

SOFTWARE MAINTENANCE AGREEMENT
AGREEMENT NUMBER CA712014CCSF

This Agreement is entered into this 12th day of August, 2014, by and between Manatron Incorporated (“Manatron”), having its principal place of business at 510 E. Milham Avenue, Portage, Michigan, 49002, and the City and County of San Francisco (“City”), a municipal corporation, acting by and through its Director of the Office of Contract Administration or the Director’s designated agent. References herein to the “Agreement” shall be deemed to mean, collectively, the provisions of this Software Maintenance Agreement and the Software Maintenance Attachment (“SMA”), attached as Exhibit E. To the extent a conflict exists between the provisions of this Software Maintenance Agreement and the SMA, the terms of the SMA shall take precedence.

WHEREAS, Manatron has provided to City certain Software pursuant to a software license agreement between the parties, dated July 30, 2013, including all modifications and amendments, that Manatron acknowledges provides a perpetual license to the City (the "End Use License Agreement," Appendix G of STATEMENT OF WORK between City and County of San Francisco and XTech dated September 28, 2012); (“XTech SOW”). For clarity, the XTECH SOW is a separate and independent contract from this agreement; and

WHEREAS, City wishes to have Manatron provide maintenance and support services for the Software, pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

I. INCORPORATION OF DOCUMENTS AND DEFINITIONS

The following documents are attached hereto and, by this reference, incorporated in this Agreement:

- Exhibit A – Maintenance Services
- Exhibit B - Authorized City Contacts
- Exhibit C - Services and Fees
- Exhibit D - List of Legal Holidays
- Exhibit E - Software Maintenance Attachment

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Effective Date Date upon which the Controller of the City has certified to the availability of funds and Manatron has been notified in writing.

- Customization** Any improvement, derivation, extension or other change to the Software made by Manatron at the request of Customer, including any that result from the joint efforts or collaboration of Manatron and Customer. Manatron may, from time to time and in its sole discretion, incorporate Customizations into the Software as “Enhancements.”
- Enhancement** Any modification or addition that, when made or added to the Software, changes its utility, efficiency, functional capability, or application. Manatron may, in its sole discretion, designate an Enhancement as minor or major.
- Errors, Defects, and Malfunctions** Any failure of the Software to conform to the functional specifications contained in the documentation, as published from time to time by Manatron.
- Fix /Error Correction** Repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction, including a modification or an addition that, when made or added to the Software, establishes material conformity of the Software to the documentation, or a procedure or routine that, when implemented in the regular operation of the Software, eliminates the practical adverse effect on City of such nonconformity.
- Go-Live** Use of the Software by Customer in a production environment.
- Release** An adaptation of the Software that includes major Enhancements and the incorporation of any Version developed after the Release immediately preceding the most current Release. A Release is denoted by the numbers to the left of the right decimal point (as compared to a change in the number to the right of the right decimal point). For example, 9.05.00 and 9.05.01 are the same Release but different Versions; 9.05.00 and 9.06.00 are two different Releases.
- Software** Programs licensed to City by Manatron, as listed in Exhibit A to this Software Maintenance Agreement (along with any associated documentation) in object code only and any modification or Updates or modifications to the program(s) provided under the this Agreement. Software includes Error Corrections and new Versions and Releases of such program(s) that may be provided under this Agreement. The term “Software” excludes any third-party software.
- Subsequent Release** A Release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Manatron as a replacement to a specified Software product. A Subsequent Release will be supported by Manatron in accordance

with the terms of this Agreement. Multiple Subsequent Releases may be supported by Manatron at any given time.

Updates Software enhancements and updates which are offered by Manatron to licensees of its Software under maintenance generally.

User An individual authorized by the City to use the Software operating at the Covered Site as defined in Exhibit A of this Agreement.

Version A new adaptation of the Software that includes minor Enhancements, Error Corrections, and/or Compliance Updates. Versions are denoted by a different number to the right of the right decimal point. For example, 9.05.00 and 9.05.01 are different Versions of Release 9.05.

