

LICENSED MATERIALS AGREEMENT

THIS AGREEMENT, NUMBERED 0015 AS OF  
SEPTEMBER 24 , 1987 BY AND BETWEEN

ACTRON INFORMATION DATA SYSTEMS, INC.  
2212 ARLINGTON DOWNS ROAD  
SUITE 100  
ARLINGTON, TEXAS 76011

AND

CLIENT NAME City of Sacramento  
CLIENT ADDRESS 915 I Street, Room 104  
CITY Sacramento STATE CA ZIP 95814

LICENSE AGREEMENT

This Agreement is made by and between Actron Information Data Systems, Inc., a Texas corporation having its principal place of business at 2212 Arlington Downs Road, Suite 100, Arlington, Texas 76011 (hereinafter ACTRON); and

City of Sacramento

(Name of Company)

915 I Street, Room 104, Sacramento, CA 95814

(Address of Company)

(hereinafter CLIENT), this 24th day of September 1987.

RECITALS

A. ACTRON has exclusive rights to market and license computer programs and related program materials, identified specifically in Licensed Materials Description of this Agreement, attached as Exhibit A, hereinafter collectively referred to as the Licensed Materials.

B. The Client wishes to obtain the right to use the Licensed Materials, and ACTRON is willing to grant to Client limited rights to Use the Licensed Materials under the terms and conditions set forth herein.

1. DEFINITIONS: The parties hereto agree that the following definitions shall apply to all uses of the defined terms contained in this Agreement, amendments, addendums, etc.

1.1. "Licensed Materials" means the Programs and/or documentation in any recordable media (e.g., documents, machine readable form) for the Customer Service (CS) System developed by Northwestern Systems, Inc. (NSI) and as further defined in Exhibit A.

1.2. "Use" means (i) copying and/or transmitting any portion of the Licensed Materials into a machine for processing Licensed Materials, and (ii) Modifying the Licensed Materials to more specifically meet the Client's requirements.

1.3. "Installation" means one or more computer central processing units housed within a single physical Client location, designated by a single mailing address and contained within a single building.

1.4. "Customization" means all improvements, alterations, enhancements to and derivations based on the Licensed Materials, developed and/or approved by ACTRON's designated representative to more specifically meet the Client's requirements.

1.5. "Modification" means all improvements, alterations, enhancements to and derivations based on the Licensed Materials not approved by ACTRON's designated representative and implemented by Client or Client's third party vendor.

1.6. "Reimbursable Expenses" means the actual cost of expenses incurred by ACTRON, including, but not limited to, telephone, travel, per diem (lodging, food, personal), relocation, and contracted expenses which are actually and necessarily expended by ACTRON in connection with the performance of services for Client.

1.7. "Significant Enhancements" means features and/or functions which may be added to the Licensed Materials from time to time and made available to current as well as future Clients, for an additional charge.

1.8. "Specifications" means the detailed statement in document form prepared by ACTRON and prepared and/or approved by Client specifying the function of and the operating results to be obtained from the CS System Licensed Materials as installed and through Customization.

1.9. "Affiliate" means any legal entity controlling, controlled by, or under common control with the Client. For the purpose of the preceding sentence, "Control" shall mean the ownership of more than fifty (50) percent of the outstanding stock entitled to vote, the ownership of more than a fifty (50) percent equity interest in any unincorporated entity, or the sharing of more than fifty (50) percent of the directors in any nonprofit corporation.

## 2. LICENSE GRANT:

2.1. ACTRON hereby grants and Client hereby accepts a nontransferable, nonexclusive License to the Licensed Materials as defined in Exhibit A. The Client hereby accepts with respect to such Licensed Materials responsibility for (i) their selection to achieve the Client's intended results, (ii) their installation, (iii) their Use. The Client also has the responsibility for the selection and use of, and results obtained from, any other programs or programming equipment or services used with the Licensed Materials.

