

AGREEMENT TERMS AND CONDITIONS

STATE OF NEW MEXICO SANTA FE COUNTY

CONTRACT TERMS AND CONDITIONS CONTRACT NO. 27-1910-AS/RM

THIS AGREEMENT is made and entered into by and between Santa Fe County, a political subdivision of the State of New Mexico, hereinafter referred to as the "County" and Manatron, Inc., a Michigan corporation, licensed to do business in New Mexico, hereinafter referred to as "Manatron".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS:

"Acceptance" means approval, after a test period, of software, communications, card products, systems production facility, or any other component of this project, by the County.

"Agreement" means this agreement for the procurement of the software and services specified herein.

"Application Development Services" refers to Manatron-provided services for the design, development, modification, installation, data migration, and testing of software or custom application software.

"Compliance Update" means a change made to the Software to reflect a mandated change in an applicable State Law.

"Commercial Off-the shelf" Software ("COTS") means the current, generally available releases of Manatron's software products.

"Customization" means any improvement, derivation, extension or other change to the Software made by Manatron at the request of the County, including any that result from the joint efforts or collaboration of Manatron and the County. Manatron may from time to time and in its sole discretion, incorporate Customizations into the Software as "Enhancements".

"Database Software" means Relational Database Management Systems (RDMS) such as Microsoft SQL Server, Oracle or similar third-party Software that is utilized by the Software to store County data on a disk subsystem as part of the operation of the Software.

"Designated Processor" means the computer processing device that provides the primary control for the interpretation and execution of the Software and is designated in the Statement of Work or, if not so identified, on which the Software is initially installed or, if a software activator device is required, the computer processing device within which the software activator is properly installed.

“Documentation” means any standard operator and user manuals, product specifications, glossary, index, training materials, and other similar materials generally made available and provided by Manatron for use with the Software.

“End User” means the County, or any employee(s), affiliate(s), agent(s), representative(s) or any other person under the direction or control of the County that uses the Software to perform certain functions or tasks as required by the County.

“Enhancement” means 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.

“Error” means any failure of the Software to conform in any material respect to the functional specifications contained in the Documentation, as published from time to time by Manatron.

“Error Corrections” means 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 the County of such nonconformity.

“Hardware” means the Computer System components and equipment, other than the Database Software, Software, and Third-Party Software.

“Installation Date” means the date on which Manatron completes Installation of the Hardware at a location specified by the County or the Software or Third Party Software on the Designated Processor or, in the case where the County requests or causes a material delay in the performance of installation, the date set forth in the Statement of Work for commencement of installation (if for Hardware) or acceptance testing (if for software or Third-Party Software).

“Interface” means the transmission of data that will allow for efficient and logical interaction with other applicable systems.

“Integrate” means components of the system shall function efficiently and logically with all applicable existing systems.

“Licensed Software” is the computer software in all representations, along with documentation and manuals that are owned by the licensor.

“Maintenance” means both preventive and remedial maintenance.

“Minimum Requirements” means the minimum requirements for the Computer System as set forth in the Statement of Work. The Software may operate on a Computer System that is below the Minimum Requirements, but such operation is not warranted by Manatron.

“Notice of Completion” means: (a) if Manatron is to provide implementation services, a written notice from Manatron stating that installation and implementation of all Hardware, Software and/or Third-Party Software at the County's site has been completed and that the Software is available for acceptance testing; or (b) in all other cases, a written notice from Manatron stating that all Hardware, Software and/or Third-Party Software has been delivered.

"Products" refers to software, Commercial Off-the-shelf Software, or services purchased by the County or provided by Manatron.

"Project Manager" means the employee or consultant identified by the County or Manatron who reports to the County or Manatron regarding the services and products contracted in this Agreement.

"Project Management Plan" means the jointly developed, detailed plan for tasks, deliverables, and the dates for commencement and completion of the tasks or deliverables.

"Release" means a version of the Software denoted by the number to the left of the decimal point (as compared to a change in the number to the right 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 include major Enhancements and the incorporation of any Version developed after the Release immediately preceding the most current Release.

"Services" refers to support services, educational services, services to customize software, application design and analysis, or other professional services to be performed within the scope of the Agreement.

"Site" means a single physical location and single database for which the Software is licensed. The number of Sites for which County is licensed to use the Software shall be specified in the Statement of Work.

"Software" applies to programs, procedures, rules, and any associated documentation pertaining to the operation of a system or applications system and includes Error Corrections, Compliance Updates and new Versions and Releases of such program(s) that may be provided under this Agreement. The term "Software" excludes any Third-Party Software.

"Software Modification" has the same meaning as "Customization" if made at the request of the County under the terms of this Agreement and "Enhancement" when made by Manatron as part of the development or enhancement of the Software or Third-Party Software.

"Statement of Work" refers to a mutually agreed upon and maintained document that identifies hardware and software requirements and delineates project deliverables, installation schedules, and responsibilities of both parties.

"Task" means a specific piece of work or activity.

"Technical Support" means Manatron-supplied software, customized software, hardware, and COTS maintenance, trouble shooting and correction, telephone support, and other software/hardware.

"Test Period" means the period following (a) the County's receipt of the Notice of Completion or (b) in the case where the County requests or causes a material delay in the performance of implementation services, the date set forth in the Statement of Work for commencement of acceptance testing.