Workaround A change in the procedures followed or end user operation of the Software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

II. COVERAGE

During the term of this Agreement, Manatron agrees to provide maintenance and support services for the Software operating at the Covered Site as configured in the Definition of Go Live deliverable of the XTech STATEMENT OF WORK between City and County of San Francisco and XTech dated September 28, 2012. Any changes to the configuration will not be included in maintenance and support services unless both parties have agreed in writing to the changes. Unless specifically listed in Exhibit A, Software does not include vendor operating systems and other system software, City-developed software, and third-party software (except any third party software embedded in the Software).

III. 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 Software in good working order, keeping it free from material defects so that the Software shall function properly and in accordance with the accepted level of performance, as set forth in the Definition of Go Live deliverable of the XTech STATEMENT OF WORK between City and County of San Francisco and XTech dated September 28, 2012 (End User License Agreement by and between Manatron, Inc. and Xtech Joint Venture for the benefit of the City and County of San Francisco, – Appendix G to the STATEMENT OF WORK between City and County of San Francisco and XTech dated September 28, 2012).

B. Service Response. Manatron will provide to City a telephone number (the "Hotline") for City to call to request service of the Software. The Hotline shall operate during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, Pacific Standard Time, excluding legal holidays, as listed in Exhibit D. Customer may also place support calls via the Connexion Support Portal, by

calling the help desk, or by e-mailing the help desk. Extended coverage hours may be provided upon mutual agreement of the parties on a time and materials basis.

C. Scope of Service Coverage Manatron shall respond to any Errors reported by City based on the priority code assigned to such Error, Defect or Malfunction. City shall identify the priority code when it initially reports the Error, Defect or Malfunction to Manatron. Manatron may, in its reasonable discretion, re-classify the Error, Defect or Malfunction after its initial investigation and notification to the City. Notwithstanding the foregoing, the City may request that the Error be resolved with a priority code higher than the level classified by Manatron, by paying Manatron for such support on a time-and-materials basis at Manatron’s then current rates. Should the City disagree with a response policy reclassification by Manatron the Dispute Resolution Procedure outlined in section 42. of Exhibit E could be pursued.

The priority codes and responses are as follows:

Priority	Definition/Impact	Manatron’s Responses
1	The problem causes an immediate major impact on City’s business. The problem has caused City’s use of the software, or a significant component thereof, to stop or substantially deviate from the documentation. No timely workaround exists.	Manatron will use all commercially reasonable efforts to: (i) respond to City within one hour, indicating that Manatron has received the report of the error; (ii) provide an initial status report to City within two hours, and regularly communicate thereafter the status of a reported incident; and (iii) provide the appropriate modifications, Fixes, and other changes to the Software as soon as reasonably possible.
2	The problem causes an impact on City’s business. A workaround is not available; however, processing can still continue but in a restricted manner.	Manatron will use all commercially reasonable efforts to: (i) acknowledge receipt of the error within four hours of the report; (ii) verify the reported error and regularly communicate the status to City; and (iii) provide the appropriate modifications, Fixes, and other changes to the Software within ten days, or to continue its efforts indefinitely beyond this period when an error remains unresolved.
3	The problem has a minor impact on City’s business. The problem does not prevent operation of the software.	Manatron will use all commercially reasonable efforts to: (i) acknowledge receipt of the error within one business day of the report; and (ii) respond to the error within thirty days.
4	The problem has no business impact.	Manatron will use all commercially reasonable efforts to: (i) acknowledge receipt of the error within one business day of the report; and (ii) consider addressing the issue in a future Version or Release.

Manatron may from time to time amend its response policy upon at least sixty (60) days’ prior notice to Customer.

D. PAYMENT

City agrees to pay Manatron the support fees set forth in Exhibit C. Support fees shall be invoiced annually in advance, commencing on the first day of the month next following the date of Go-Live. After the initial term, the parties upon mutually agreement may change the annual support fees for existing Software Releases. Support fee increases will not be arbitrary or unreasonable. Any such would be outlined in a subsequent, mutually agreeable amendment.

E. UPDATES

Updates will be provided on an as-available basis and include the items listed below:

- (1) Fixes;
- (2) Enhancements to market data service software provided by Manatron to keep current with changes in market data services or as Manatron makes enhancements;
- (3) Performance enhancements to Software.

Updates do not include:

- (1) Platform extensions, including product extensions to: (i) different hardware platforms; (ii) different windowing system platforms; and (iii) different operating system platforms; and
- (2) New functions 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 format and updates to related documentation will be provided via Manatron's Connexion Site or client landing zone. All such deliveries shall be made by a single communication the City' designated notice party specified in Exhibit E. Duplication, distribution, and installation of Updates is the responsibility of City.