2.2. Client's License to Use the CS System Licensed Materials is solely for its own internal operation for the charge set forth in Exhibit A of this Agreement. The Client shall not have the right to Use the CS System Licensed Materials for providing data processing or other services for third parties; nor is a single copy of the CS System Licensed Materials to be Used by Client in a Service Bureau environment by which the Client would pursue Use of the CS System Licensed Materials by entities other than those directly affiliated with the Client or entities that are potential ACTRON CS System clients. The Client may make available Use of the CS Licensed Materials to facilitate support of Affiliates that are supported within the normal course of operation of the Client or to provide data

processing and billing services for other governmental entities for which Client provides services within the normal course of its operation, such entities being located within Sacramento County. The License authorizes Client to Use the CS System Licensed Materials as a single system (defined as one set of operating programs) for Client at the Computer Site defined in Exhibit A of this Agreement. The Computer Site defined in Exhibit A of this Agreement may be amended from time to time as needed. When amended, Client may Use the CS System Licensed Materials at the new Computer Site and continue to Use the CS System Licensed Materials at the former Computer Site for a period not to exceed sixty (60) days.

2.3. The foregoing restrictions regarding the location of the Computer Site shall not apply, however, when a designated Computer Site is rendered temporarily inoperative by a mechanical breakdown or loss of electrical power service or by any other cause beyond Client's control. In any such event, the License granted hereunder shall be automatically extended without charge or prior consent to permit Use of the CS System Licensed Materials at another Computer Site on an interim basis. When the licensed Computer Site again becomes operational, Client shall promptly return the CS System Licensed Materials to such Computer Site and the aforementioned temporary extension of this License shall be revoked.

2.4. Client may Use the CS System Licensed Materials at additional Installations by contracting for additional Licenses. The location of each such additional Installation shall be stated in Exhibit A of this Agreement which shall specifically authorize such Use and establish the applicable charge therefore.

2.5. If the Client acquires, without competitive evaluation, an additional License for the same CS System Licensed Materials within eighteen (18) months from the execution of this Agreement for the first License, the charge for which shall not have been discounted under this Paragraph, the License charge for such acquisition shall be an amount equal to seventy-five percent (75%) of the then current License charge.

2.6. In the event Client permanently relocates that portion of its business utilizing the Licensed Materials to a site other than that set forth as the original Installation Site hereunder, Client may relocate the CS System Licensed Materials to such new site at no charge. All terms of this Agreement, including but not limited to, the provisions of Article 8, shall remain in effect at such new site. Client will provide ACTRON with written notice of such relocation.

### 3. PROHIBITION OF ASSIGNMENT:

3.1. Excepting only successors, no assignment or other voluntary transfer of this Agreement or any duty or obligation of performance hereunder or any other interest

herein shall be made in whole or in part by Client without the express written consent of ACTRON which will not be unreasonably withheld.

4. CLIENT'S RIGHTS TO CUSTOMIZE LICENSED MATERIALS:

The Client shall have the right, subject to the restrictions in this Agreement, to Modify the Licensed Materials to perform any functions related to Client's internal Use. The Licensed Materials as Modified shall remain subject to the restriction on their use, reproduction, and disclosure as imposed by the License on the Licensed Materials. Such Modification shall be at Client's sole risk and expense and ACTRON shall not be responsible in any regard and shall incur no liability for any failure of Licensed Materials or any nonconformance to Specifications which occur as a result of any Modification Made by Client. Client assumes full responsibility for any liabilities to third parties and all other damages resulting from such Modifications. Client further agrees and understands that its Modification of the Licensed Materials may render the Licensed Materials or future Modification thereof unusable or nonconforming to applicable Specifications and Client assumes all risks arising from its Modifications.

5. OWNERSHIP OF CUSTOMIZED LICENSED MATERIALS:

5.1. Client shall be granted a nontransferable, nonexclusive License for its internal use of the Customized CS System Licensed Materials.

5.2. ACTRON's supplier, NSI, shall retain proprietary rights to the Licensed Materials as Customized and installed and shall have, without further act or deed on its part, the right to use all nonconfidential materials generated in support of the Customized and installed Licensed Materials.

5.3. All Modifications remain the property of Client subject to the License termination provisions of Article 11 of this Agreement.

6. CLIENT'S RIGHTS TO REPRODUCE LICENSED MATERIALS:

6.1. The Licensed Materials may be reproduced by Client provided that such reproduction is treated with the same confidentiality as described in Article 10. Client shall keep records of all copies and their disposition. Proprietary rights in the original and any copies of the Licensed Materials which are made by the Client, in whole or in part, shall remain in ACTRON's supplier, NSI.