"Third-Party Software" means any third-party software program(s) provided by Manatron to the County under this Agreement.

"Version" means a new version of the 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").

2. GENERAL SCOPE OF WORK:

- 2.1 Manatron agrees to provide an integrated GIS and CAMA system, including software products and services, which:
 - 2.1.1 Will operate in a recognized industry standard operating system environment.
 - 2.1.2 Will use an industry standard Relational Database Management System.
 - 2.1.3 Will operate effectively on County hardware as defined or with Manatron supplied upgrade recommendations.
 - 2.1.4 Will allow the County, from PCs on the users' desks, to access and update all necessary information to complete a transaction by use of automated processes.
 - 2.1.5 Will allow for the accurate and timely input and extraction of County data.
 - 2.1.6 Will allow for processing of County business related to property mapping, assessment administration and mass appraisal functions.
 - 2.1.7 Will provide suitable data reporting capabilities.
 - 2.1.8 Will provide Graphical User Interfaces (GUI) that are user-friendly and provide integrated mapping, data, calculation, reporting and communication capabilities to County personnel.
 - 2.1.9 Will allow an end user utilizing Manatron-supplied support tools to easily extract data from the database, import it into Microsoft Word, Excel, or Access, manipulate it and print it on any networked printer.
 - 2.1.10 Will allow the designated County System Administrator to maintain a central point of control for system security and functions.

3. DETAILED SCOPE OF WORK: To accomplish the goals in Section 2 above, the parties have developed a Statement of Work, attached hereto as "Appendix 1", setting out the Schedules of Software and Services to be provided and installed by Manatron and the dates for delivery and/or installation of such products and services. Manatron shall license the Software, provide the Hardware, and perform the services described in the Statement of Work and such amendments to the Statement of Work as the parties may execute from time to time (referred to as the "Statement of Work" or "SOW"). The Statement of Work shall be a part of and governed by the terms and conditions of this Agreement.

3.1 All work performed by Manatron under this Agreement must conform to applicable government laws, regulations, and codes as well as to accepted industry standards and practices. This conformance includes but is not limited to all relevant State of New Mexico laws and statutes, County ordinances and regulations and documented County procedures which may affect the operation of the COTS. This clause shall not be construed as to change the meaning of Compliance Update, as set forth above.

4. **SOFTWARE LICENSE:** Manatron grants to the County a perpetual, nontransferable, nonexclusive license to use the Software and Documentation on the terms and conditions set forth in this Agreement.

4.1 Scope of Rights: County may:

4.1.1 Install the Software on the Designated Processor and may, upon prior written notice to Manatron, move the Software to a different processor, or, in the event of a disaster, run the Software on a back-up processor. Notwithstanding the foregoing, the County may install the Software and Third Party Software supplied under this Agreement on a designated processor to provide for load balancing and fail over.

4.1.2 Use and execute the Software in connection with the operations of the designated sites. Unless otherwise provided in the Statement of Work, the County must purchase a license for each site, except for a back-up site, for which the Software is used.

4.1.3 Make copies of the Software for backup and archival purposes only, provided that Manatron's copyright and other proprietary legends are reproduced on each copy. The County shall keep appropriate records of the number and location of all copies and make such records available to Manatron upon request. All copies that are made by the County shall be the property of Manatron.

4.1.4 Make copies of the Documentation for the County's internal use only, provided that Manatron's copyright and other proprietary legends are reproduced on each copy.

4.2 Restrictions. In addition to other restrictions set forth in this Agreement, the County may not:

4.2.1 Use, copy, modify or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription or merged portion thereof except as expressly authorized under this Agreement;

4.2.2 Without prior written approval of Manatron, translate, reverse engineer, decompile, recompile, update, enhance or create derivations of all or any part of the Software; or

4.2.3 Without prior written approval of Manatron, modify or manipulate the data maintained in the standard database structure schema that is documented as part of the Software, except by those provided in the Software.

4.2.4 Without prior written approval of Manatron, modify, extend or add tables including without limitation, the structure and sequence of any database or database files that are used by the Software, including those created by or for the County under this Agreement; or

4.2.5 Remove the labels or any proprietary legends from the Software or its Documentation.

4.3 Title. Manatron reserves all rights not expressly granted to the County hereunder. The County understands that the license granted herein transfers neither title nor proprietary rights to the County with respect to the Software or Documentation. Any data supplied by the County shall remain the property of the County.

4.4 Right to Audit. Manatron shall have the right, within ten (10) days of Manatron's written request during normal business hours and at times mutually agreed upon by Manatron and County, to audit County's use of the Software to monitor compliance with this Agreement. If an audit reveals that County has exceeded the restrictions on use, County shall be responsible for the prompt payment to Manatron of the underpayment of license fees.

4.5 Third-Party Software. County acknowledges and agrees that each Third-Party Software product is subject to the licensing agreement with the Software product owner. All Third-Party Software provided to County under this Agreement shall be used only in accordance with the applicable license agreement from the third-party owner or licensor.

4.6 Tools; Customizations. The County shall not have any right to independently make such changes to the underlying code of the Software. The County may develop, and shall retain ownership of hooks, interfaces or similar tools for use with the Software, provided that the hook, interface or tool does not use any part of the Software or require any modification or alteration of the underlying code of the Software. Manatron shall own all right, title and interest (including all associated intellectual property rights) in and to any Customizations to the Software.

