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**BILL NO. S-18-02-17**

**SPECIAL ORDINANCE NO. S-21-18**

**AN ORDINANCE APPROVING PURCHASE AGREEMENT FOR WATER METER RADIOS - (NOT TO EXCEED \$365,800.00) by the City of Fort Wayne, Indiana, by and through its BOARD OF PUBLIC WORKS AND ITRON INCORPORATED for the WATER MAINTENANCE DEPARTMENT.**

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA;**

**SECTION 1.** That APPROVING PURCHASE AGREEMENT FOR WATER METER RADIOS between the City of Fort Wayne, by and through its BOARD OF PUBLIC WORKS and ITRON INCORPORATED for the WATER MAINTENANCE DEPARTMENT, respectfully for:

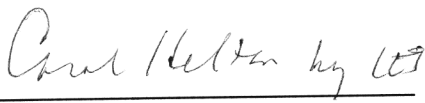
purchase of radios from Itron Incorporated as needed involving a total cost of not to exceed THREE HUNDRED SIXTY-FIVE THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS (\$365,800.00) all as more particularly set forth in said PURCHASE AGREEMENT AGREEMENT which is on file in the Office of the City Clerk, and is by reference incorporated herein, made a part hereof, and is hereby in all things ratified, confirmed and approved.

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**SECTION 2.** That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
\_\_\_\_\_  
Council Member

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Carol Helton, City Attorney

**CONTRIBUTION STATEMENT BY A BUSINESS ENTITY**

I, Robert H. A. Farrow, over the age of eighteen (18) years old, affirm under the penalties of perjury as follows:

1. I am the VP Treasury and Strategic Planning of Itron, Inc., a business entity within the meaning of Section 37.28(D) of the Fort Wayne Municipal Code of Ordinances (the "City Code").
2. As VP Treasury and Strategic Planning of Itron, Inc. I am authorized to execute this *Contribution Statement by a Business Entity* on behalf of Itron, Inc.
3. Since January 1, 2018, neither Itron, Inc., nor any of its covered principals, partners, officers or subsidiaries has made a contribution to any City of Fort Wayne candidate or holder of public office that would prohibit the City of Fort Wayne from negotiating or entering into a contract with Itron, Inc. under Section 37.28 of the City Code.
4. This *Contribution Statement by a Business Entity* is made pursuant to Section 37.28(G) of the City Code to support approval of the proposed Master Sales Agreement related to the purchase of new water meter reading radios between the City of Fort Wayne, Indiana and Itron, Inc.

ITRON, INC.

By: 

Printed: Robert H. A. Farrow

Title: VP Treasury and Strategic  
Planning

2/12/18  
Date

A PURCHASE AGREEMENT BETWEEN THE BOARD OF PUBLIC WORKS  
OF THE CITY OF FORT WAYNE, INDIANA, AND ITRON INCORPORATED  
GROUP INCORPORATED FOR WATER METER RADIOS

This contract is between the City of Fort Wayne Board of Public Works, a Municipal Corporation, with address of 200 East Berry Street, Fort Wayne, Indiana, 46802 ("BOARD"), and Itron Incorporated, with address of 2111 North Molter Road, Liberty Lake, Washington, 99019 ("Itron").

The BOARD does hereby approve City of Fort Wayne Water Maintenance to purchase radios from Itron as needed. Itron shall supply water meter radios to the City of Fort Wayne Water Maintenance as they request. The purchase order shall not exceed \$365,800.00, and will be issued to Itron upon approval of the \$365,800.00 expenditure by the BOARD. The Purchase Order will reference this agreement and the date approved by the BOARD. Itron shall hold the pricing as quoted in the Itron Terms of Sale and Itron Pricing Summary BMR #14224-17 Ver1 Dec dated December 20, 2017. Itron shall agree to hold the prices as quoted through December 31, 2018



Electric / Gas / Water  
Information collection, analysis and application

2111 N. Moller Rd.  
Liberty Lake, WA 99019  
fax: 866-787-6910  
[www.itron.com](http://www.itron.com)

Pricing Summary for  
City of Fort Wayne, IN

BMR# 14224-17 Ver1 Dec  
December 20, 2017

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
<b>ERTs</b>						
1	ERW-1601-001S	OpenWay Riva Water Module-Pit	400	\$64.50	\$25,800.00	(1)
2	CFG-0151-010	Standard 5' cable with In-Line connector with .167" diameter protective cover	400	\$10.00	\$4,000.00	
3	CFG-1601-001	OpenWay Riva Through Lid Mount Kit	400	\$2.50	\$1,000.00	
4	ERW-1601-002S	OpenWay Riva Water Module-Remote	5,000	\$64.50	\$322,500.00	(1)
5	CFG-1300-003	OpenWay Riva Mounting Kit for Remote Installations	5,000	\$2.50	\$12,500.00	
<b>ERT Total</b>					<b>\$365,800.00</b>	

**Notes and Assumptions**

- (1) OpenWay Riva Water Module full warranty is consistent with the warranty terms in the Agreement for the first 10 years from date of shipment. For warranty claims in years 11 through 15, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 50 percent of its then-current list price for the replacement product. For warranty claims in years 16 through 20, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 25 percent of its then-current list price for the replacement product.
- (2) Taxes and freight are not included and will be billed at actual. Prices are in US dollars. Prices are valid through December 31, 2018.

**MASTER SALES AGREEMENT  
TERMS AND CONDITIONS**

This Master Sales Agreement (the "*Agreement*") is made and entered into as of \_\_\_\_\_, 2018 (the "*Effective Date*") by and between Itron, Inc., a Washington corporation with a principal place of business at 2111 N. Molter Road, Liberty Lake, Washington 99019 ("*Itron*"), and the City of Fort Wayne by and through its Board of Public Works, a political subdivision located in the State of Indiana, with a principal place of business at 200 E. Berry St., Fort Wayne, IN 46802 ("*Customer*"). Itron and Customer may each be referred to as a "*Party*" and together as the "*Parties*."

**1. Scope.** This Agreement sets forth the terms governing all Technology & Services Addenda under this Agreement. The attached Transaction Summary identifies which Addenda are made a part of this Agreement. This Agreement is subject to approval by the Fort Wayne Common Council and shall only become binding upon the Parties if such approval is obtained.

**2. Technology & Services Addenda.** Technology & Services Addenda may set forth additional terms and conditions applicable to specific products and services purchased by Customer. In the event of a conflict between this Agreement and an Addendum, the Addendum will control to the extent necessary to resolve the conflict.

**3. Purchase Orders.** All purchase orders will be governed by the terms of this Agreement. Pre-printed terms on a purchase order will be null and void, and no contingency, addition, or conflicting term contained on any purchase order will be binding upon Itron.

**4. Fees, Taxes, and Payment.**

**4.1. Fees.** Fees will be specified in a pricing summary made a part of this Agreement. Itron reserves the right to modify the pricing summary from time-to-time during the term of this Agreement upon thirty (30) days' prior written notice to Customer for any new purchase orders.

