SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement ("Agreement") is entered into between the City of Roseville, California, hereinafter "City" and *<Vendor Name>*, hereinafter "Company" on the Execution Date.
City desires that Company provide Maintenance and Enhancements for releases of the Baseline software on the terms and conditions contained in this Agreement. Company agrees to provide City standard maintenance, on-site support, and training services for the computer programs and user manuals listed below (collectively "Software") and regular upgrades including enhancements and user manuals.

1. Definitions.
a. *Baseline.* means the general release version of Software as updated by the Company and without any other modification.
b. *Software.* means any one of the computer software programs, including source code and documentation. Company shall provide updates to the Software as required in order that the Software reflect current federal and state laws or requirements of the federal or state government or federal or state regulatory agencies.
c. *Confidential Information.* means non-public information of a party to the Agreement.
d. *Execution Date.* means the latest date shown on the signature page of this Agreement.
e. *Equipment.* means hardware and systems configuration meeting Company's criteria.
f. *User Manuals.* shall include any user manuals which are designed for the software and any user manuals and all manuals provided to users for the Software listed above. The user manuals shall be updated with each new release of the Software and shall be updated at least annually.
g. *Production Environment.* means City's operational version of Company's Software critical for business and financial opportunities.
h. *Test Environment.* means version of Company's Software used for staging functionality changes
i. *Development Environment.* means version of Company's Software used for ad hoc changes to functionality
j. *Account.* Installation of Company's Software on City's Equipment, to include Production, Test, and Development Environments.

2. Standard Maintenance Services
Scope of Services. During the term of this Agreement, Company will provide City the following Standard Maintenance Services for the Software:
a. *Corrections.* of substantial defects in the Software so that the Software will operate as described in the user manuals listed above. Software functionality will meet documented specifications and City will not be charged to correct defects / functional gaps.
b. *Periodic Updates*. of the Software that may incorporate (A) corrections of any substantial defects; (B) fixes of any bugs; (C) enhancements to the Software; and (D) upgrades to user manuals as sets out above. Company will access Company's Software at City Facility, with authorization from City, and load periodic updates into a single Account.
c. *Remote Assistance*. Company will provide telephone and e-mail support, as well as remote resolution support, [between the hours of 7:00 a.m. to 6:00 p.m. Pacific Time, Monday through Friday, excluding City holidays] or [twenty-four (24) hours per day, seven (7) days per week], to assist City in using the Software. City will provide method for remote resolution support to access Company's Software at City Facility.

d. *Failures*. In the event of emergencies or systems failures caused by Company's Software which occur outside of the designated support hours established by Section 2(c), Company will provide support twenty-four (24) hours per day, seven (7) days per week for the term of the Agreement.
e. *Test Environment.* Company's office will have ability to produce a test version, including a test database, for the most recent version of City's Software.
f. *Functional Compliance.* Company will provide Software Improvements to conform to Federal and State regulations and requirements.
g. *Third Party Software*. Company will provide support for any third party software or interfaces that their software is reliant on for baseline functionality
h. *Software Escrow.* Company will deposit source code with third party Escrow Agent and list City as beneficiary.
i. *Response/Resolution.* Company will respond to City requests in accordance with Table 2a.

Table 2a

Priority	Name	Description	Resolution Time
1	Critical	Software down with a direct impact on organization and services it provides (no work around available)	2 hours
2	High	Software outage that is preventing single or multiple user(s) from working (no work around)	4 hours
3	Medium	Single user or group Software outage that is preventing affected user(s) from working. (work around may be available)	5 Business Days
4	Standard	End users not able to perform some of the daily functions (work around may be available)	7 Business Days

3. Term
This agreement will remain in full force and effect throughout the initial Contract Year. It will automatically be extended for consecutive Contract Years on a year-to-year basis unless either party notifies the other in writing of its intent not to extend this Agreement.

4. On-Site Support
Company, upon receipt of a written request from City, will provide City On-Site Support at a mutually agreed time. City agrees to pay Company's costs associated with the provision of on-site support, including charges for (i) Company's personnel; (ii) charges for travel, lodging and miscellaneous expenses (if personnel must travel more than 75 miles) in accordance with City of Roseville, California consultant guidelines for travel expenses; and (iii) applicable taxes.

5. Training
a. *Conference.* Company will provide registration passes for two (2) City employees to participate in both National and Regional conferences to gain knowledge on Company's Software direction and new functionality.

b. *Functional Training.* Company will provide eight (8) hours of training specific to City per Contract Year.
c. *Administration Training.* Company will provide four (4) hours of training per Contract Year.
d. *Additional Training.* Upon receipt of a written request from City, Company will provide Training at a mutually agreed time at the offices of City, unless City agrees to receive the Training elsewhere. City agrees to pay Company all costs associated with this Training Pricing Quotation, including (i) charges for Company's personnel, which may include a surcharge for training conducted at City's location; (ii) charges for travel, lodging and miscellaneous (if personnel must travel more than 75 miles) in accordance with City of Roseville, California consultant guideline for travel expenses; and (iii) applicable taxes.