5. **ACCEPTANCE:** The County reserves the right to perform acceptance testing for a period beginning at the end of each phase of system installation and implementation at the County site, and lasting for the period of time stated in the Statement of Work. Acceptance testing periods will vary depending on the complexity of the task, but in no event will any acceptance period exceed ninety (90) days.

5.1 During any acceptance test period, the County may test the Software to verify that it conforms in all material respects to the Documentation and the Statement of Work. If the Software does not so conform, the County shall promptly notify Manatron in writing and Manatron shall work diligently to correct all nonconformities free of cost to the County.

5.2 Test Period for Final Acceptance. The Test period for final acceptance will begin following notification from Manatron that the project is complete and continue for a period of ninety (90) days.

5.3 The Software shall be considered accepted for all purposes upon the earlier of: (a) notification by County that the Software is in compliance; (b) expiration of the Test Period if County fails to notify Manatron of any material nonconformity within five (5) days of the Deliverable Overview conference call described in the Statement of Work; or (c) use of the Software by County for any purpose other than testing.

5.4 The County also reserves the right to have an independent contractor audit the system to obtain reasonable assurance pertaining to the functions and related controls of the system. At any time before the end of the acceptance testing period, if the County, in its sole discretion, determines that the system has failed to meet the specifications or requirements of this Agreement, or that features or functions said to be present in Manatron's proposal are absent or do not function properly, and Manatron is unable to correct any non-conformity in the Software within fifteen (15) days of notice of the non-conformity, the County may take any or all of the following actions:

5.4.1 Have Manatron modify the installed system to eliminate the deficiency to the County's satisfaction.

5.4.2 Have Manatron re-install a new copy of the system product(s).

5.4.3 Allow Manatron an additional fifteen (15) days to cure any defect or implement a plan to cure any defect within a time period acceptable to the County.

6. **HARDWARE:**

6.1 Delivery. If Hardware is provided to County under this Agreement, Manatron shall coordinate delivery of the Hardware to County. Manatron shall deliver all Hardware to County FOB the County's designated location.

7. **TRAINING:**

7.1 Manatron will provide on-site consultation visit(s) as provided in the Statement of Work.

8. **SUPPORT SERVICES:**

8.1 Technical and User Documentation. Supporting technical and user documentation, help files, data files, libraries, software customizations and modifications will be provided by Manatron at no additional cost to the County during the Agreement Term, as defined in Section 15, below.

8.2 Manatron will provide post-implementation information systems operation support during the final acceptance test period to be provided by remote VPN access during normal telephone support hours as described in the Statement of Work and on-site support services as needed for a period not to exceed fifteen (15) days.

8.3 Telephone Support. Manatron shall provide County with unlimited telephone support services as provided in the Statement of Work.

8.4 Web Site. Manatron shall maintain a web site that contains information concerning the Software and Support Services.

8.5 Error Corrections. Manatron will respond to any Errors reported by the County in accordance with its response policy as provided in the Statement of Work. Manatron may from

time to time amend its response policy upon at least sixty (60) days' prior written notice to the County.

8.6 Compliance Updates. Manatron will dedicate up to, but not to exceed, 200 development hours per year for legislative change updates in the jurisdiction. Manatron shall exercise due diligence in accordance with the highest professional standards and provide the County, in a timely manner, with Compliance Updates, provided that the County actively monitors changes in applicable laws and provides Manatron with timely written notification of such changes. The County understands and agrees that Manatron's ability to meet its obligations under this Section is contingent upon publication of the change by the applicable regulatory agency and notification to Manatron in a manner that provides Manatron sufficient time, to be agreed upon by the parties, to prepare and distribute the Compliance Update before the effective date of the change. In the event that Compliance Updates require more than the 200 hours allotted, the County will have the option of securing third parties or County staff to perform the necessary work. In such event, Manatron will cooperate with such third parties and/or County staff to implement the necessary changes.

8.7 Versions. Manatron shall provide the County with new Versions of the Software. The County understands that its implementation of a new Version may require the County to upgrade its Computer System. Manatron will provide twelve (12) months written notification to the County if any upgrades are required to the County's hardware and/or software computer systems.

8.8 Supported Software. Manatron's obligation to provide Support Services shall extend only to the current Release and prior Versions whose Release number begins with the same number or immediately preceding number. For example, if the current Release is 4.5, Manatron will support only those Versions between 3.x and 4.5. If the County desires support for earlier Versions of the Software, such support may be treated by Manatron as additional consulting services for which the County will be billed at Manatron's then-current time-and-material rates. Manatron will provide twelve (12) months notification to the County of release and update schedules.

8.9 County Obligations.

8.9.1 The County shall designate one or more persons, depending on the size and complexity of the County's application, through whom requests by the County for Support Services shall be made. Manatron shall not be required to accept calls or requests from anyone other than a designated contact person unless a designated contact person is not available for any reason. The County may change its designated contact person at any time upon notice to Manatron.

8.9.2 The County shall implement and follow the reasonable written instructions of Manatron regarding operation of the Software.

8.9.3 The County shall purchase, install and maintain a Computer System that complies with the Minimum Requirements subject to the provisions for prior notification in Section 8.7.