**4.2. Taxes.** Prices and charges for products and services are exclusive of taxes, levies, duties and similar governmental assessments ("*Taxes*"), all of which are the responsibility of Customer to pay. Customer is responsible for paying all Taxes applicable to transactions. If Itron has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides a valid tax exemption certificate or direct pay permit authorized by the appropriate taxing authority. Itron is solely responsible for taxes assessable against Itron based on its income, property and employees.

**4.3. Payment.** All purchase orders are subject to credit approval. Payment terms are net thirty (30) days from the date of invoice. All payments shall be made in US currency. Late payments shall accrue interest from the due date at the rate of 1.0% of the outstanding balance per month, or the maximum rate permitted by law until the date paid, and Itron may condition future renewals and purchase orders on payment terms shorter than thirty (30) days.

**5. Term and Termination.**

**5.1. Term.** Subject to approval of the Fort Wayne Common Council, the term of this Agreement begins on the Effective Date and continues for a period of five (5) years and shall automatically renew for one (1) year periods – up to three (3) years' renewal of annual renewal terms in total – unless either Party provides ninety (90) days' prior written notice by either Party of intent not to renew prior to the applicable expiration date.

**5.2. Termination for Convenience.** Either Party may terminate this Agreement for convenience upon

ninety (90) days' prior written notice to the other.

**5.3. Termination for Cause.** Other than Customer's nonpayment which shall constitute a breach of this Agreement if full payment is not received within five (5) days of written notice, either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings; (ii) breaches its obligations related to the other Party's confidential information; or (iii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Agreement that are in breach or default and the action required to cure the breach or default).

**5.4. Surviving Provisions.** Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration and continue in full force and effect for the period so contemplated.

## **6. Confidentiality.**

**6.1. Definitions.** (A) "*Confidential Information*" means (1) this Agreement and the discussions, negotiations and proposals related to this Agreement and (2) information, whether provided directly or indirectly from the other Party in writing, orally, by electronic or other data transmission or in any other form or media or obtained through on-site visits at Itron or Customer facilities and whether furnished or made available before or after the date of this Agreement, that is confidential, proprietary or otherwise not generally available to the public. Confidential Information does not include information that is: (a) rightfully known to the receiving Party before negotiations leading up to this Agreement; (b) independently developed by the receiving Party without relying on the disclosing Party's Confidential Information; (c) part of the public domain or is lawfully obtained by the receiving Party from a third party not under an obligation of confidentiality; or (d) free of confidentiality restrictions by agreement of the disclosing party. (B) "*Receiving Party*" means the Party receiving Confidential Information of the other. (C) "*Disclosing Party*" means the Party disclosing Confidential Information to the other Party.

**6.2. Obligations.** The Receiving Party will keep Confidential Information of the Disclosing Party strictly confidential and will not disclose it to any third party during the term of this Agreement and for a period of three (3) years after termination or expiration of this Agreement.

**6.3. Permitted Disclosure.** The Receiving Party may disclose Confidential Information to its affiliates, agents, contractors, and legal representatives, but only if they have a need to know and an obligation to protect the Disclosing Party's Confidential Information that is at least as restrictive as the confidentiality provisions of this Agreement.

**6.4. Return of Confidential Information.** The Receiving Party will destroy or return the Disclosing Party's Confidential Information within fourteen (14) days after receipt of the Disclosing Party's written request. With the exception of Customer Data (as defined in Section 7), the Receiving Party may retain a copy of Confidential Information as part of archival records (including backup systems) the Receiving Party keeps in the ordinary course of business, or if required by law or regulation; provided however, that any Confidential Information so retained will continue to be Confidential Information pursuant to the terms of this Agreement and the Receiving Party will continue to be bound by the terms of this Agreement with respect to such Confidential Information.

## **7. Privacy.**

**7.1. General.** If, in the course of providing any services, Itron has or obtains, to any extent and for any reason, any access to Customer Data, then the terms and conditions of this Section 7 will apply.

**7.2. Definition of Customer Data.** "*Customer Data*" means any information about Customer's existing or prospective customers that Itron acquires, develops, or derives under this Agreement. Customer Data may include, without limitation, any personally identifying information relating to an existing or prospective customer, or any other information that, either individually or when combined with other information could be used to derive information specific to a particular customer or prospective customer, which information is not generally available to the public and which Itron acquires or derives in carrying out its obligations under this Agreement. Customer Data includes, but is not limited to, information regarding a User's identity social security number, telephone number, credit card number, e-mail address, account information, service purchase and usage information.

**7.3. Use of Customer Data.** Itron may only collect, access, use, maintain, or disclose Customer Data to fulfill its obligations under this Agreement. Customer exclusively owns all Customer Data and Itron agrees to return, or at the election of Customer, destroy (and confirm in writing the destruction) all Customer Data upon the termination or expiration of this Agreement, or earlier if requested to do so in writing by Customer.

**7.4. Reservation of Rights to Customer.** Subject to the limited rights granted by Customer hereunder, Itron acquires no right, title or interest from Customer or its licensors under this Agreement in or to Customer Data, including any Intellectual Property (defined below) rights in that Customer Data.

**7.5. Safeguards.** Itron will employ administrative, physical, and technical safeguards that are reasonably designed to prevent unauthorized collection, access, disclosure, and use of Customer Data while in its custody ("*Safeguards*"). The Safeguards Itron employs must: (1) meet, at a minimum, industry practice; and (2) be reasonably designed to ensure that only Itron personnel with a need to know the Customer Data have access to it. Itron will promptly notify Customer of any known breach of any Safeguards, and Itron and Customer will cooperate to investigate and remedy any such breach and any related dispute, inquiry, or claim.

**7.6. Miscellaneous.** This Section 7 supplements Section 6 ("*Confidentiality*"), and the provisions of this Section 7 control if they conflict with Section 6 ("*Confidentiality*"). A breach of any Customer Data provision may result in irreparable harm to Customer, for which monetary damages may not provide a sufficient remedy, Customer may seek both monetary damages and equitable relief.

**8. Publicity.** Neither Party shall disclose, advertise, or publish the detailed terms and conditions of this Agreement without the prior written consent of the other Party. Any press release or publication regarding this Agreement or deliverables under it are presumed by the Parties to contain Confidential Information and is subject to prior review and written approval of the Parties.

**9. Warranties.**

**9.1. Services & Deliverables Warranties.** Express warranties for products and services (the Express Warranties") will be stated in the applicable Addenda for the period stated therein (the "*Express Warranty Period*").