6. Maintenance Fee
a. *Warranty Period.* Company will not charge City any Maintenance Fee for the Warranty Period, as defined in City's Software License Agreement for the Software.
b. *Amount of Fee.* City agrees to pay Company an annual Maintenance Fee, the amount set forth in Exhibit 3, Pricing Quotation for Standard Maintenance Services provided by Company pursuant to this Agreement. The amount charged for these services shall not increase by more than five (5) percent from one year to the next, in the event of renewal.

7. Payment Terms
a. *Maintenance Fees.* City will pay Company the amount identified for the first Contract Year. Fees are due within thirty (30) days of Execution Date.
b. *Invoice Payment.* City agrees to pay Company by thirty (30) days after receipt by City of invoices for agreed upon fees.
c. *Taxes.* City is responsible for paying all taxes relating to this Agreement or any services provided by the Company.
d. *Response/Resolution Fees.* Company will reimburse City 1% of current Contract Year Maintenance Fee for each incident not meeting Response/Resolution requirement. Fee will be due within thirty (30) days of incident.

8. Obligations of City
a. *City Contact.* City shall notify Company of City's designated City Contact. To the maximum extent practicable, City's communications with Company will be through the City Contact.
b. *Installation.* City agrees to install corrections of substantial defects, minor bug fixes and updates, including any enhancements, for the Software in accordance with the instructions and in order of receipt from Company, as deemed necessary.
c. *Facility and Personnel Access.* City agrees to grant Company reasonable access to City's facilities and personnel concerned with the operation of the Software to enable Company to provide services.
d. *No Modification of Software.* City agrees not to modify, enhance or otherwise alter the Software, unless and only to the extent such modification, enhancement or other alteration is specifically authorized in the user manuals identified in this Agreement or through the consent of Company.
e. *Error Documentation.* Upon detection of any error in the Software, City, as requested by Company, agrees to provide Company a listing of output and any other data, including databases and backup systems that Company reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

9. Intellectual Property Rights
City shall have ownership of any enhancements performed outside the Company's Baseline Software.

10. Termination
City shall have the right to terminate this Agreement at any time upon giving thirty (30) days notice to Company. Upon termination, City shall be entitled to a pro rata refund. Company shall have the right to terminate this Agreement and all services provided pursuant to this Agreement (i) upon termination of City's Software License Agreement by either party for any reason; and (ii) if City violates any provision of this Agreement and City fails to cure such violation within fifteen (15) days after receipt of written notice from Company.

a. *Notices.* All notices under this Agreement are to be sent by certified mail to the address below or to any other address as the party may designate:
COMPANY:
Name: Attention:
Address: Fax No.:
Phone No.:
CITY:
Name: Chief Information Officer
Address: 401 Oak Street #404 Fax No.: 916.774.5511
Roseville, California 95678 Phone No.: 916.774.5151
b. *Assignment.* City will not assign or sublicense, in whole or in part, any of its rights or obligations under this Agreement without the prior written consent of Company, which consent shall not be unreasonably withheld.
c. *Complete Agreement.* The parties agree that this Agreement, its attachments, the City's Request for Offer and the Company's Response to the Request for Offer are the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to this Agreement.
d. *Order of Precedence.* In the event of any conflict or inconsistency among documents related to this Agreement, said conflict or inconsistency shall be resolved by giving precedence to the later dated document. Unless otherwise agreed to by both parties, document precedence shall be as follows: (1) the Software License and/or Hardware Sales Agreement; (2) the Request for Quote/Proposal; (3) the Company's response to the Request for Quote/Proposal.
e. *Waiver.* The waiver of failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.
f. *Severability.* If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute, court decision or rule of law, it is to the extent possible, deemed to be omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.
g. *Governing Law.* This Agreement is to be construed in accordance with the law of the State of California. Venue for any cause of action arising pursuant to this agreement shall be in Placer County, California.

11. Force Majeure
Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God and acts of war.

12. Indemnification
Company shall defend, indemnify, and save and hold harmless City, its officers, agents, employees and volunteers from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to

workers and the public), or damage to property, resulting from or arising out of Company's willful misconduct or negligent act or omission while engaged in the performance of obligations or exercise of rights created by this Agreement, except those matters arising from City's sole active negligence. The parties intend that this provision shall be broadly construed.

13. Confidentiality
Company shall adhere to the City's Confidentiality/Non-Compete Agreement (Exhibit 1).

14. Insurance Requirement
Company shall adhere to the City's General Insurance Requirements (Exhibit 2).

AGREED:
COMPANY: _____
BY: _____
SIGNATURE: _____
TITLE: _____
DATE: _____
CITY OF ROSEVILLE:
SIGNATURE: _____
Ray Kerridge, City Manager
DATE: _____
ATTESTED TO:
SIGNATURE: _____
Sonia Orozco, City Clerk
DATE: _____
APPROVED AS TO FORM:
SIGNATURE: _____
Brita Bayless, City Attorney
DATE: _____

Exhibit 1
Confidentiality/Non-Compete Agreement

Exhibit 2
General Insurance Requirements

Exhibit 3
Maintenance Fee Price Quotation

CORPORATE ACKNOWLEDGMENT

THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____ of _____ known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said _____, a corporation, that he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation and that he executed the same as the act of the said corporation for purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A. D.

_____
Notary Public In and
For the State of _____
My Commission Expires:
_____