8.10 Third-Party Software Support. Manatron shall provide the County with telephone assistance for the Third-Party Software during the hours set forth in the Statement of Work. If Manatron is unable to resolve a problem with the Third-Party Software, it shall contact the appropriate vendor on the County's behalf and coordinate and monitor correction efforts by the vendor under the same terms and conditions as Manatron's customer support services.

8.11 Hardware Maintenance. Manatron may provide maintenance services for Hardware or third-party hardware and equipment which may be provided by Manatron ("Hardware Maintenance") as agreed upon by the parties. Hardware Maintenance shall not include standard supplies such as ribbons, paper, forms, media, print heads, toner or laser drums. Manatron is not responsible or liable for any problems associated with the County's installation or use of any third-party hardware, equipment, system or application software not purchased by the County from Manatron or the attachment of third-party hardware or equipment to the County's Computer System without Manatron's knowledge and approval. Manatron is not obligated to repair damage to any Hardware or third-party hardware or equipment caused either directly or indirectly by nuclear radiation, accident, negligence or abuse, electrical power fluctuation, fire, windstorm, acts of terrorism, or acts of God.

9. OTHER SERVICES:

9.1 Description. Manatron shall provide Services (other than Support Services) as set forth in the Statement of Work.

9.2 Implementation Services. The terms set forth in this Section shall apply if the Statement of Work provides for the provision of implementation services by Manatron:

9.2.1 Joint Development. Manatron and the County shall jointly develop the Project Management Plan using Manatron's standard implementation methodology contained in the Statement of Work. The Project Management Plan shall be made part of the Statement of Work without any further action.

9.2.2 Amendments. Manatron and the County contemplate that the Project Management Plan will from time to time be amended by mutual agreement during the project. All amendments to the Project Management Plan shall be made in writing on a change control request form and signed by the Project Manager for each party (as defined below). Services requested of and provided by Manatron that are not within Manatron's obligations under this Agreement shall be subject to the payment provisions set forth in the Statement of Work.

9.2.3 Performance Dates.

9.2.3.1 Interdependence of Dates. Each party understands that any variation from the performance dates set forth in the Implementation Plan may adversely impact project milestones and completion dates, including, without limitation, the date of completion of the project.

9.2.3.2 Efforts. Each party agrees to use all commercially reasonable efforts to fulfill its obligations under the Project Management Plan and to meet the performance dates set forth in the Project Management Plan.

9.2.3.3 Adjustments. To the extent that either party is unable to perform its obligations in accordance with the performance schedule that is set forth in the Project Management Plan, the parties may negotiate an adjustment to the schedule in accordance with the Statement of Work.

9.3 Manatron's Personnel.

9.3.1 Personnel commitments identified in Manatron's proposal are mandatory to the work to be performed under this Agreement. Manatron will maintain adequate staffing levels throughout the implementation of the project to assure the project is completed in a timely manner.

9.3.2 Key Personnel. Manatron shall, as soon as practicable following the execution of the Agreement, identify all key personnel, including the Project Manager. The Project Manager shall have principal responsibility for overseeing and managing the performance of Manatron's obligations under this Agreement and shall be the primary point of contact for Manatron. Manatron's key personnel shall not be diverted from this project without the prior written approval of the County, provided, however, that such approval will be timely given and will not be unreasonably withheld. Key personnel are those individuals who are determined by the County to be central to the management of the project and the implementation of the proposed system. Manatron will give the County fifteen (15) days advance notice of its intent to replace any key personnel. The County will have five (5) days to accept or reject any replacement.

9.3.3 If the number of Manatron's personnel are reduced because of death, permanent termination of employment or extended illness, Manatron shall, within ten (10) working days of the reduction, replace the personnel with the same or greater number of personnel of equal ability, experience, and qualification subject to the County's approval, such approval to be timely given and not unreasonably withheld. The County, in its sole discretion, may approve additional time beyond the ten (10) working days for replacement of personnel. Manatron shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. Manatron shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel.

9.3.4 The County reserves the right to require a change in Manatron's personnel if the assigned personnel are not, in the opinion of the County, meeting its needs adequately. The parties agree to act expeditiously and reasonably so as to not substantially affect the project schedule.

9.4 County Personnel. The County shall, as soon as practicable following the execution of the Schedule, assign a Project Manager (the "County Project Manager") who shall have the principal responsibility for overseeing and managing the performance of obligations of the County under the Agreement and who shall be the primary point of contact for the County. The Project Manager shall approve and accept all Agreement products and services prior to payment. The County may replace the person serving as its County Project Manager upon prior written notice to Manatron.

10. **WARRANTIES:**

10.1 Software. Manatron warrants that the Software will conform in all material respects to the functional specifications contained in its then-current Documentation and the requirements of the Statement of Work for the term of this Agreement and any extensions thereto. Manatron agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the warranty period. In addition, Manatron warrants that any Enhancement, Customization, Compliance Update and/or Error Correction will conform in all material respects to the functional specifications contained in the then-current Documentation and the Statement of Work. The

warranty for any Enhancement, Compliance Update and/or Error Correction shall expire simultaneously with the expiration of the Software warranty.

Manatron's sole obligation to the County, and the County's exclusive remedy for breach of warranty under this Section, is the correction or replacement of any nonconformity. The County shall provide Manatron with written notice that nonconformity exists, and Manatron shall have a reasonable period of time, based on the severity of the nonconformity, to correct the Software. The severity of any such non-conformity shall be subject to the problem solving response criteria in the Statement of Work. Manatron warrants that the Software does not contain any disabling devices that would allow Manatron to terminate operation of the Software. Manatron further warrants that to the best of its knowledge, the Software does not contain any viruses.