Manatron will provide support services for previous releases for a minimum period of twelve (12) months following the general availability of a Subsequent Release or Update. After this time, Manatron shall have no further responsibility for supporting and maintaining the prior releases.

Manatron assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or Subsequent Releases of the Software if the City has made changes to the system hardware/software configuration or modifications to any supplied source code, which changes effect the performance of the Software and were made without prior notification and written approval by Manatron. Manatron assumes no responsibility for the operation or performance of any City-written or third-party application.

F. 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 that is not 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 through VI of this Software Maintenance Agreement.

This section is not meant to indicate that Manatron shall have no responsibility for supporting installation of Subsequent Releases, or providing documentation to support the User in learning new product features available in Subsequent Releases. Manatron shall provide, at a minimum, with each Subsequent Release a comprehensive set of release notes and any other necessary technical documentation to support the installation and usage of the Subsequent Release. If, after the user has consulted the release notes and other documentation, the City is unable to deploy the Subsequent Release into a production environment, the parties may determine the level and cost of any on-site assistance that may be required pursuant to an amendment to the Agreement signed by the parties. If the City is unable to deploy the Subsequent Release because of an error caused by Manatron in developing the Subsequent Release, Manatron shall agree to correct the issue.

V. RESERVED ("PER CALL SUPPORT")

VII. ACCESS

Maintenance Services are conditioned upon provision by City to Manatron of reasonable appropriate access to the system(s) running the Software, including, but not limited to, passwords, system data, file transfer capabilities, and remote log-in-capabilities. Manatron will maintain the security of the system and use such access only for the purposes of this Agreement and will comply with City's standard security procedures. Information accessed by Manatron's agents or employees as a result of accessing City's system shall be deemed confidential information pursuant to the terms of the End User License Agreement by and between Manatron, Inc. and Xtech Joint Venture for the benefit of the City and County of San Francisco, Appendix G of STATEMENT OF WORK between City and County of San Francisco and XTech dated September 28, 2012.

City 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.

VIII. PROBLEM REPORTING AND TRACKING PROCEDURES

City may use the services described herein only by making reference to the authorized support Agreement Number shown on page 1 of this Software Maintenance Agreement. All maintenance service reports and requests will be made through the Authorized City Contacts designated by City in Exhibit B, who may be changed by City from time to time by written notice to Manatron.

IX. MAINTENANCE FEES

Fees for Maintenance Services provided under this Agreement are contained in Exhibit C.

X. RESERVED (“PAYMENT”)

XI. SUPPORT AGREEMENT NUMBER

For purposes of problem notification, it is necessary for City to utilize the Agreement Number shown on page 1 of this Software Maintenance Agreement.

XII. RESERVED (“EXCLUSION OF LIABILITY”)

XIII. RESERVED (“TAXES”)

XIV. RESERVED (“GENERAL”)

XV. RESERVED (“TERM AND TERMINATION”)

IN WITNESS WHEREOF, each party has caused a counterpart of the original of this Software Maintenance Agreement to be executed as of the date first written above by its duly authorized representative.

CITY

CONTRACTOR

Recommended by:

Manatron, Inc.



Pauline Marx
Chief Assistant Treasurer
Office of the Treasurer & Tax Collector



Tom Walsh
Managing Director, Government

City vendor number: **08210**

Approved as to Form:

Dennis J. Herrera
City Attorney

By:


Deputy City Attorney

Approved:



PUR **Jaci Fong**
Director of the Office of Contract
Administration, and Purchaser

Exhibit A – Maintenance Services

Covered Site:

Means a single physical server location and single database for which the Software is licensed. Customer may have multiple non-production sites in place.

Software and Configuration: GRM Business Revenue application; California Base COTS Configuration.

Exhibit B – Authorized City Contacts

David Augustine, Tax Collector
Tajel Shah, Deputy Director
Greg Kato, Policy & Legislative Manager

Exhibit C – Services and Fees

Item	Total
Annual Support – Year 1	\$186,461.00
Annual Support – Year 2	\$193,920.00
Annual Support – Year 3	\$201,678.00
Annual Support – Year 4	\$209,746.00
Annual Support – Year 5	\$218,136.00

Item	Total
Customer Support Services	\$50,000.00

The above referenced Professional Services Hours apply to Off Hours Professional Services requested by the City or an escalation of Support as defined on page 5 of this document. In no event shall the Professional Services Fees exceed \$50,000.00.