**9.2. CERTAIN WARRANTY EXCLUSIONS. THE WARRANTIES UNDER THIS AGREEMENT AND THE ADDENDA DO NOT COVER PROBLEMS CAUSED BY EXTERNAL CAUSES, INCLUDING ACCIDENTS, ACTS OF VANDALISM, ABUSE, MISUSE, INADEQUATE MAINTENANCE, UNKNOWN OR UNFORESEEN ELECTROMAGNETIC DISTURBANCES ON THE NETWORK, PROBLEMS WITH ELECTRICAL POWER, OR WITH THE QUALITY OF THE WATER, THE ENERGY OR THE NETWORK, ACTS OF GOD, SERVICE (INCLUDING INSTALLATION OR DE-INSTALLATION) NOT PERFORMED OR AUTHORIZED BY ITRON.**

**9.3. DISCLAIMER OF WARRANTIES. WARRANTIES UNDER THIS AGREEMENT,**

TOGETHER WITH ALL EXPRESS WARRANTIES CONTAINED IN ANY ADDENDUM, STATEMENT OF WORK, OR OTHERWISE INCORPORATED IN THIS AGREEMENT, CONSTITUTE AND EXPRESS THE ENTIRE STATEMENT OF THE PARTIES WITH RESPECT TO WARRANTIES. THE PARTIES DISCLAIM ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

**10. Insurance.** During the term of this Agreement, Itron will maintain the following minimum levels of insurance (i) workers' compensation insurance for Itron employees equal to applicable statutory limits and an employer's liability policy in an amount not less than \$1,000,000.00; (ii) an occurrence form commercial general liability policy or policies in an amount not less than \$1,000,000 per occurrence and \$2,000,000.00 aggregate; (iii) an automobile liability policy or policies in an amount not less than \$1,000,000.00 combined single limit; and (iv) a professional liability policy or policies insuring against liability for errors and omissions covering professional activities contemplated under this Agreement in an amount not less than \$1,000,000.00. Upon written request, Itron will provide Certificates of Insurance evidencing the coverage described in this Section.

**11. Limitation of Liability.**

**11.1. NO CONSEQUENTIAL DAMAGES.** NEITHER PARTY WILL BE LIABLE HEREUNDER FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS OR SAVINGS) FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTY WAS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES, EXCEPT THAT THE FOREGOING WILL NOT RESTRICT A PARTY'S ABILITY TO RECOVER ACTUAL DAMAGES FOR BREACH OF THIS AGREEMENT, INCLUDING THE COSTS OF OBTAINING REPLACEMENT SERVICES AND DELIVERABLES COMPLYING WITH THE TERMS OF THIS AGREEMENT.

**11.2. LIMITATION.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER TO SUPPLIER FOR THE SERVICES OR DELIVERABLES IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE OF ANY CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE.

**12. Indemnification against Third Party Claims.**

**12.1. General Claims.** Itron agrees to defend Customer and Customer's successors and assigns, officers, directors, employees, representatives, and agents ("*Customer Indemnitees*") from and against any and all third-party claims, demands, suits, actions, causes of action, of any kind whatsoever (together a "*Claim*"), and Itron will indemnify and hold harmless Customer Indemnitees from and against all damages, losses, costs and/or expenses (including legal fees and disbursements) awarded against Customer in any such Claim, or those costs and damages agreed to by Itron in a monetary settlement of such Claim, to the extent resulting from damages to persons or real or tangible property, bodily injury or death caused by Itron's negligence or intentional misconduct (including that of its employees, agents, and contractors) arising in connection with this Agreement.

**12.2. Infringement Claims.** Itron shall defend the Customer Indemnitees from and against any and all claims, demands, suits, actions, causes of action, of any kind whatsoever, for damages, losses, costs and/or expenses (including legal fees and disbursements) by an unaffiliated third party to the extent

resulting from any allegation that any Itron Deliverables and/or Services constitute a direct infringement, violation or misappropriation of any such third party's Intellectual Property rights. The foregoing does not apply to products that are not manufactured by Itron or to software licensed by third parties.

**12.3. Conditions to Infringement Claim Defense.** Itron's infringement defense obligations under Section 12.2 are conditioned on Customer's agreement that if the applicable product or service becomes, or in Itron's opinion is likely to become, the subject of such a claim, Itron will have the right, at Itron's sole option and expense, either to procure the right for Customer to continue using the affected product or service or to replace or modify the same so that it becomes non-infringing. Such replacements or modifications will be functionally equivalent to the replaced product or service. If the foregoing alternatives are not available on terms that are commercially reasonable in Itron's sole judgment, Itron shall have the right to require Customer to cease using the affected product or service in which case Itron will refund to Customer the depreciated value of the affected product or the unused portion of the service, as the case may be.

**12.4. Exclusions to Infringement Claim Defense.** Itron shall have no obligation under this Agreement to the extent any claim of infringement or misappropriation results from: (i) use of a product or service, other than as permitted under this Agreement or as intended by Itron, if the infringement would not have occurred but for such use; (ii) use of any product or service in combination with any other product, equipment, software or data, if the infringement would not have occurred but for such combination; (iii) any use of any release of a software or any firmware other than the most current release made available to Customer, (iv) any claim based on Customer's use of a product after Itron has informed Customer of modifications or changes to the product required to avoid such claims and offered to implement those modification or changes, if such claim would have been avoided or mitigated by the implementation of Itron's suggestions, (v) any modification to a product made by a person other than Itron or an authorized representative of Itron, or (vi) compliance by Itron with specifications or instructions supplied by Customer. Itron shall not be liable hereunder for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

**12.5. Conditions to Defense.** As a condition to Itron's defense obligations under this Agreement, Customer will provide Itron with prompt written notice of the claim, permit Itron to control the defense, settlement, adjustment or compromise of the claim and provide Itron with reasonable assistance in connection with such defense; however, Itron shall not consent to any judgment or settlement of the foregoing, that creates an obligation on any Customer Indemnitee without first obtaining such indemnitee's prior written consent. Customer may employ counsel at its own expense to assist it with respect to any such claim.

**12.6. THIRD PARTY CLAIM DISCLAIMER. THIS SECTION CONSTITUTES ITRON'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.**

### **13. Intellectual Property.**

**13.1. Definition.** "*Intellectual Property*" means intellectual and industrial property rights, and moral rights or similar or analogous proprietary rights, pertaining to a particular invention, work of authorship, symbol or other mark or designation indicative of source or quality, or other particular item of tangible or intangible property, arising under statutory or common law or by contract, in the United States or another country that recognizes such rights, whether or not perfected, now existing or hereafter filed, issued, or acquired, including: (i) patent rights associated with an invention and processes (including business processes), methods and apparatuses entailed by such invention (including, as applicable, the rights to make, use, sell, offer to sell, import, or have made, and the rights to file and prosecute patent applications and provisional patent applications); (ii) rights associated with works of authorship, including copyrights

and mask work rights (including the rights to copy, adapt, distribute, display, perform, and create derivative works); (iii) rights relating to the protection of trade secrets and confidential information (including the rights to use and disclose); (iv) trademarks, service marks, trade dress, trade names, and design patent rights (including the right to goodwill appertaining thereto); (v) moral rights; and (vi) other rights analogous, similar, or comparable to those described by the foregoing clauses (i) through (v), and other proprietary rights relating to intangible property (including licensing rights and shop rights).

