

34. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Vendor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
STEPHANIE Y. O'MALLEY, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
DAVID R. FINE, Attorney
for the City and County of Denver

RECOMMENDED AND APPROVED:

By: _____
Assistant City Attorney

By: _____
Chief Information Officer

By: _____
Assessor

By: _____
Controller

By: _____
Treasurer

REGISTERED AND COUNTERSIGNED:

By: _____
Auditor

By: _____
Manager of Finance
Contract Control No CE15013
"City"

MANATRON, INC

By: _____

Print Name: JOHN R. HANSEN

Title: VICE PRESIDENT

"Vendor"

EXHIBIT A
SOFTWARE MAINTENANCE AGREEMENT
Authorized Support Agreement No. _____

DEFINITIONS.

"Compliance Update" means a change made to the Covered Software to reflect a proposed or mandated change in an applicable law or regulation.

"Customization" means any improvement, derivation, extension or other change to the Covered Software at the request of the Customer, including any that result from the joint efforts or collaboration of Manatron, and the Customer and/or Property Taxation Officials of Colorado (PTOC).

"Enhancement" means any modification or addition that, when made or added to the Covered Software, improves its utility, efficiency, fundamental capability or application.

"Error" or "Bug" means any failure of the Covered Software to conform in any material respect to the functional specifications contained in the documentation for the Covered Software.

"Error Correction" or "Bug Fixes" means a modification or an addition that, when made or added to the Covered Software, establishes material conformity of the Covered Software to the documentation for the Covered Software, or a procedure or routine that when implemented in the regular operation of the Covered Software, eliminates the particular adverse effect on Customer.

"Release" means a version of the Covered Software denoted by a number to the left of the decimal point (as compared to a change in the number to the right of the side of the decimal point). For example 4.X and 4.1 are the same Release. 4.X and 5.X are two different Releases. Releases will incorporate major Enhancements and any Version developed after the Release immediately preceding the most current Release.

"Version" means a new version of the Covered Software that includes minor Enhancements, Error Corrections and/or Compliance Updates, which is indicated by a different number to the right of the decimal point (e.g. "4.1" and "4.2" represent different versions of Release "4").

I. COVERAGE

During the term of this Agreement, Manatron agrees to provide maintenance and support services for the Covered Software (Covered Software & Sites"). Unless specifically listed in Covered Software does not include hardware, vendor operating systems and other system software, Customer-developed software unless developed by Customer in conjunction with or with the approval of Manatron pursuant to this Agreement or the Contract for Vendor Products and Services for a Multi-Jurisdiction Assessor/Treasurer System (the "Vendor Products and Services Agreement"), and third-party software (except any third party software embedded in the Covered Software).

II. DESCRIPTION OF MAINTENANCE SERVICES

A. Support Services. During the term of this Agreement, Manatron will provide the services described herein so as to maintain the Covered Software in good working order, keeping it free from material defects so that the Covered Software shall function properly and in accordance with the accepted level of performance as set forth in the Software License Agreement.

(1) Service Response. Manatron will make available to Customer a telephone number (the "Support Center HOTLINE") for Customer to call requesting service of the Covered Software. The Support Center HOTLINE operates during business hours, 7:00 a.m. to 5:30 p.m. Mountain Time, Monday through Friday, excluding legal holidays. Extended coverage is available for an additional fee. The Support Center HOTLINE can also be used to notify Manatron of problems associated with the Covered Software and related documentation.

B. Remedial Support. Upon receipt by Manatron of notice from Customer through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Covered Software, Manatron shall respond as provided below:

The parties acknowledge that the categorization of the severity level will vary depending on the function that is affected, the timing of that function's failure and the criticality of that function in relation to Customer's assessment and taxation cycle.

Severity 1: Produces an emergency situation in which the Covered Software is inoperable, produces incorrect results, or fails catastrophically.

RESPONSE: Manatron will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within one (1) hour. An initial status report shall be provided to Customer within one (1) hour. Manatron will continue to provide best efforts to resolve Severity 1 problems in less than forty-eight (48) hours. The resolution will be delivered to Customer as a work-around. If Manatron delivers a work-around acceptable to Customer, the severity classification will drop to a Severity 2.