OFF HOURS PROFESSIONAL SERVICES:

In the event the City requests Off Hours Professional Services the City and Manatron would collaboratively define the specific date or dates, times, and scope of the Professional Services required and would execute a Schedules for Master Agreement, Letter of Authorization, or Change Request outlining said services and the terms and conditions associated with the provision of the items outlined.

OFF HOURS PROFESSIONAL RATES - Based on base rate of \$205.00/Hour.

- 50% of a resource(s) normal rate is charged for resource(s) to be on-call and available outside of normal business hours.
- Outside of normal business hours, we would charge as follows once our resources are engaged...

\$256.25

- Weekdays, 5 PM to midnight
- Saturdays, 8 AM to midnight
- Sundays, 8 AM to midnight

\$307.50

- Any designated holiday (holiday rates supersede all other rates)
- Weekdays, midnight to 8 AM
- Saturdays, midnight to 8AM
- Sundays, midnight to 8 AM

Exhibit D – List of Legal Holidays

New Years Day

Dr. Martin Luther King, Jr. Day

President's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day and the Day After

Christmas Eve

Christmas Day

Manatron may from time to time amend its holiday schedule upon at least sixty (60) days' prior notice to Customer.

EXHIBIT E

City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

**Software Maintenance Attachment to the
Software Maintenance Agreement # CA712914CCSF between
the City and County of San Francisco and
Manatron, Inc.**

This Software Maintenance Attachment (“Attachment”) is appended to the **Software Maintenance Agreement # CA712014CCSF** between the City and County of San Francisco (“City”) and **Manatron, Inc., 510 E. Milham Avenue, Portage, Michigan 49002** (“Contractor” or “Manatron”), dated August 12, 2014 (the “Software Maintenance Agreement”). The terms and conditions of this Attachment are referenced in and incorporated into the **Software Maintenance Agreement**. City and Contractor agree that the terms and conditions of this Attachment, along with the Software Maintenance Agreement (collectively, the “Agreement”), cover support and maintenance services to be provided by Contractor to City, for the computer programs listed in Exhibit A to the Software Maintenance Agreement, and any related manuals.

- 1. Definitions.** All definitions from the Software Maintenance Agreement apply to this Attachment, unless otherwise indicated. Whenever the words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **Office of the Treasurer & Tax Collector**. The words “sufficient,” “necessary,” or “proper,” and the like, mean sufficient, necessary, or proper in the judgment of the **Office of the Treasurer & Tax Collector**, unless otherwise indicated by the context.
- 2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** The Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. The Agreement will terminate without penalty, liability, or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, the Agreement will terminate, without penalty, liability, or expense of any kind at the end of the term for which funds are appropriated.

THIS SECTION SHALL CONTROL AGAINST ANY AND ALL OTHER PROVISIONS OF THE AGREEMENT.

- 3. Term of the Agreement.** Subject to Section 2, the term of the Agreement shall be from **July 1, 2014 to June 30, 2019** with the option to renew annually for up to four years upon mutual agreement between the parties.
- 4. City's Payment Obligation.** The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges

for any late payments made after such 30 day period. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or monies of the City. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of the Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City. In no event shall the amount of the Agreement exceed **One Million nine thousand nine hundred forty-one dollars (\$1,009,941.00)**. The breakdown of costs associated with the Agreement appears in the Software Maintenance Agreement between City and Contractor, dated August 12, 2014 to which this Attachment is attached. After Year # 5, Manatron reserves the right to increase pricing for each year by no more than 5% per year.

5. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment, and supplies that would result in Contractor performing services or providing materials, equipment, and supplies that are beyond the scope of the services, materials, equipment, and supplies agreed upon in the contract unless the Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment, or supplies. The City is not required to reimburse Contractor for services, materials, equipment, or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment, and supplies agreed upon in the contract and which were not approved by a written amendment to the Agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6. Payment; Invoice Format. Invoices furnished by Contractor under the Agreement must be in a form acceptable to the Controller. Each invoice must contain a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

7. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of

Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at [http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1). A contractor, subcontractor, or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

8. Taxes. Remittance of any taxes, including possessory interest taxes and California sales and use taxes, levied upon the Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. The City agrees to pay appropriate taxes or tax reimbursement to Contractor to fulfill this obligation.