**13.2. Reservation of Intellectual Property Rights.** Itron reserves all rights, title and interest in and to all of its Intellectual Property. Customer reserves all rights, title and interest in and to all of its Intellectual Property.

**13.3. Suggestions.** Itron shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into its products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

#### **14. Change Requests & Change Orders.**

**14.1. Request.** Customer may at any time, and from time to time, propose changes to services or services deliverables or request that Itron perform additional services for Customer (each a "*Change Request*"). Within a reasonable period after receiving a written Change Request from Customer, Itron will prepare and submit a written proposal in the form of a statement of work to Customer that: (i) if applicable, assesses the expected impact of the Change Request on any services or services deliverables being provided at the time of the request; (ii) defines and describes how Itron would fulfill or satisfy the Change Request, and describes any additional services or services deliverables to be provided by Itron in reasonable detail; (iii) sets forth pricing, specifications, implementation plans and time schedules, with appropriate milestone and completion dates, anticipated by Itron in connection with fulfilling the Change Request; (iv) contains proposed completion and acceptance criteria; and (v) sets forth any other information required by this Agreement and any Technology & Services Addendum.

**14.2. Response.** If Itron timely submits a response to the Change Request, the Parties will attempt in good faith to negotiate a mutually acceptable resolution. Mutually agreed upon Change Requests will take the form of a written order (each a "*Change Order*"). Following the issuance of any Change Request and during any negotiation, Itron will continue to provide the services and services deliverables, unless otherwise agreed to by Itron and Customer in writing.

**14.3. Failure to Respond to Change Request.** If Itron fails to respond to Customer's Change Request within five (5) business days, the Change Request will be deemed to be rejected.

**14.4. Authorized Approvals.** No Change Order will be binding upon Customer or Itron unless executed and delivered by an authorized signatory of both parties. All Change Orders and all statements of work under a Change Order will be governed by the terms and conditions of this Agreement and the applicable Technology & Services Addendum.

#### **15. DISPUTE RESOLUTION**

**15.1. Dispute Resolution Procedure.** The Parties will resolve any dispute between the Parties regarding the interpretation of this Agreement or Itron's performance using the procedures in this Section.

**15.1.1.** Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Upon delivery of the notice, each of the Parties will appoint a designated representative who does not devote substantially all of his or her time to performance under this Master Sales Agreement and who, in the case of Customer, will be a director (or more senior corporate officer), and in the case of Itron, a director (or more senior corporate officer), to

meet for the purpose of resolving the dispute.

**15.1.2.** The representatives will discuss the problem and negotiate in good faith to resolve the dispute promptly and without the necessity of any formal proceeding. If either Party intends to have an attorney attend a meeting, it will notify the other Party at least two (2) business days before the meeting to enable the other Party to also be accompanied by an attorney. All negotiations pursuant to this Section are confidential and will be treated as compromise and settlement negotiations for purposes of evidentiary rules.

**15.1.3.** If the disputed matter has not been resolved by the designated representatives within ten (10) business days after delivery of the written notice by one Party to the other, or such longer period as agreed to in writing by the Parties, each Party will have the right to commence any legal proceeding as permitted by law.

**15.2. Agreements in writing.** No agreement achieved under this dispute resolution process will be binding on either Party unless set forth in a writing executed by both Parties by duly authorized signatories.

**15.3. No Termination or Suspension of Services.** During the pendency of any dispute, Itron will not interrupt or delay the provision of Services, disable any Deliverable in whole or in part, or perform any other action that prevents, slows down, or reduces in any way the provision of Services or Customer's ability to conduct its business, unless Customer agrees in writing or terminates this Master Sales Agreement.

**15.4. Injunctive relief.** Neither Party will be obligated to follow the procedures set forth in this Section when seeking injunctive relief.

## **16. Miscellaneous.**

**16.1. Entire Agreement.** This Agreement and any attachments hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements pertaining to such subject matter. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded hereby and Customer represents and acknowledges that it has not relied on any representation or warranty other than those explicitly set forth in this Agreement in connection with its execution of this Agreement. Neither Party shall be bound by terms and conditions imprinted on or embedded in purchase orders, order acknowledgments, statements of work not expressly made a part hereof or other communications between the Parties.

**16.2. Waivers.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

**16.3. No Assignment.** This Agreement is personal to each Party, and none of the rights of a Party hereunder shall be sold, transferred, assigned or sublicensed by a Party; provided, however, that upon written notice to Customer, Itron shall have the right to assign, by contract or by operation of law, any or all of its rights and obligations under this Agreement to a Itron Affiliate without any requirement that Itron seek or obtain the approval of Customer. "*Itron Affiliate*" means an entity controlled by or under common control with Itron.

**16.4. Captions; Section Numbers.** Article, section and paragraph numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any references to a particular Section of this Agreement will be deemed to include reference to any and all subsections

thereof.

**16.5. Neither Party Deemed Drafter.** Despite the possibility that one Party or its representatives may have prepared the initial draft of this Agreement or any provision or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them will be deemed the drafter of this Agreement and that, in construing this Agreement, no provision hereof will be construed in favor of one Party on the ground that such provision was drafted by the other.

**16.6. Expenses.** Each Party will be responsible for, and will pay, all expenses paid or incurred by it in connection with the planning, negotiation, and consummation of this Agreement.

**16.7. Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an Itron employee or agent in connection with this Agreement.

**16.8. Relationship of the Parties.** The Parties are independent contractors for all purposes and at all times. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. Itron has the responsibility for, and control over, the methods and details of performing services and providing products under this Agreement. Itron will provide all tools, materials, training, hiring, supervision, work policies and procedures, and be responsible for the compensation, discipline and termination of Itron personnel. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

**16.9. Compliance with Law.** Itron and Customer will at all times perform their respective obligations under this Agreement in compliance in all material respects with all applicable foreign, domestic, state, and local laws and regulations of all applicable foreign and domestic jurisdictions, and in such a manner as not to cause the other to be in material violation of any applicable laws or regulations including any applicable requirements of any foreign, domestic, state, or local authority regulating health, safety, employment, the environment, consumer protection, security, exportation, information services, or telecommunications.

**16.10. Governing Law.** This Agreement and performance hereunder will be governed by and construed in accordance with the laws of the State of Washington without reference to their conflicts of law principles or the United Nations Convention on Contracts for the Sale of Goods.

**16.11. Forum Selection.** The Parties agree that all actions and proceedings arising out of or related to this Agreement, except as necessary to enforce indemnity or defense obligations, will be brought only in a state court located in Spokane County, Washington or in the United States District Court for the Eastern District of Washington. The Parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves.