Severity 2: Produces a detrimental situation in which performance (throughput or response) of the Covered Software degrades substantially under reasonable loads, such that there is a severe impact on use; the Covered Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

RESPONSE: Manatron will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonable possible, but in any event a response via telephone will be provided within four (4) hours. Manatron shall verify the reported problem and regularly communicate the status to Customer. Manatron will exercise best efforts to resolve Severity 2 problems within five (5) days. The resolution will be delivered to Customer in the same format as Severity 1 problems. If Manatron delivers a work-around

acceptable to Customer for a Severity 2 problem, the severity classification will drop to a Severity 3.

Severity 3: Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact.

RESPONSE: Manatron will use all commercially reasonable efforts to acknowledge receipt of the problem within one business day of the report and respond to the problem within thirty (30) days.

Severity 4: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from Manatron.

RESPONSE: Manatron will use all commercially reasonable efforts to acknowledge receipt of the problem within one business day and provide, as agreed by the parties, a fix or fixes for Severity 4 problems in future maintenance releases.

C. Maintenance Services. During the term of this Agreement, Manatron will maintain the Covered Software by providing software updates including Compliance Updates and Enhancements to Customer as the same are offered by Manatron to its licensees of the Covered Software under maintenance generally ("Updates"). All software Updates and Enhancements provided to Customer by Manatron pursuant to the terms of this Agreement shall be subject to the terms and conditions of the Software License Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:

- (1) Bug fixes;
- (2) Enhancements including but not limited to:
 - (a) Enhancements to keep current with the current hardware vendor's Operating System ("OS") releases, as available from Manatron, provided that the current hardware vendor's OS release is both binary and source-compatible with the OS release currently supported by Manatron; and
- (3) Performance enhancements to Covered Software.
- (4) Compliance Updates.
- (5) Versions
- (6) Releases

Updates do not include: New functions other than those required for Compliance Updates such as (i) new functionality or market data delivery infrastructure; (ii) new market data feeds; (iii) new applications; and (iv) new presentation tools.

Updates will be provided in machine-readable or electronic format and updates to related documentation will be provided in hard copy form. All such deliveries shall be made by a single communication to a single Customer designated distribution point specified in Attachment A. Duplication, distribution and installation of Updates is the responsibility of Customer. If requested, Manatron will provide on-site assistance in the installation of Updates on a time and materials basis, plus expenses.

Manatron's obligation to provide Support services shall extend only to the current Release and two prior Releases.

If Customer desires support for earlier Releases of the Current Software, such support may be treated by Manatron as additional consulting services for which Customer will be billed at Manatron's time and materials rates set forth in Attachment E ("Time & Materials Rates").

Manatron assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Covered Software if the Customer has made changes to the system hardware/software configuration or modifications to any supplied source code which changes effect the performance of the Covered Software and were made without prior notification to Manatron. Manatron assumes no responsibility for the operation or performance of any Customer-written or third-party application. Manatron applications will maintain currency with the then current database and operating system within 90 days from the date the Customer notifies Manatron it has obtained a new release of said database software, operating system software or utility software.

D. Services Not Included. Maintenance Services do not include any of the following: (1) custom programming services; (2) on-site support, including installation of hardware or software; (3) support of any software not Covered Software; (4) training; (5) out-of-pocket and reasonable expenses, including hardware and related supplies; or (6) any other activity set forth in Articles IV and VI of this Agreement.

III. ON-SITE SUPPORT

As requested by Customer, and upon reasonable notice and approval by Manatron, Manatron shall maintain personnel at any of the Covered Sites. On-site personnel will perform ongoing system administration, monitoring, reconfiguration and tuning, problem diagnosis, and resolution, and interfacing with Customer personnel on production system issues, to the extent possible during normal business hours. These personnel shall also be responsible for the installation of new Manatron software releases on the production system and the distribution of documentation updates. In addition, on-site personnel will provide training to Customer personnel on the operation and administration of the Covered Software as time permits. Fees for on-site support are contained in Attachment C ("Services and Fees"). No travel expenses or travel time will be reimbursed unless Manatron has received written approval for travel time and expenses prior to travel. Only travel expenses that comply with the limits and procedures set forth in Attachment D ("Travel Expenses Limits and Procedures") shall be reimbursed. No

charge will be made for any on-site support required for the satisfactory performance of the maintenance services as described in section III herein.