7. MAINTENANCE AND SIGNIFICANT ENHANCEMENTS:

7.1. Maintenance is available to Client as specified in Paragraphs 7.2, 7.3, and 7.4, and includes the following provisions:

(a) Code Corrections - For the CS System Licensed Materials as initially installed and with any Customization performed by ACTRON personnel, to supply

code corrections as required to correct deviations of the Licensed Materials from Specifications of the current applicable technical reference manual. However, if Client has performed the Customization (with the approval but not the involvement of ACTRON personnel) or if Client has Modified the CS System Licensed Materials, ACTRON, at its discretion, may require Client to demonstrate that any deviation of the CS System Licensed Materials was not caused by such Customization or Modification of Client.

(b) Product Updates - To supply improvements, extensions and other changes to the Licensed Materials which are logical improvements or extensions to the original Licensed Materials supplied to Client.

(c) Technical Support - To supply a reasonable amount of consulting assistance in the event of difficulties in the Use of the Licensed Materials or in the interpretation of results of the CS System Licensed Materials Use, to the extent of mail and telephone contact. If on-site assistance is required and the problem is the failure of the CS System Licensed Materials to perform to specifications, no charge will be made. If the problem is due to other causes, ACTRON's standard consulting rates for such services will be applicable.

7.2. Maintenance is provided to Client at no cost for the twelve (12) months following installation. Upon the completion of the initial maintenance period and on each anniversary of the completion date thereafter, Client shall be invoiced a fee for maintenance for the following year.

7.3. Client may elect to cancel maintenance on the anniversary date noted above, and each year thereafter, by written notice received by ACTRON thirty (30) days prior to such date. With ACTRON's approval, Client may at any later time renew maintenance upon payment of the annual fee for the Plan in effect at the time of renewal, plus the cost to update the database structure to reflect the then current Release of the CS System Licensed Material, if ACTRON has not maintained the database structure for Client.

7.4. Client further recognizes and agrees that its Customization and Modification of the CS System Licensed Materials may render the CS System Licensed Materials nonconforming to certain Significant Enhancements.

7.5 ACTRON will assume no Installation Support and Training Support responsibilities for implementation of any Significant Enhancements. At Client's discretion, ACTRON will provide requested assistance at ACTRON's standard consulting rates for such services.

## 8. WARRANTIES, REPRESENTATIONS, AND LIMITATION OF LIABILITY:

8.1 ACTRON represents and warrants as follows:

(a) The Licensed Materials will operate and

function as represented in the appropriate Licensed Materials Documentation when initially installed by ACTRON personnel at the Client's Installation address specified in Exhibit A.

(b) The Licensed Materials was developed from NSI's own resources independently of the application software of any third party;

(c) ACTRON's supplier, NSI, is the sole and exclusive owner of all copyright and all trade secret rights in and to the Licensed Materials.

(d) The distribution of the Licensed Materials under Licensed Materials Agreement which it issues will not infringe the copyright, patent, or trade secret right of any third party;

(e) It has the full power and authority to enter into this Agreement.

8.2 ACTRON SHALL NOT BE LIABLE FOR DEFECTS OR IMPERFECTIONS OCCURRING AS A RESULT OF CHANGES MADE IN THE DELIVERED LICENSED MATERIALS OR DAMAGES INFLICTED THEREON.

8.3 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATIVE OF ACTRON HAS ANY AUTHORITY TO MAKE ANY ORAL OR WRITTEN WARRANTIES OTHER THAN AS PROVIDED HEREIN.

8.4 UNDER NO CIRCUMSTANCES UNDER THIS AGREEMENT OR ANY AMENDMENT HERETO SHALL ACTRON BE LIABLE FOR DAMAGES WHICH EXCEED THE AMOUNT OF THE CHARGES PAID BY CLIENT FOR THE LICENSED MATERIALS; EXCEPT PURSUANT TO 8.7.

8.5 THE CLIENT FURTHER AGREES THAT ACTRON WILL NOT BE LIABLE FOR ANY LOST PROFITS, OR FOR ANY CLAIM OR DEMAND AGAINST THE CLIENT BY ANY OTHER PARTY EXCEPT **TO** PURSUANT TO 8.7.

8.6 UNDER NO CIRCUMSTANCES SHALL ACTRON OR CLIENT BE LIABLE UNDER THIS AGREEMENT FOR SPECIAL OR CONSEQUENTIAL DAMAGES OR INDIRECT DAMAGES, EVEN IF ACTRON OR CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.7. SECTION 9 OF EXHIBIT "D" OF THE PROFESSIONAL SERVICES AGREEMENT IS HERBY INCORPORATED BY REFERENCE AS THOUGH FULLY SET FORTH HEREAT.