**16.12. Jury Trial Waiver.**

**16.12.1. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY COURT ACTION ARISING AMONG THE PARTIES UNDER THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT, WHETHER MADE BY CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR OTHERWISE.**

**16.12.2.** If the jury waiver is held to be unenforceable, the Parties agree to binding arbitration for any dispute arising out of this Agreement or any claim arising under any federal, state or local statutes, laws, or regulations. The arbitration will be conducted in accordance with the arbitration rules promulgated under the CPR Institute for Dispute Resolution's ("CPR") Rules for Non-Administered Arbitration of Business Disputes then prevailing. To the extent that the provisions

of this Agreement and the prevailing rules of CPR conflict, the provisions of this Agreement will govern. The arbitrator(s) will be required to furnish, promptly upon conclusion of the arbitration, a written decision, setting out the reasons for the decision. The arbitration decision will be final and binding on the parties, and the decision may be enforced by either Party in any court of competent jurisdiction. Each Party will bear its own expenses and an equal share of the expenses of the third arbitrator and the fees, if any, of the CPR.

**16.12.3.** The Parties agreement to waive their right to a jury trial will be binding on their respective successors and assignees.

**16.13. Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by overnight delivery, (iv) the second business day after sending by confirmed facsimile, or (v), except for legal notices, the first business day after sending by email. All legal notices shall be clearly identified as such.

**16.14. Severability.** If any provision of this Agreement or its applications to particular circumstances is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision (or its application to those circumstances) will be deemed stricken and the remainder of this Agreement (and the application of that provision to other circumstances) will continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the parties; the parties will replace the severed provision with the provision that will come closest to reflecting the intention of the parties underlying the severed provision but that will be valid, legal, and enforceable.

**16.15. Force Majeure.** Except for the obligation to pay monies due and owing, neither Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, industry wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting Party shall be extended for a period equal to the period during which such event prevented such Party's performance.

**16.16. No Third Party Rights.** This Agreement is entered into only for the benefit of Customer and Itron and no other person or entity shall have the right to enforce any of its terms.

**16.17. Authorization.** Each Party represents and warrants that the signing, delivery and performance of this Agreement has been properly authorized.

**16.18. Counterparts.** This Agreement may be executed by facsimile or scan and in counterparts, which taken together shall form one legal instrument.

*[Signature Page Follows]*

**SIGNATURE PAGE  
TO  
MASTER SALES AGREEMENT  
TERMS AND CONDITIONS**

**AGREED:**

APPROVED this 16 day of February, 2018.

**BOARD OF PUBLIC WORKS**

By: [Signature]  
Shan Gunawardena, Chair

By: [Signature]  
Kumar Menon, Member

By: [Signature]  
Mike Avila, Member

Attest: [Signature]  
Michelle Fulk, Clerk

**Itron, Inc.**

[Signature]  
Signature

Julie Schmar  
Printed Name

Director, Finance  
Title

1.28.18  
Date

**TRANSACTION SUMMARY  
TO  
MASTER SALES AGREEMENT**

<b>Technology &amp; Services Addendum to Master Sales Agreement</b>	
1. Equipment Purchase & Warranty Schedule Addendum	<input checked="" type="checkbox"/>
2. Software License Addendum	<input checked="" type="checkbox"/>
3. Maintenance & Support Services Addendum	<input checked="" type="checkbox"/>
4. Installation/Implementation Services Addendum	<input checked="" type="checkbox"/>
5. Itron Mobile Addendum	<input type="checkbox"/>

<b>Pricing Summary (Attached)</b>
BMR# 14224-17 Ver1 Dec

<b>Identification of Licensed Software (if applicable)</b>
<b>Application Name</b>
<b>License Term</b>
<input type="checkbox"/> Perpetual <input type="checkbox"/> Fixed Term ( Years) <input type="checkbox"/> <i>Check if fixed term license requires purchase of software maintenance and support services</i>
<b>Usage</b>
<input type="checkbox"/> Tier Limitation, if applicable (Maximum Usage: )

<b>Billing Information (if applicable)</b>
Ship Software to Contact Name: _____
Address: _____
City / State / Zip: _____
Phone Number: _____
email Address: _____

Billing Contact Information	Contact Name: _____
	Address: _____
	City / State / Zip: _____
	Phone Number: _____
	Fax Number: _____
Renewal Notice Contact Information	Contact Name: _____
	Address: _____
	City / State / Zip: _____
	Phone Number: _____
	Fax Number: _____
Purchase Order Number: _____	

**TECHNOLOGY & SERVICES ADDENDUM**  
**– Equipment Purchase & Warranty Schedule –**

1. **Ordering of Equipment.** During the term of the Agreement, Customer shall order quantities of equipment by issuing a purchase order to Itron, with a requested ship date agreeable to both Parties – in each case specifying the type and quantity of equipment, the shipment destination and the requested ship date.
2. **Firmware.** The purchase of equipment manufactured by Itron includes a perpetual, irrevocable license to use and execute any software embedded in the equipment. The license to any software embedded in third party equipment purchased by Customer through Itron shall be between Customer and the manufacturer of such third party equipment.
3. **Equipment Invoicing.** Itron will invoice Customer for equipment upon shipment.
4. **Ordering Lead Time & Ship Date.** The required lead time for equipment manufactured by Itron shall be ninety (90) days between the date Itron receives the purchase order and the ship date, unless (a) otherwise provided in an agreed-upon purchase order, or (b) Itron has notified Customer in advance that a different lead time is required for specific Itron equipment. The required lead time for third party equipment shall be the applicable third party manufacturer's then-current, standard lead time. Itron shall have no obligation to accept any requested ship date that is sooner than the required lead time.
5. **Order Cancellation & Rescheduling.** Unless otherwise provided in an agreed-upon purchase order, a purchase order for equipment may not be canceled or rescheduled by Customer.
6. **Forecasts.** Itron may condition the ninety (90) day order lead time or such other lead time required by Itron under Section 4 ("Ordering Lead Time & Ship Date") upon Customer providing binding forecasts, at intervals requested by Itron, of Customer's equipment demand.
7. **Delivery & Risk of Loss.**
  - 7.1 **Delivery.** Itron shall cause the equipment to be delivered to Customer (or Customer's authorized agent) at customer's expense in accordance with the purchase order and by the specified ship date, provided that all purchase order content and lead time requirements have been met.
  - 7.2 **Title and Risk of Loss.** Title to equipment and risk of loss or damage will transfer to Customer upon delivery to Customer's place of business.
8. **Documentation.** Itron shall make its standard product documentation available via download. Itron will provide Customer with download instructions.
9. **Inspection by Customer.** Customer shall inspect a shipment within a reasonable period of time after receiving shipment – and in all events no longer than seven (7) days – to confirm that the items delivered are the equipment ordered and that the quantity received is the same as the quantity ordered.
10. **Limited Equipment Warranty.**
  - 10.1 **Limited Warranty.** Itron warrants to Customer that the Itron-manufactured equipment will be free from defects in materials and workmanship and will conform to the applicable specifications for a period of one (1) year from the date of shipment, unless otherwise stated in the attached warranty schedule for Itron-manufacture equipment. For avoidance of doubt, components parts of Itron-manufactured

equipment that are provided by third-party manufacturers and developers -- and which are integrated into Itron-manufactured equipment -- are covered by this Section 10 warranty.