9. Reserved.

10. Reserved.

11. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect, or Malfunction, the Software product, and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Maintenance Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing, and operating any Software delivered under the Agreement.

12. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment, or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of the Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

13. Qualified Personnel. Work under the Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in the Agreement.

14. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Contractor, or by

any of its employees, even though such equipment be furnished, rented, or loaned to Contractor by City.

15. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under the Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health, or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees, and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state, or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in the Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in the Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under the Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under the Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under the Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of the Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under the Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

16. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Attachment, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and

4) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum not exclude liability for professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

(ii) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(iii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and

2) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

b. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

c. All certificates shall contain a statement that Insurers will endeavor to provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages below the required coverage under this contract. Notices shall be sent to the City address in the "Notices to the Parties" section.

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of the Agreement and, without lapse, for a period of three years beyond the expiration of the Agreement, to the effect

that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of the Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by the Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate the Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under the Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of the Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

i. (Reserved)

17. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising from Contractor's alleged negligence or willful misconduct Contractor's liability under this section shall be limited to the maximum limits of Contractor's insurance coverage plus the total amount of fees paid to the Contractor by the City pursuant to this agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs incurred by Contractor in the defense of the claim. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied by Contractor in the performance of this Agreement. City agrees to provide Contractor with (i) prompt written notice of any claims covered by this Section 17 (Indemnification); and (ii) reasonable cooperation. Contractor shall not be responsible for any settlement agreed to without Contractor's prior written approval

18. Liability of Contractor. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, IN NO EVENT SHALL CONTRACTOR BE LIABLE,

REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THE AGREEMENT. Contractor's liability for direct damages shall be limited to the maximum limits of Contractor's insurance coverage as provided in Section 16 (Insurance) plus the total amount of fees paid to the Contractor by the City pursuant to this agreement.

19. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OBLIGATION PROVIDED FOR IN SECTION 4 OF THIS ATTACHMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THE AGREEMENT.

20. Default. Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, the Agreement may be terminated by the City, if Contractor does not cure the default within 20 days or provide a plan to cure the default within 10 days upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

21. Support Service Term and Termination

a. **Commencement.** Maintenance Services for the Software begin on the Effective Date for the Software .

b. **Termination for Cause.** In the event Contractor fails to perform any of its obligations under the Agreement, the Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective if Contractor fails to cure the breach within 20 days or develop a mutually agreeable plan to cure after ten (10) days' written notice to Contractor. In the event of such termination, Contractor will be paid for those services performed in accordance with the terms of the Agreement , up to the date of termination. However, City may offset from any such amounts due Contractor any amounts Contractor owes City under this agreement. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise. Such termination does not waive any other legal remedies available to the City.

c. **Optional Termination.** City shall have the option, in its sole discretion, to terminate the Agreement at any time during the term thereof under the following conditions:

1. Contractor amends its Service Response Policy as it relates to City in Article III of the Software Maintenance Agreement, or
2. Contractor is not in compliance with the City's Charter, codes, ordinances, or regulations of the City, to the extent such laws and regulations are applicable to the Contractor, and Contractor fails to cure the non-compliance within a reasonable period of time, not to exceed thirty (30) days, of receiving written notice of such non-compliance.

City shall provide Contractor thirty days' written notice of such termination. In the event of such termination, Contractor will be paid for those services performed in accordance with the terms of this Agreement through thirty (30) days beyond the effective date of termination. In no event will City be liable for costs incurred by Contractor after the effective date of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized under this section. Contractor shall return a prorated adjusted amount of fees accrued to the date of termination. Fees due under such a proration shall be calculated by taking the total yearly fee divided by 365 days and multiplying this figure by the total days of service up to and including thirty days (beyond) the effective termination date. The balance of fees shall be returned to the City within 60 days of the effective date of termination.