Notwithstanding the foregoing, Manatron is aware that the County currently maintains all land valuation and tax billing processes via SunGard HTE Public Sector Application Software. Manatron warrants that software and services relating to data conversion and interfaces to and from SunGard HTE land and tax applications will preserve and maintain the integrity of the County's land valuation and tax processes. Manatron also warrants that the GIS software products which are being provided through this agreement are compatible with Manatron, Microsoft SQL Server, and ESRI software in order to preserve the integrity of processes provided by these systems, provided, however, that this warranty shall not apply to changes that may occur to HTE's database structure.

10.2 Services. Manatron warrants that all Services provided under this Agreement will be performed in a workmanlike manner. The County shall notify Manatron in writing of any breach of this warranty within thirty (30) days after completion of the Service.

10.3 Third-Party Software; Hardware. MANATRON MAKES NO WARRANTY WITH RESPECT TO ANY HARDWARE OR THIRD PARTY SOFTWARE NOT SUPPLIED BY MANATRON, AND WHATEVER WARRANTY MAY APPLY TO ANY HARDWARE OR THIRD PARTY SOFTWARE PRODUCT, IF ANY, IS ONLY AS IS EXPRESSLY STATED BY THE THIRD PARTY MANUFACTURER, OWNER OR LICENSOR OF THE HARDWARE OR THIRD PARTY SOFTWARE. MANATRON EXPRESSLY DISCLAIMS ALL WARRANTIES FOR THE HARDWARE AND THIRD PARTY SOFTWARE, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding the foregoing, Manatron warrants that the Third Party GIS Software provided by Manatron, will conform in all material respects to the functional specifications contained in its then-current Documentation and the Statement of Work for the term of this Agreement and any extensions thereto. Manatron agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the warranty period with comparable Software acceptable to the County.

10.4 In addition to the foregoing, Manatron holds itself out as an expert in Application Systems. Manatron represents itself as possessing greater knowledge and skill in this area than the average person. Accordingly, Manatron is under a duty to exercise a skill greater than that of an ordinary person, and the manner in which advice is handled or services are rendered will be evaluated in light of Manatron's superior skill.

10.5 Manatron also warrants that it has a positive net worth at the effective date of this Agreement and agrees that it shall maintain a positive net worth throughout the term of this

Agreement. Furthermore, Manatron shall notify the County immediately, in writing, of any material, adverse change in Manatron's net worth.

10.6 Manatron also warrants that neither Manatron nor any officer, stockholder, director or employee of Manatron, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on Manatron's ability to perform under this Agreement, nor to the best knowledge of Manatron is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, Manatron shall immediately disclose such fact to the County.

10.7 Exclusions. Manatron's warranty obligations and other obligations under this Agreement with respect to the Hardware and Software are expressly conditioned upon the County's proper use and do not include:

10.7.1 Support or correction of errors or increases in service time that result from (a) the County's accident, neglect, misuse or use other than ordinary use; (b) failure of electrical power, air conditioning, or humidity controls that cause a computer failure; and (c) modifications made to the Software by other than a representative of Manatron;

10.7.2 Problems and errors that Manatron and/or the County cannot reproduce after reasonable efforts to reproduce the problem;

10.7.3 Problems relating to or caused by (a) any hardware, third party software (other than GIS Third Party Software supplied by Manatron), Internet Service Provider (ISP), or software that was not supplied or approved by Manatron or (b) use of a Computer System that does not meet the Minimum Requirements; or

10.7.4 Problems relating to or caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating system for which the Software is procured other than changes or modifications approved by Manatron.

10.8 Corrections to errors, defects, and malfunctions that are traceable to any of the foregoing or any County errors or system changes not approved by Manatron, any ISP, or any third party hardware and/or software, other than software provided by Manatron, shall be billed at Manatron's then-current time-and-material rates, including out-of-pocket expenses.

11. INTELLECTUAL PROPERTY INDEMNIFICATION:

11.1 Scope. Manatron agrees to indemnify and defend the County against any claim or action brought by any third party for actual or alleged infringement of any United States patent, copyright, or trade secret based upon the County's own internal use of the Software and the Third Party Software provided under this Agreement in accordance with this Agreement and to pay any damages and costs, including attorney's fees, finally awarded against the County or paid in settlement. Manatron shall have the sole right to conduct the defense of any claim or action and all negotiations for its settlement, unless the parties to this Agreement agree otherwise in writing.

11.2 Notice. The County shall give Manatron prompt written notice of any threat, warning, or notice of any claim or action that could have an adverse impact on Manatron's rights in the Software.

11.3 Alternatives. Manatron shall not be responsible for any settlement entered into without its consent. In the event of a claim or action under Section 11.1, Manatron shall (a) procure for the County the right to continue using the Software; (b) provide a substitute, noninfringing Software; or (c) terminate this Agreement and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to Manatron. Manatron's obligation will be void as to any product or service supplied by Manatron which was modified by the County without Manatron's knowledge or approval to the extent such modification is the cause of the claim.