9. DELIVERY, INSTALLATION, AND IMPLEMENTATION:

9.1. To implement the License granted hereby, ACTRON shall deliver one copy of the Licensed Materials to Client upon a mutually agreed schedule which shall be set forth in writing and constitute a part of this Agreement as if set forth fully herein.

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9.2. Client will be responsible for the installation of the Licensed Materials. However, ACTRON will provide Installation Support to the extent specified in the Licensed Materials Description; provided, however, that such support must be utilized by the Client within six (6) months from the date of delivery of the Licensed Materials. Such services shall be free of cost to the Client, except that the Client shall pay ACTRON for Reimbursable Expenses.

9.3. Except as outlined in the maintenance provision, notwithstanding the above, no Installation Support or Training Support shall be included for any second and succeeding licenses for the Licensed Materials discounted under Paragraph 2.5. hereinabove. If Client desires further services, Client may obtain additional services on a mutually agreed schedule and on a time and materials basis.

9.4. Implementation of the Licensed Materials will be performed only by Client and/or ACTRON personnel. Modification of the Licensed Materials will be performed only by Client and/or Client may contract with a third party, but not a direct competitor of ACTRON for the Licensed Materials, to program individually defined and specified Modifications. The Client shall assign such programming support only after having defined the work and divided it into work packages which prevent the architecture and design of the Licensed Materials from being disclosed. The contracting third party and its individual employees working with the Licensed Materials shall each sign a nondisclosure and noncompetitive agreement.

10. CONFIDENTIALITY AND SECURITY OF LICENSED MATERIALS:

10.1 With respect to the Licensed Materials, and to financial, statistical, business, technical, copyrighted and/or confidential information relating to each other's business which is submitted by either ACTRON or Client in order to carry out this Agreement, each party will instruct its personnel to keep such information confidential by using the same care and discretion that they use with similar data of their own. Client further agrees to take reasonable steps to ensure that any program or materials relative to the operation of the Licensed Materials including but not limited to flow charts, logic diagrams, and source code, in any form are not provided or otherwise made available to any other parties other than employees of Client without prior written consent from ACTRON. Information regarding the CS System Licensed Materials may be provided to Client's auditors only to the extent required by their audit function. Client may also disclose ACTRON confidential information to Client's consultants who have been retained to perform work for hire in connection with the Client's Use of CS System Licensed Materials. All Client consultants having access to confidential information will be required to execute a non-disclosure agreement prior to disclosure.



10.2 If Client or any of its employees, agents, or representatives shall attempt to Use or dispose of the Licensed Materials or any of its aspects or components or any duplication or alteration thereof in a manner contrary to the terms of this License, ACTRON shall have the right, in addition to such other remedies as may be available to it, to injunctive relief without the necessity of bond, it being acknowledged that legal remedies are inadequate.

10.3 The obligation of Client under this Article shall continue until the earlier of a) until such information is no longer deemed confidential by ACTRON or b) until such information is in the public domain.

#### 11. TERMINATION FOR MATERIAL FAILURE:

11.1. This Agreement may be terminated by either party in writing provided the basis for such termination is a material breach by the other party of any of the terms and provisions of this Licensed Materials Agreement. The termination will be made in accordance with the following provisions:

11.1.1. The party alleging the material breach must submit the facts of the alleged material breach in writing and in full detail to the other party.

11.1.2. The party whose material breach is alleged shall be allowed ninety (90) days after such written notice is given in which to take steps to cure the material breach or otherwise satisfy the complaining party.

11.1.3. If at the end of such ninety (90) day period, the material breach has not been corrected or the performance toward correcting the material breach is not proceeding as agreed to, and assuming the uncured material breach did, in fact, exist as described, termination will be effective on the ninety-first (91st) day after such notification is given.

11.2. Notwithstanding the provisions hereof granting to Client a License, if the Client shall fail or refuse to make the payments due hereunder, within a period of forty-five (45) days after due date, or if continued Use of the Licensed Materials by the Client endangers the proprietary interest of ACTRON or NSI in the Licensed Materials, then the License granted to the Client shall terminate upon notice of such termination from ACTRON to Client.

11.3. Upon any such termination, Client shall return to ACTRON all materials delivered and furnished by ACTRON which pertain in any way to the Licensed Materials and shall deliver to ACTRON or destroy such materials in any copied, Customized or Modified form resulting from the Use or application by Client. The Client shall warrant to ACTRON that all copies thereof have been either returned to ACTRON or destroyed, and Client shall indemnify and hold ACTRON harmless for any and all damages or losses which ACTRON may suffer as a result of the use by any other person of the CS System Licensed Materials or copies thereof made by Client and not returned to ACTRON.