22. Rights and Duties Upon Termination or Expiration. This Section and the following Sections of the Attachment shall survive termination or expiration of the Agreement:

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| 7. Submitting False Claims; Monetary Penalties | 25. Audit and Inspection of Records. |
| 8. Taxes. | 26. Subcontracting. |
| 12. Payment Does Not Imply Acceptance of Work. | 27. Assignment. |
| 14. Responsibility for Equipment. | 34. Provisions Controlling. |
| 15. Independent Contractor; Payment of Taxes and Other Expenses | 35. Entire Agreement; Modifications |
| 16. Insurance | 37. Non-Waiver of Rights. |
| 17. Indemnification. | 38. Governing Law. |
| | 41. Protection of Private Information. |

Subject to the immediately preceding sentence, upon termination of the Agreement prior to expiration of the term specified in Section 3, the Agreement shall terminate and be of no further force or effect. Upon termination Contractor shall deliver to the City, any work in progress, completed work, supplies, equipment, and other materials required to be provided to the City by Contractor under this Agreement, in each case, AS IS, WHERE IS. This subsection shall survive termination of the Agreement until fulfilled

23. Conflict of Interest. Through its execution of the Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under the Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect

such information as a reasonably prudent software developer would use to protect its own proprietary data.

25. Notices to Parties. Unless otherwise indicated elsewhere in the Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or fax, and shall be addressed as follows:

To City: **Office of the Treasurer & Tax Collector
ATTN: Tajel Shah, Deputy Director
City Hall Room 140
1 Dr. Carlton B. Goodlett Pl
San Francisco, CA 94102
Tajel.shah@sfgov.org**

To Contractor: **Manatron, Inc.
ATTN: Matthew Henry
510 East Milham Avenue
Portage, MI 49002
Matt.Henry@ThomsonReuters.com**

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a receipt notice. Any notice of default must be sent by registered mail.

26. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under the Agreement. Contractor will permit City to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records, or personnel and other data related to all other matters covered by the Agreement, whether funded in whole or in part under the Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of the Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting. Contractor is prohibited from subcontracting the Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of the Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment. The services to be performed by Contractor are personal in character and neither the Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as the Agreement.

29. Limitations on Contributions. Through execution of the Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies, or equipment, for the sale or lease of any land or building, or for a grant, loan, or loan guarantee, from making any campaign

contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

30. Drug-Free Workplace. Contractor acknowledges that pursuant to the Federal Drug Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents, or assigns shall be deemed a material breach of contract.

31. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in the Agreement in a manner that complies with the ADA and any and all other applicable federal, state, and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under the Agreement, and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents, or assigns will constitute a material breach of the Agreement.

32. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, Contractors' bids, responses to RFPs, and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

33. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under the Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G

are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate the Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this section.

34. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances, and regulation of the City and of all state and federal laws in any manner affecting the performance of the Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

35. Provisions Controlling. Contractor agrees that in the event of conflicting language between this "Software Maintenance Attachment" and the Software Maintenance Agreement, the provisions of this "Software Maintenance Attachment" shall take precedence.

36. Entire Agreement; Modifications. The Agreement, together with all Appendices and/or Exhibits, constitutes the entire Agreement between the parties, and the Agreement may not be modified, nor may any of its terms be waived, except by written instrument executed and approved in the same manner as the Agreement. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as the Agreement. Should the application of any provision of the Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of the Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. Subject to the specific provisions of the Agreement, the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

37. Force Majeure. Contractor shall not be liable for failure to maintain Software when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Contractor shall perform as soon as such cause is removed.

38. Non-Waiver of Rights. The waiver by either party of any breach by either party of any term, covenant, or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

39. Governing Law. This formation, interpretation and performance of the Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation, and performance of the Agreement shall be in San Francisco.

40. Construction. All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of the Agreement.

41. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of the Agreement, the question shall, prior to any other action

or resort to any other legal remedy, be referred to the Purchaser for the City who shall decide the true meaning and intent of the Agreement; provided however, the decision of the Purchaser for the City shall not be binding on Contractor and shall not limit or restrict any rights or remedies of Contractor.

42. Dispute Resolution Procedure. The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy (except disputes over non-payment of invoices) notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement, to the extent reasonably practical. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

43. Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code , Section 900, et. seq., but only with respect to claims covered by San Francisco Administrative Code Chapter 10 and California Government Code , Section 900, et. seq.

44. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

45. Reserved.

46. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of the Agreement as though fully set forth. This provision is a material term of the Agreement. By entering into the Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time the Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor’s failure to comply with this provision.

47. **Cooperative Drafting.** The Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of the Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of the Agreement.