11.4 Exclusions. Manatron shall have no obligation under this Section 11 with respect to any claim or action that is based upon (a) the County's use of the Software in breach of any term or condition of this Agreement; (b) the use or combination of the Software with any third-party product, software, hardware or system except Third Party Software provided by or approved by Manatron; (c) modification of the Software other than by a representative of Manatron or approved by Manatron; (d) use of a Version of the Software other than currently supported Versions of the Software, where use of the currently supported Versions would have avoided the claim of infringement.

12. LIABILITY:

12.1 In addition to Manatron's liability as provided for in Sections 10 and 11, of this Agreement, Manatron shall indemnify, defend, and hold harmless the County and their officers and employees from and against any and all claims, demands, liability, suits, causes of action, losses, damages, fines, fees, attorneys fees, penalties, costs, expenses, injuries to property, judgments (including defense costs and attorneys fees) that occur or arise out of or in connection with:

12.1.1 Manatron's performance or failure to perform under any provision of this Agreement;

12.1.2 Manatron's breach of any term, condition, warranty or representation contained in this Agreement;

12.1.3 Manatron's provision of services that are not in accordance with any applicable law, rule, regulation, or provision of this Agreement;

12.1.4 Manatron's failure to perform in accordance with the standard of care contained in Section 10.4 of this Agreement; or

12.1.5 any error, omission, fraud, embezzlement, theft or negligence of Manatron.

12.2 It is understood, however, that Manatron's obligations under this Section 12 do not extend to liabilities resulting from causes beyond the control and without the fault or negligence of Manatron, including acts of God, war or civil disorder, fire, earthquake, or other natural disaster, and unforeseeable acts of any federal, state, or local government.

12.3 The County shall have the right to approve any counsel retained by Manatron to defend any demand, suit, or cause of action in which the County is named, such approval not to be unreasonably withheld.

Manatron agrees (i) that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and (ii) that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If, in the County's judgment, a conflict exists between the interests of the County and Manatron in such demand, suit, or cause of action, the County may retain its own counsel, whose fees shall be paid by Manatron.

12.4 Manatron's liability under this Section 12 will be limited to the limit of its insurance policies for the occurrences listed in subsection 12.1, on the condition that, during the term of this Agreement and any extensions thereto, Manatron maintains a minimum of ten million dollars (\$10,000,000) worth of coverage; that Manatron names the County as an additional insured; and that Manatron notifies the County of its intent to change any such insurance and secures the County's consent to any change in policy limits.

13. DAMAGES DUE TO DEFAULT OR BREACH:

13.1 Manatron acknowledges and agrees that (i) time is of the essence under this Agreement; (ii) The County's loss caused by Manatron's delay in completing the work will be difficult to prove; (iii) that it will be inconvenient and non-feasible for the County to obtain an adequate remedy for Manatron's delay in completing the work. Manatron thus agrees to pay the County \$200 for each calendar day beyond the final acceptance date that completion of the work is delayed, which amounts Manatron agrees is not a penalty but, rather, reasonable estimates of the County's anticipated harm. The amounts for liquidated damages will be calculated and reasonably determined by the County taking into consideration the value of County work and resources being lost on a daily basis, but in the event completion of the work is delayed by the County, such liquidated damages will be reduced by the delay occasioned by the County.

13.2 In case of default and/or breach by Manatron for any reason, the County may procure the goods or services from another source and hold Manatron responsible for any resulting excess costs, direct or indirect damages, and special damages, and may seek all other remedies under the terms of this Agreement and under law and equity.

13.3 In the event damages are assessed under this Section 13, the County may elect damages under either subsection of this Section, but may not collect damages under both subsections. If the County changes its choice of damages at any time, any damages owed under one subsection will be offset by any amounts paid under the other subsection.

14. PERFORMANCE BOND:

14.1 Manatron shall execute and deliver to the County, contemporaneously with the signing of the Agreement, a performance bond in the amount of 100% the total cost of this Agreement (including all selected options) in the name of the County. The bond shall be in effect for the duration of this Agreement and any renewals thereof. The required bond shall be conditioned upon and for the full performance and actual fulfillment of each and every term, condition, provision, and obligation of Manatron and its officers and employees arising under this agreement. The County's right to recover from the bond shall include all costs and damages associated with transferring the services provided under this Agreement to another Contractor or the State as a result of Manatron's failure to perform.

15. TERM:

15.1 This Agreement shall become effective upon execution by both parties. The term of the Agreement shall be for four (4) years commencing on **February 1, 2008** and terminating on **January 31, 2012**. The County reserves the right to renew this Agreement for four (4) additional years in one (1) year increments. In no event, however, shall the term of the Agreement exceed eight (8) years in duration. Furthermore, at any time during the term of the Agreement, the Agreement is subject to early termination or termination for lack of appropriations in accordance with Section 16 of this Agreement. The County may contract with Manatron for software maintenance, upgrades and services on a yearly basis beyond the term of this Agreement.

16. TERMINATION:

16.1 Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective **thirty (30)** days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within **thirty (30)** days, the breaching party shall have a reasonable time to cure the breach, provided that, within seven (7) days of its receipt of the written notice of termination, the breaching party (i) began to cure the breach and (ii) advised the non-breaching party in writing that it intended to cure.

16.2 If Manatron ceases conducting business in the normal course, admits its insolvency or makes an assignment for the benefit of creditors or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization and such proceeding is not dismissed within ninety (90) days after it is commenced, the County may terminate this Agreement immediately upon written notice to Manatron.