#### **10.2. Repair or Replacement.**

**10.2.1.** Itron reserves the option to repair or replace the Itron-manufactured equipment after Customer has returned non-conforming Itron-manufactured equipment under warranty properly packaged and prepaid to a repair facility designated by Itron in accordance with Itron's then-current RMA procedures. Itron's warranty under this Section, does not include freight to the Itron designated facilities; however, it does include return freight to Customer's location in the event that the returned unit of Itron-manufactured equipment is determined to be faulty and under warranty.

**10.2.2.** Labor costs associated with removal or reinstallation of failed equipment at Customer location, after the initial deployment of equipment, is not included in Itron's warranty under this Section.

**10.3. Warranty on Repaired or Replaced Equipment.** Repaired and replacement Itron-manufactured equipment will be warranted for the remainder of the original warranty period set forth above, but no less than six (6) months from repair or replacement.

**11. Exclusions to Warranty on Itron-Manufactured Equipment.** The above Section 10 warranty on Itron-manufactured equipment does not cover damage due to external causes, including accident, abuse, misuse, inadequate maintenance, problems with electrical power, acts of God; service (including installation or de-installation) not performed or authorized by Itron; usage not in accordance with product instructions or in a configuration not approved by Itron; normal wear and tear; and problems caused by use of parts and components that are not supplied by Itron. The warranty provided herein shall be void if the equipment is modified in a way not authorized in writing by Itron.

**12. Pass-Through Warranties on Third-Party Equipment.** ITRON IS NOT THE MANUFACTURER OF THE EQUIPMENT SPECIFICALLY IDENTIFIED IN THE THIRD PARTY EQUIPMENT WARRANTY SCHEDULE AS THIRD PARTY EQUIPMENT AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE OR NON-INFRINGEMENT OF THE THIRD PARTY EQUIPMENT. WITH RESPECT TO ITRON, CUSTOMER PURCHASES THIRD PARTY EQUIPMENT "AS IS." THIRD PARTY EQUIPMENT SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED BY THE THIRD PARTY EQUIPMENT MANUFACTURER. MODIFICATIONS MAY VOID OR OTHERWISE LIMIT ANY WARRANTY APPLICABLE TO THIRD PARTY EQUIPMENT. See the attached Third Party Equipment Warranty Schedule, if applicable, for an informational use only summary of third party warranties for Third Party Equipment. Itron will act as a liaison with the Third Party Equipment providers in regard to the Third Party Equipment warranties and will make commercially reasonable efforts to assist Customer in enforcing those warranties.

*[Warranty Schedule Follows]*

**Itron Equipment Warranty Schedule  
To  
Supplemental Equipment Purchase Terms**

Product	Warranty Terms
Centron and Sentinel electricity meters	3 years from shipment
Repairs for out-of-warranty electricity meters	Itron shall perform the repairs with reasonable care and in a diligent and competent manner. Itron's sole obligation in connection with repair warranty failures shall be, at its option, to correct or re-perform repairs or refund to Customer the amount paid for the repairs. Customer must report any deficiencies in repair work to Itron in writing within 90 days of shipment to receive the remedies described herein.
OpenWay Riva Water Module (including battery)	<p>Full warranty consistent with the warranty terms in the Agreement for the first 10 years from shipment.</p> <p>For warranty claims in years 11 through 15, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 50 percent of its then-current list price for the replacement product.</p> <p>For warranty claims in years 16 through 20, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 25 percent of its then-current list price for the replacement product.</p> <p>The warranty on Itron water endpoints shall be void if the endpoint is used in connection with a third party reading system that is not approved by Itron.</p>
100W and 100W+ series water endpoints (including battery)	<p>Full warranty consistent with the warranty terms in the Agreement for the first 10 years from shipment.</p> <p>For warranty claims in years 11 through 15, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 50 percent of its then-current list price for the replacement product.</p> <p>For warranty claims in years 16 through 20, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 25 percent of its then-current list price for the replacement product.</p> <p>The warranty on Itron water endpoints shall be void if the endpoint is used in connection with a third party reading system that is not approved by Itron.</p>
OpenWay Riva Leak Sensor	Full warranty consistent with the warranty terms in the Agreement for the first 5 years from shipment.

Leak Sensor (Non-OpenWay Riva)	<p>Full warranty consistent with the warranty terms in the Agreement for the first 10 years from shipment.</p> <p>For warranty claims in years 11 through 15, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 50 percent of its then-current list price for the replacement product.</p> <p>For warranty claims in years 16 through 20, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 25 percent of its then-current list price for the replacement product.</p>
Upgraded handhelds or Mobile Collectors	90 days from shipment.
METRIS Meters and I-250 Meters	<p>Itron warrants that eighty five percent (85%) or more of the METRIS Meters and I-250 Meters shipped to Customer during any calendar year will be free from defects in materials and workmanship such that they maintain set point calibration that is within two percent of their original factory set point calibration (open and check) ("Calibration Warranty"). The foregoing Calibration Warranty is valid until the earlier of (i) 15 years from shipment to Customer of the METRIS Meter and I-250 Meter for which warranty coverage is sought, (ii) the measurement of more than one million cubic feet of gas measured by such meter, or (iii) until such meter is replaced by Customer in connection with a periodic meter change-out.</p> <p>Itron's sole obligation and Customer's exclusive remedy in connection with the breach of a warranty provided under this Section shall be for Itron, at its option, to repair any non-conforming METRIS Meters and I-250 Meters, provided that if Itron determines that it is unable to repair a non-conforming METRIS Meter and I-250 Meter, Itron will refund to Customer the depreciated value of such non-conforming METRIS Meter and I-250 Meter. At the request of Itron, Customer will provide evidence of a meter's service history to verify warranty coverage.</p>

*[End of Warranty Schedule]*

**TECHNOLOGY & SERVICES ADDENDUM**  
*- Software License -*

- 1. The Licensed Software.** The Itron software licensed under this Addendum (the "*Licensed Software*") is identified in the Transaction Summary.
- 2. Software Maintenance & Support.** Note: Customers licensing Licensed Software in connection with Cloud Infrastructure service are required to purchase software Maintenance & Support Services for term of the Cloud Infrastructure service.