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12. CHARGES, INVOICING, AND PAYMENT:

12.1. Client shall pay, without delay, to ACTRON ninety percent (90%) of the License Fee upon the execution of the Licensed Materials Agreement for the CS System Licensed Materials, and shall pay to ACTRON without delay, ten (10%) percent upon ACTRON's certification of completion of the installation of the CS System on Client's computer, operable in a demonstrable mode utilizing a test database and performing with the appropriate database management system.

12.2. Charges for the License defined in the Licensed Materials Agreement are net charges. Applicable taxes, if any, for the Licensed Materials and Reimbursable Expenses shall be invoiced to Client as appropriate.

12.3. Payment terms are net cash in U.S.A. dollars, payable to ACTRON at its office in Arlington, Texas. Late payment charge is the lesser of 1.5% per month or the maximum amount allowed under applicable usury laws.

12.4. Payment for Reimbursable Expenses is payable within fifteen (15) days of postmarked date of invoice.

13. GENERAL:

13.1. NOTICE: All notices under this Agreement shall be deemed duly given upon delivery, if delivered by hand, or five (5) days after posting, if sent by certified or registered mail, return receipt requested, at such address as set forth in this Agreement or to such other address as either party may designate by notice pursuant hereto.

13.2. DISPUTES: Disputes on any matter relating to this Agreement shall be discussed and resolved by authorized representatives of each party who have the authority to bind the party that they represent. The parties shall use their best efforts to amicably and promptly resolve the dispute. However, pending resolution of any dispute, ACTRON shall proceed with the work, or that portion thereof in dispute, as directed by Client and Client shall continue to make timely payments of ACTRON's invoices.

13.3. FORCE MAJEURE: Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulation superimposed after the fact, fire, communication line failure, power failures, earthquakes, or other disasters.

13.4. WAIVER OF BREACH: No term or provision hereof shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

13.5. SEVERABILITY: If any term or provision of this Agreement shall be found to be illegal or unenforceable, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be modified as originally intended to be enforceable.

13.6. AMENDMENTS IN WRITING: No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both parties.

13.7. HEADINGS: Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

13.8. GOVERNING LAW AND VENUE: This Agreement shall be governed by the laws of the State of California and any suit arising out of a dispute thereunder shall be litigated in Sacramento County, California or the U.S. District Court for the Eastern District of California.

13.9. SURVIVAL BEYOND COMPLETION: All provisions of this Agreement and items incorporated in this Agreement by reference including items concerning License Grant, Licensed Materials, Confidentiality, Limitation of Liability, Use, Prohibition of Assignment, Reproduction, Warranties return, or destruction on termination shall survive the delivery of the Licensed Materials and the payment of the associated ACTRON charges.

13.10. SURVIVAL BEYOND TERMINATION: The terms and provisions of Article 5, OWNERSHIP OF CUSTOMIZED AND MODIFIED LICENSED MATERIALS; Article 8, WARRANTIES REPRESENTATIONS, AND LIMITATION OF LIABILITY; Article 10, CONFIDENTIALITY AND SECURITY OF LICENSED MATERIALS; Article 11, TERMINATION FOR MATERIAL BREACH; and Article 13.4, WAIVER OF BREACH; hereof shall survive termination of this Agreement.

13.11. ENTIRE AGREEMENT: This Agreement, together with all attachments referenced herein, constitutes the entire Agreement between ACTRON and Client, and supersedes all communications, oral and written between the parties on this subject.

14. AUTHORITY: EACH PARTY HAS FULL POWER AND AUTHORITY TO ENTER INTO, PERFORM, AND EXECUTE THIS AGREEMENT, AND THE PERSON SIGNING THIS AGREEMENT ON BEHALF OF EACH HAS BEEN PROPERLY AUTHORIZED AND EMPOWERED TO ENTER AND EXECUTE THIS AGREEMENT. EACH PARTY FURTHER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT. IN WITNESS WHEREOF, Client and ACTRON have executed this Agreement as of the date first indicated above.

ACTRON INFORMATION DATA SYSTEMS, INC.

By \_\_\_\_\_

Name Stan Royal

Title President

Date September 24, 1987

CLIENT \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_