17. APPROPRIATIONS AND AUTHORIZATIONS:

17.1 This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to Manatron. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse Manatron for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by Manatron in any way or forum, including a lawsuit.

18. COMPENSATION

18.1 Fee: The total amount to be paid to Manatron under this Agreement shall not exceed **\$907,901.00** inclusive of New Mexico Gross Receipts Tax, including the cost of the CAMA system, Third Party Software, licensed software, installation, configuration, data conversion, training, routine maintenance, updates and support services as set forth in this Agreement.

- 18.2 Software: The total cost of the license to use the software is \$250,000. The County shall pay to Manatron the amount of \$250,000 upon the successful installation, testing and acceptance testing of the software by the County, as provided in the Statement of Work.
- 18.3 Software Support Services: The total cost of software support services is \$244,324. The obligation to pay software support services fees will begin on the first of the month next following final acceptance and will continue as provided in Section 15. The payment schedule for software support services rendered will be agreed upon by the parties.
- 18.4 Personal Services: Manatron's personal services fee is included in this total amount. This services fee includes:
- 18.4.1 Installation, customization and/or configuration of the system, system software, support for conversion of County data and testing of the software as installed at the County site, and all other support listed in the Statement of Work.
- 18.4.2 Training County users at the County site to use and maintain the software.
- 18.4.3 Additional onsite technical support as specified in this Agreement and unlimited telephone or online technical support.
- 18.5 Travel and Lodging: Manatron's personnel travel and lodging fees are included in the total amount.
- 18.6 Payment of Taxes: New Mexico gross receipts taxes levied on amounts payable under this Agreement shall be paid by Manatron. Manatron agrees that it is responsible for payment of all state and federal taxes assessed on the compensation received under this Agreement which shall be identified under the Manatron's federal and state identification number(s). New Mexico gross receipts taxes shall be itemized separately on the invoice.
- 18.7 Manatron shall submit a written request for payment to the County as provided in the Statement of Work. Within fifteen (15) days of the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Manatron acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
- 18.8 In the event Manatron breaches this Agreement, the County may, without penalty, withhold any payments due Manatron for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
- 18.9 Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

19. SOFTWARE SOURCE CODE:

19.1 Software in Escrow: Manatron agrees to maintain a copy of the software source code with an escrow agent and to list the County as an authorized recipient of this source code in the event that Manatron ceases to do business. The source code shall be in digital form on media specified by the County. The escrow agent shall be responsible for storage and safekeeping of the media. Manatron shall replace the media no less frequently than every six (6) months, to ensure readability and preserve the software at the current revision level. Included within this media shall be all associated documentation to allow the County to upload, compile and maintain the software.

19.2 Access to Source Code: If Manatron ceases to do business (whether by bankruptcy, insolvency, assignment of assets for the benefit of creditors) or ceases support of this project, and does not make adequate provision of continued support of the licensed software provided by Manatron, Manatron shall make available to the County the latest available licensed software program source code and related documentation, as specified in this Agreement for the licensed software provided or developed by Manatron, which is listed as part of the purchase system; and the source code and compiler/utilities necessary to maintain the system and related documentation for software developed by third parties, to the extent that Manatron is authorized to disclose such software. In such circumstances, the County shall have the right to unlimited internal use of source code and documentation.

20. CONFIDENTIAL INFORMATION:

20.1 Both the County and Manatron acknowledge that the Software, including the database architecture and sequence and Documentation, the Third Party Software, any information, except for information that is public information under law, provided to or developed by Manatron in the performance of this Agreement, and any information that is exchanged by the parties that is clearly marked with a confidential, private or proprietary legend, is Confidential Information.

20.2 The parties agree, unless otherwise provided in this Agreement, the Statement of Work, or required by law, not to use or make each other's Confidential Information or make it available to any third party for any purpose other than as necessary to perform under this Agreement. Both parties acknowledge that any breach of its obligations with respect to Confidential Information may cause the other irreparable injury for which there are no adequate remedies at law and that the nondisclosing party shall be entitled to equitable relief in addition to all other remedies available to it.

20.3 Exceptions. A party's Confidential Information shall not include information that: (a) is or becomes publicly available through no act or omission of the recipient; (b) was in the recipient's lawful possession prior to the disclosure and was not obtained by the recipient either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the recipient by a third party without restriction on recipient's disclosure, and where recipient was not aware that the information was the confidential information of discloser; (d) is independently developed by the recipient without violation of this Agreement; or (e) is required to be disclosed by law.

21. ASSIGNMENT: Manatron shall not assign nor transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior, written approval from the County. No such assignment or transfer shall relieve Manatron from its obligations and liabilities under this Agreement.

22. **SUBCONTRACTING:** Manatron may subcontract portions of the services to be performed under this Agreement with prior, written approval of the County. No such subcontracting shall relieve Manatron from its obligations and liabilities under this Agreement. The following listed subcontractors have been approved to provide services under the terms and conditions of this agreement:

23. **STATUS OF CONTRACTOR:** Notwithstanding any other provisions of this Agreement, Manatron, and its agents and employees, are independent Contractors performing professional services for the County and are not employees of the County. Manatron, including its agents and employees, shall not, by virtue of this Agreement, accrue leave, retirement, insurance, bonding, use of County vehicles, or any other benefits afforded to employees of the County. Manatron acknowledges that all sums received under the terms of the Agreement are reportable by it for income tax purposes as self-employment or business income.