3. **License Grant.** Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable right and license – within the Territory and for the Software License Term, subject to payment of license fees and compliance with the terms and conditions of this Addendum and the Agreement – to: (i) use, make, execute, display, and perform the Licensed Software in object code form for Customer's own internal business purposes and only in connection with the number of specified endpoints. The "Territory" shall be the United States of America – or Canada, if Customer is a Canadian company that will be operating the Licensed Software in Canada. The Software License Term is identified in the Transaction Summary.

4. **Third-Party Software.** All software developed by a third-party and sublicensed by Itron is subject to the licensing terms of the third-party developer, a copy of which terms shall be given to Customer. Such third-party software does not include software incorporated or embedded into hardware and software manufactured or developed by Itron.

5. **Restrictions.** In addition to those restrictions, terms, and conditions set forth in the Agreement – and as a condition to the license grant under Section 3, above – Customer shall not (a) modify or create any derivative works from the Licensed Software or the documentation provided with the Licensed Software ("Documentation"), (b) include or combine the Licensed Software with any software or with any equipment or hardware other than as authorized by Itron, (c) use the Licensed Software to provide processing services to third-parties or on a service bureau basis, (d) reverse assemble, decompile, reverse engineer the Licensed Software or otherwise attempt to derive its source code, (e) transfer any copy of the Licensed Software from the authorized system to any other computer hardware or system, except in case of malfunctioning or defective computer hardware or system – and then only temporarily and with the consent of Itron; or (viii) export the Licensed Software or any copy or direct product thereof out of the United States except in compliance with applicable export laws and regulations. Customer may only make copies of Documentation as reasonably necessary for the use contemplated under the Agreement; provided, however, that Customer may not copy the Licensed Software other than to make one machine readable copy for disaster recovery or archival purposes. Installation of the Licensed Software shall be limited to one production environment and one test environment. The Licensed Software and Documentation is the Confidential Information of Itron. Customer recognizes and agrees that any breach of the preceding restrictions by Customer shall constitute a material breach of this Addendum by Customer, and, at the option of Itron, shall result in revocation and immediate termination of all rights and licenses granted hereunder. Customer further recognizes and agrees that nothing in this Section shall be construed as prohibiting Itron from pursuing any and all remedies in the event of such breach or violation, and Itron hereby expressly reserves such rights and remedies.

6. **Reservation of Intellectual Property Rights by Itron.** Itron (and third party developer in the case of sublicensed software) retains all right, title and interest, and all ownership, in and to the Licensed Software and Documentation, including but not limited to all patent, copyright, trade secret, proprietary and other intellectual property rights in the Licensed Software and Documentation and in any modifications and derivative works. Itron (and third party developer in the case of sublicensed software) reserves the sole right to modify and update the Licensed Software. Customer will not take any action that might impair or challenge in any way any right, title or interest of Itron (or the applicable third party developers in the case of sublicensed software) in any such intellectual property rights. Customer must not alter or remove trade names, trademarks, services marks, or copyright notices and any other proprietary notices or trademarks on any Licensed Software or Documentation.

7. **Software Delivery.** Licensed Software will be delivered on the date and in the manner agreed to by the Parties.

8. **Limited Warranties.** The following warranties are the sole and exclusive warranties offered by Itron in connection with the Licensed Software.

**8.1. Itron Software.** Itron represents and warrants that for a period of ninety (90) days from the date of delivery to Customer, the Itron Software will operate substantially in conformance with the applicable Specifications. Customer's sole remedy for a breach of this warranty – if Itron has failed to cure the breach of warranty within a reasonable period – will be the refund of license fees for the Licensed Software. Itron Software that is repaired or replaced pursuant to this Section will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Customer's license to Itron Software for which it has received a refund hereunder shall terminate upon its receipt of a refund. The foregoing warranty does not cover third party software.

**8.2. Third Party Software.** ITRON IS NOT THE OWNER OF THE THIRD PARTY SOFTWARE AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, AND FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE OR NON-INFRINGEMENT OF THE THIRD PARTY SOFTWARE. WITH RESPECT TO ITRON, CUSTOMER IS PROVIDED THIRD PARTY EQUIPMENT "AS IS." THIRD PARTY SOFTWARE SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED BY THE THIRD PARTY SOFTWARE LICENSOR. MODIFICATIONS MAY VOID OR OTHERWISE LIMIT ANY WARRANTY APPLICABLE TO THIRD PARTY SOFTWARE.

Itron agrees to act as a liaison with the third party software licensors in regard to the third party software warranties, if any, and will use its commercially reasonable efforts to assist Customer in enforcing those warranties.

**9. Exclusions from Liability.** Itron shall have no obligation to Customer to the extent any Licensed Software is adversely affected by: (i) use of the Licensed Software in combination with any equipment, computer hardware and peripheral devices, operating system software, device drivers, third party software programs, computer graphic elements, and the like that are not authorized by Itron; (ii) any modification, fix, update or upgrade to the Licensed Software that is made other than by Itron; (iii) the use of a version of Licensed Software that is not supported by Itron; (iv) Customer's failure to implement a fix, update, or upgrade to Licensed Software provided by Itron; (v) the maintenance or support of Licensed Software other than by Itron; (vi) viruses introduced through no fault of Itron; or (vii) Customer's failure to follow installation, set up, and configuration instructions as described in the Documentation.

**10. Effect of Termination for Cause.** Upon termination of this Addendum for cause, Customer shall immediately discontinue use of the Licensed Software and Documentation and will destroy or return to Itron any and all copies of the Licensed Software and Documentation and certify to Itron in writing within fourteen (14) days after such termination that Customer has destroyed or has returned to Itron the Licensed Software and Documentation. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials. Termination of this Addendum for cause will not restrict either Party from pursuing any other remedies available to it, including injunctive relief, nor will such termination relieve Customer of its obligation to pay all fees that accrued prior to such termination. Upon termination of this Addendum for cause, Itron will have no further obligations to Customer in any respect whatsoever with respect to the Licensed Software. For avoidance of doubt – notwithstanding the foregoing, upon termination of this Addendum for cause no license, express or implied, is granted to Customer to any Itron intellectual property rights in the Licensed Software and Documentation.

**11. Open Source.** In the event that Itron identifies open source components within the Itron Software and provides Customer with the applicable license(s), Customer is required to accept and will comply with all such licenses.

**12. License Compliance Verification.**

**12.1. Records.** Customer agrees to create, retain, and provide to Itron and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Customer's use of all Licensed Software is in compliance with the license terms and conditions of this Addendum and the Agreement, including, without limitation, all of Itron's applicable licensing and pricing terms. Customer is responsible for 1) ensuring that it does not exceed its authorized use, and 2) remaining in compliance with the license terms and conditions of this Addendum. Customer, at Itron's request, will provide records and other information to demonstrate compliance with license terms and conditions of this Addendum and the Agreement.

**12.2. Verification Process.** Upon reasonable notice, Itron may verify Customer's compliance with the license terms and conditions of this Addendum at all sites and for all environments in which Customer uses (for any purpose) Licensed Software. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during normal business hours. Itron may use an independent auditor to assist with such verification, provided Itron has a written confidentiality agreement in place with such auditor.