IV. PER CALL SUPPORT

Visits by Manatron engineers to the Covered Site(s) can be provided for non-maintenance related activities to supplement the services provided under this Agreement. Tasks performed under Per Call Support include, but are not limited to, installation of additional hardware, training, and consulting for non-Manatron applications. At any time, Customer may request Per Call Support. All requests will be documented by a work order from Customer to Manatron and response by Manatron will be on a best efforts basis. The minimum call duration is two (2) hours. Customer will not be billed for labor, or expenses required for the performance of the requested service. No travel expenses or travel time will be reimbursed unless Manatron has received written approval for the travel time and expenses prior to travel. Only travel expenses that comply with the limits and procedures set forth in Attachment D shall be reimbursed.

V. TIME AND MATERIALS SERVICES

A. For Non-Manatron Problems. In the event that Customer notifies Manatron of a problem experienced by Customer in connection with the operation of the Covered Software, Manatron shall respond as provided in Section II.B., above. If the cause of such problem is not an error, defect or nonconformity in the Covered Software, Customer shall compensate Manatron for all work performed by Manatron in connection therewith, on a time and materials basis at Manatron's time and materials rates set forth in Attachment E., unless otherwise agreed by the parties in writing at the time, plus expenses. No travel expenses or travel time will be reimbursed unless Manatron has received written approval for the travel time and expenses prior to travel. Only travel expenses that comply with the limits and procedures set forth in Attachment D shall be reimbursed.

B. For Non-Manatron Software. Upon request and reasonable notice from Customer, Manatron will provide assistance in the installation of non-Manatron software on a time and materials basis, plus expenses. Non-Manatron software consists of any software not specifically listed in Attachment A, including the following:

1. New releases and updates to hardware vendor operating systems and other system software not listed in Attachment A;
2. Customer-developed software; and
3. Third-party software (except third party software embedded in the Covered Software which is considered Covered Software).

VI. ACCESS

Software Maintenance is conditioned upon provision by Customer to Manatron of reasonable appropriate access to the system(s) running the Covered Software, including, but not limited to, passwords, system data, file transfer capabilities, and remote log-in-capabilities. Manatron will maintain security of the system and use such access only for the purposes of this Agreement and

will comply with Customer's standard security procedures. Information accessed by Manatron agents or employees as a result of accessing Customer's system shall be deemed confidential information subject to the Confidentiality provision set forth herein.

Customer shall also use commercially reasonable efforts to provide an active voice telephone line at each site which is available continuously when required for support access.

VII. PROBLEM REPORTING AND TRACKING PROCEDURES

Customer may use the services described herein only by making reference to the Authorized A Support Agreement number. All such reports and requests will be made through the authorized individuals (up to two [2] per site), designated by Customer in Attachment B ("Authorized Customer Contacts"), who may be changed by Customer from time to time by written notice to Manatron. A twenty-four (24) hour Support Center HOTLINE is provided for problem reporting outside of normal business hours.

VIII. FEES

A. Maintenance Fees. Fees for Maintenance Services provided under this Agreement are contained in Attachment C. Any time a site or software package is added or deleted from Attachment A, Manatron will automatically adjust and/or amend Attachment A and Attachment C accordingly.

Rates will be reviewed and adjusted accordingly when another site is added and/or the workstation/server base increases (i.e., added equipment and/or installed software) and/or software to be supported exceeds the Covered Software. Maintenance fees shall not increase during the Initial Term. Manatron agrees to provide Customer with notice of any increase in the Maintenance fee, On-Site Support fees, Per Call Support fees and time and materials rates ("Fees") not later than 180 days prior to the expiration of any subsequent one year renewal term. In the event such notice is not timely provided, there shall be no increase in the Fees. Any increase in the Fees shall not exceed the percentage difference between the latest CPI for all Urban Consumers, US City Average ("CPI") and the CPI for the preceding calendar year.

B. Expenses. Customer agrees to reimburse Manatron for reasonable expenses related to the performance of services. Expenses may include, but are not limited to, charges for materials, freight, travel (including lodging and associated expenses), printing and documentation, and other out-of-pocket expenses reasonably required for performance. No travel expenses or travel time will be reimbursed unless Manatron has received written approval for the travel time and expenses prior to travel. Only travel expenses that comply with the limits and procedures set forth in Attachment D shall be reimbursed.