24. **CONFLICT OF INTEREST:** Manatron warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

25. **AMENDMENTS:** This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto.

26. **EQUAL OPPORTUNITY COMPLIANCE:**

26.1 Manatron agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Manatron specifically agrees not to discriminate against any person with regard to employment with Manatron or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

26.2 Manatron acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

27. **APPLICABLE LAW:** This Agreement shall be governed by the laws of the State of New Mexico. Notwithstanding any other provision of this Agreement, in the event of a lawsuit involving this Agreement, venue shall be proper only in a New Mexico court of competent jurisdiction. By execution of this Agreement, Manatron acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over such lawsuits.

28. RECORDS AND AUDITS:

28.1 To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, Manatron agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

28.2 To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, Manatron also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

29. ENFORCEMENT OF AGREEMENT/WAIVER: A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed in writing and signed by the party alleged to have granted the waiver. A waiver by a party of any of its rights shall not be effective to waive any other rights.

30. GRATUITIES AND CAMPAIGN CONTRIBUTIONS: Manatron agrees to complete and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. NOTICE OF PENALTIES: The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as amended, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

32. ON-SITE RESPONSIBILITIES: Manatron agrees to provide Manatron's personnel while performing on-site services for the following:

32.1 The County shall provide a systems analyst to work with Manatron's personnel in all aspects of installation and training activities. The County systems analyst will work with Manatron's personnel during the installation and training at the County site.

32.2 While performing on-site services in Santa Fe, the County will provide Manatron's personnel reasonable office space and facilities for conducting training including use of a copy machine, multimedia equipment, personal computer, local telephone service, and FAX machine.

33. NOTICES: All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier;

or upon telephone confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

SANTA FE COUNTY:

Steve Meyer
102 Grant Ave.
P.O. Box 276
Santa Fe, NM 87504-0276
505-490-2270

MANATRON:

Matthew J. Henry
510 E. Milham Ave.
Portage, MI 49002
269-567-2900

Each party may designate a different person and address by sending written notice to the other party, to be effective no later than ten (10) days after the date of the notice.

34. MERGER; SCOPE OF AGREEMENT:

34.1 The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

34.2 This Agreement incorporates all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

34.3 This Agreement incorporates by reference the following Exhibits:

34.3.1 Appendix 1: Detailed Statement of Work with Implementation Schedule of deliverables and detailed parts/component list for the proposed system, hardware and software configuration with clearly identifiable and measurable "triggers" of events.

34.3.2 Appendix 2: A complete copy of RFP #27-1910-AS/RM, including all Appendices;

34.3.3. Appendix 3: Manatron's proposal submitted in response to RFP #27-1910-AS/RM, including any amendments and best and final offers;

34.3.4 Appendix 4: List of Manatron's project staff and key personnel.

In the event of a conflict among these documents, the documents shall take precedence in the following order:

1. The Terms and Conditions of this Agreement
2. Detailed Statement of Work (Appendix A)
3. RFP #27-1910-AS/RM
4. Manatron's response to RFP #27-1910-AS/RM

35. INSURANCE:

35.1 General Conditions. Manatron shall submit evidence of insurance as required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

35.2 General Liability Insurance, Including Automobile. Manatron shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by Manatron; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. County of Santa Fe shall be a named additional insured on the policy.

35.3 Workers' Compensation Insurance. Manatron agrees to comply with the state laws and rules pertaining to workers' compensation insurance coverage for its employees. If Manatron fails to comply with the New Mexico Workers' Compensation Act and applicable rules when required to do so, the Agreement may be canceled effective immediately.

35.4 Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, Manatron shall increase the maximum limits of any insurance required herein.

36. LIMITATION OF LIABILITY: The County's liability to Manatron for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 18, "COMPENSATION," of this Agreement. In no event shall the County be liable to Manatron for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

37. NO THIRD-PARTY BENEFICIARIES: This Agreement was not intended to and does not create any rights in any persons not a party hereto.

38. SURVIVAL OF OBLIGATIONS: The Sections in this Agreement entitled Software License, Intellectual Property Indemnification, and Confidential Information shall survive the expiration or termination of this Agreement. Software Escrow agreements and other unexpired agreements that were entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of the last signatory.

SANTA FE COUNTY

By: [Signature]
Jack Sullivan, Chair

Date: 1/29/08

MANATRON, INC.

By: [Signature]

Name and Title: JOHN R. HANSEN DIRECTOR OF RISK MANAGEMENT

Date: 1/28/08

New Mexico Tax I.D. No. 38-1983228

ATTEST

By: [Signature]
Valerie Espinoza, Clerk

Date: 1-30-08

APPROVED AS TO FORM

By: [Signature] for Stephen C. Ross
Stephen C. Ross, County Attorney

Date: 1/28/08

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of the last signatory.

SANTA FE COUNTY

By: _____
Jack Sullivan, Chair

Date: _____

MANATRON, INC.

By: _____

Name and Title: _____

Date: _____

New Mexico Tax I.D. No. _____

ATTEST

By: _____
Valerie Espinoza, Clerk

Date: _____

APPROVED AS TO FORM

By: *[Signature]* for *Stephen C. Ross*
Stephen C. Ross, County Attorney

Date: *1/28/07*