IX. PAYMENT

A. Except as provided in section B. below, maintenance fees will be invoiced annually, thirty (30) days in advance of the year.

B. For the first year of the Initial Term Manatron will invoice the Customer for one half of the annual maintenance fee 30 days after go-live as described in the Contract for Vendor Products and Services for a Multi-Jurisdiction Assessor/Treasurer System (the "Vendor Products and Services Agreement"). If "Final Acceptance" of the Multi-Jurisdictional Assessor/Treasurer System (the "System") has not been made as described in the Vendor Products and Services Agreement within 6 months of the commencement of the Initial Term as described in Article XV herein, Vendor will waive the balance of the maintenance fee for the first year of the Initial Term. If "Final Acceptance" of the System has been made, Manatron will invoice the Customer for the second half of the annual maintenance fee for the Initial Term 6 months from the date of the commencement of the Initial Term. Services as set forth herein will be performed by Manatron notwithstanding the waiver of the maintenance fee as set forth herein.

C. The charges for on-site support, per call support and time and materials services if applicable and any expenses as described in this Agreement will be invoiced each month for charges (services, material and expenses) incurred in the previous month.

D. All undisputed invoices shall be due and payable within sixty (60) days of the date of the invoice.

X. SUPPORT AGREEMENT NUMBER

For purposes of problem notification, Customer agrees to reference the Authorized Support Agreement Number shown on page one of this Agreement.

X. LIMITATION OF LIABILITY

MANATRON WARRANTS THAT ALL SERVICES PROVIDED UNDER THIS AGREEMENT WILL BE PERFORMED IN A WORKMANLIKE MANNER. THERE IS EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR INFRINGEMENT CLAIMS OR IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, MANATRON SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR INFRINGEMENT CLAIMS OR IN THE CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL MANATRON BE LIABLE HEREUNDER TO CUSTOMER FOR DIRECT DAMAGES IN ANY AMOUNT GREATER THAN MANATRON'S INSURANCE COVERAGE OR TO THE EXTENT THE CLAIM IS NOT WITHIN MANATRON'S INSURANCE COVERAGE, THREE TIMES THAT PAID BY CUSTOMER TO MANATRON UNDER THIS AGREEMENT.

SOFTWARE MAINTENANCE AGREEMENT
Attachment "A"

Covered Software and Sites

Covered Software:

- Manatron GRM[®] – Assessment Administration
- Manatron GRM[®] – Records
- Manatron GRM[®] – CAMA (CAMA solution from STI acquisition)
- Manatron GRM[®] – Personal Property
- Manatron GRM[®] – Tax
- Manatron GRM[®] – Interfaces

Covered Sites:

Pursuant to the terms and conditions of the Software License Agreement executed in concert with this Software Maintenance Agreement, a Site shall include the sites of all the Licensed PTOC Participants. A site is limited only by the geographical boundaries of the political jurisdiction. At the execution of this Agreement, these sites are:

- Arapahoe County, CO
- City & County of Broomfield, CO
- City & County of Denver, CO
- Jefferson County, CO

Other jurisdictions may join PTOC and fall under the scope of this Agreement. It is understood that by entering into this License, the Customer shall have the right to use the Software in connection with the operation of all Sites where another PTOC Participant holds a license to the Software. Site shall also include all locations necessary for the Software to operate in accordance with the Documentation, including another data center for redundancy disaster recovery or multiple databases including development, test, training and production.

Designated Distribution Sites:

Delivery of Updates, as set forth in Section III.C of this Agreement, for each customer are identified as follows: Arapahoe County, CO-City & County of Broomfield, CO-City & County of Denver, CO-Jefferson, County, CO

SOFTWARE MAINTENANCE AGREEMENT
Attachment "B"

Authorized Customer Contacts

Authorized Customer Contacts:

Pursuant to the terms and conditions of this Software Maintenance Agreement, the supported software is deployed at a single site in the City & County of Denver, CO. Given the multi-jurisdictional use of the system, it is necessary to identify two (2) individuals from each jurisdiction who are authorized to make maintenance and support requests on behalf of their respective jurisdictions. Given this, the following individuals have said authorization:

For City & County of Denver:

- 1.) Paul Jacobs, Assessor
- 2.) Steve Ellington, Acting Treasurer

**SOFTWARE MAINTENANCE AGREEMENT
Attachment "C"**

Services and Fees

Manatron Annual Software Maintenance Fees

Initial Term first year (following system go-live)	\$ 231,222
Initial Term second year	\$ 231,222
Initial Term third year	\$ 231,222

Manatron Onsite Maintenance and Support Rate

Onsite Support Daily Rate	\$1600*
---------------------------	---------

*Travel expenses are not included within this sum. All expenses must be pre-approved and in accordance with the travel policy set forth in Attachment D to this Software Maintenance Agreement.

SOFTWARE MAINTENANCE AGREEMENT
Attachment "D"

Travel Expenses Limits and Procedures

All Manatron, Inc. (Manatron) travel expenses related to this Software Maintenance Agreement must be approved in advance in writing by City & County of Denver (the City). Approved Manatron travel costs and expenses related to this Software Maintenance Agreement (the Agreement) will be subject to the following terms and conditions.

The following maximum costs will govern reimbursements for lodging and meals and incidental travel expenses incurred as a result of services provided through this Agreement:

- | | |
|---|----------|
| 1. Lodging expenses per individual per night: | \$150.00 |
| 2. Meals and incidental travel expenses
per individual per day | \$ 75.00 |

The following policies will govern reimbursements for air travel and ground transportation provided through this Agreement:

1. The City will not reimburse for travel completed using chartered or other non-scheduled flights.
2. The City will reimburse only for domestic travel within the continental United States, except by prior approval.
3. The City will reimburse only for coach or equivalent flight accommodations purchased as round-trip fares. No reimbursements will be paid for first class, business class or other similar air travel upgrades. Except in emergencies or with advance notification and approval, the City will not reimburse for one-way airline tickets.
4. The City expects Manatron to schedule all flights in such a way as to secure the lowest reasonable airfare cost for each Manatron staff member.
5. The City will reimburse for rental vehicles used during each trip provided that Manatron can demonstrate that the number of vehicles rented was reasonable and that whenever possible, Manatron staff made a good faith effort to travel together as a group as opposed to individual travel.
6. The City will reimburse for rental vehicles used during each trip provided that the vehicles rented were the most reasonably priced and economically sized vehicle given the travel requirements of the particular trip. The City will not reimburse for the rental of luxury vehicles.

The City will reimburse Manatron for the following specified travel expenses only:

1. Airfare
2. Lodging
3. Car Rental
4. Meals and incidental travel expenses

Manatron will invoice the City monthly for the actual cost of travel and expenses related to the Agreement. Invoices will clearly identify the travel and expense charges by the following four (4) major

cost categories listed above. Invoices will include copies of receipts documenting all cost listed in the invoice pertaining to airfare, lodging and car rental. Receipts will not be required to be submitted as documentation for meals and incidental travel expenses.

**SOFTWARE MAINTENANCE AGREEMENT
Attachment "E"**

**Manatron Maintenance and Support
Time and Materials Rates**

Professional Service Rates		
Role/Position	Hourly	Daily Rate
Vice President	\$ 385.00	\$ 2,300.00
Chief Architect	\$ 385.00	\$ 2,300.00
Senior Project Manager	\$ 228.00	\$ 1,370.00
Project Manager	\$ 200.00	\$ 1,200.00
Senior Business Analyst	\$ 228.00	\$ 1,370.00
Business Analyst	\$ 200.00	\$ 1,200.00
Senior Support Analyst	\$ 200.00	\$ 1,200.00
Support Analyst	\$ 183.00	\$ 1,100.00
Programmer / Analyst	\$ 183.00	\$ 1,100.00
Senior Trainer	\$ 200.00	\$ 1,200.00
Trainer	\$ 183.00	\$ 1,100.00
Blended rate (if required)	\$ 200.00	\$ 1,200.00
DBA	\$ 200.00	\$ 1,200.00

SOFTWARE MAINTENANCE AGREEMENT EXHIBIT “B”

Insurance Certificates

[ATTACH CERTIFICATES BELOW]