**12.3. Resolution.** Itron will notify Customer in writing if any such verification indicates that Customer has used any Licensed Deliverable in excess of its authorized use or is otherwise not in compliance with the licensing terms and conditions of this Addendum or the Solution Document. Customer agrees to promptly pay directly to Itron the charges that Itron specifies in an invoice for 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two years, and 3) any additional charges and other liabilities determined as a result of such verification.

**12.4. No Restriction on Seeking Injunctive Relief.** Nothing in this Section 12 in any way limits or restricts Itron's right to seek injunctive relief for Customer's non-compliance with licensing terms and conditions of this Software Licensed Agreement Document.

**13. Invoices.** Itron will invoice Customer one hundred percent (100%) of the license fees for the Licensed Software upon delivery to Customer in the manner agreed upon.

**14. Surviving Provisions.** In addition to the Sections identified in the survival provisions of the Agreement, the following sections of this Addendum will survive expiration and termination of this Addendum and the Agreement: 6 ("Reservation of Intellectual Property Rights by Itron"), 9 ("Exclusions from Liability"), 10 ("Effect of Termination"), 12 ("License Compliance Verification").

*[End of Addendum]*

## TECHNOLOGY & SERVICES ADDENDUM

### *— Maintenance & Support Services (Hardware & Software) —*

1. **Additional Definitions.** The following defined terms are in addition to those defined in the Agreement:

“**Annual Adjustment**” means Itron’s standard annual price increase.

“**Annual Fee**” means the annual fee identified on Attachment A to this M&S Addendum (Maintenance and Support Services Pricing) for each category of Covered Product plus the Annual Adjustment, if any. The Annual Fee for any partial Maintenance Year (i.e., for Covered Products with a Maintenance Commencement Date that falls after the beginning of the Maintenance Year) shall be prorated based on the applicable number of months Customer is to receive Services under this Addendum during such Maintenance Year.

“**Contact Documents**” means the “Itron Support Services Contacts” document, which can be obtained by calling (877) 487-6602, including for example, the Itron Equipment Repair Table and Working Effectively with Itron Client Services documents.

“**Covered Product**” means Covered Software and Covered Equipment.

“**Covered Software**” means the software identified in the Transaction Summary and/or the pricing summary to this Agreement.

“**Covered Equipment**” means the equipment identified in the pricing summary to this Addendum which is Itron Equipment. (Itron Equipment is distinguished from equipment manufactured by a third-party that Customer may purchase through Itron under an Equipment Purchase Agreement Document or other commercial sales agreement.

“**End of Support**” means a commercial decision by Itron to discontinue maintenance and support services for specific Covered Products or to discontinue offering a particular Covered Product to Itron customers in general, along with that Covered Product’s associated maintenance and support.

“**Error**” means a failure of the Covered Software or Covered Software platform to substantially comply with the applicable Specifications.

“**Fix**” means a correction of an Error, including a work-around, in order for Covered Software to function in accordance with the applicable Specifications.

“**Improvement**” means an update, modification, enhancement, extension, new version (regardless of name or number), new module, or other change to Covered Software that is developed or otherwise provided by Itron.

“**M&S Commencement Date**” means the date upon and after which a Covered Product is entitled to receive Services under this Addendum in accordance with the terms of this Addendum, which – unless otherwise stated in the pricing summary – is (a) for Covered Software that is an Itron product, the first day of the month following delivery by agreed-upon method of the Covered Software (e.g., electronic or physical medium), except that the Maintenance Commencement Date for MV-RS Software is the warranty expiration date; and (2) for Covered Equipment that is Itron Equipment, the warranty expiration date.

“**M&S Services Option**” means the maintenance and support services option for Covered Equipment or Covered Software, including Service Levels, as set forth in Attachment B-1.

**"Maintenance Year"** means, for each Covered Product, a period of one (1) year beginning on the Effective Date, any anniversary thereof, or agreed-upon coverage start date.

**"Mandatory Revision"** means a software revision that Customer is required to accept in order to correct or address any one of the following issues: a material Error or a material security breach; or third party infringement claim.

**"Operating Condition"** means that the Covered Equipment performs in accordance with the applicable Specifications.

**"Principal Services Contacts"** means the Customer personnel that Customer is required to designate to serve as Customer's principal relationship contacts for all Services under this Addendum.

**"Loaned Mobile/Handheld Equipment"** means Mobile Collector and/or Handheld units loaned by Itron to Customer, under the terms of this Addendum while Services are being performed on Customer's Mobile Collector and/or Handheld.

**"Service Levels"** means, with respect to this Addendum, the response time, effort level, and escalation path procedures and guidelines described in Attachment B to this M&S Addendum (Software Maintenance & Support Service Levels).

**"Software Release"** means a collection of Fixes or Improvements made available to Itron customers (either via physical media or electronic download access).

**"Service Request"** means a request initiated by Customer for a technical support service within the scope of the applicable maintenance and support Services option purchased by Customer.

**"Technical Support Services"** means Itron technical support services provided by technical representatives by telephone, email or other remote means to assist Customer's Principal Service Contacts with questions related to the operation of the Covered Products.

## **2. Effect of Termination.**

**2.1. Effect of Termination of Agreement.** Except as otherwise provided in Section 2.1.2 below, Itron shall not be obligated to provide any Services under this Addendum upon termination of this Addendum.

**2.1.1.** If either Party terminates the Agreement Customer shall not be entitled to a prorated refund of the applicable Fee.

**2.1.2.** Unless Itron terminates the Agreement for breach or default by Customer, Itron will continue to provide Services under this Addendum that were purchased by Customer prior to the termination date – and the terms and conditions of this Addendum will continue to govern such Services.

**2.2. End of Support.** Itron may discontinue Services for any Covered Product, effective as of the end of the current Maintenance Year, by giving Customer written notice of such discontinuance no less than ninety (90) days prior to the end of such Maintenance Year. If the End of Support date is scheduled within a subsequent Maintenance Year, Fees for that subsequent term will be pro-rated through the appropriate End of Support date. At Customer's request, Itron may elect to provide custom support for products for which Maintenance Services have been discontinued at Itron's then-current rates. Unless otherwise agreed by the Parties in accordance with the foregoing sentence, Itron shall have no obligation to provide Services under this Addendum with respect to Covered Products for which Itron has discontinued Services pursuant to this Section.

### **3. Principal Services Contacts.**

**3.1. Designation by Customer.** Customer shall designate no more than two (2) Principal Services Contacts for each Covered Product, as identified in the Contract Documents, to serve as administrative liaisons for all matters pertaining to the Services provided under this Addendum for such Covered Product line, and shall provide their contact information to Itron's customer account representative. Principal Services Contacts shall report problems with Covered Products (each such report, a "*Service Request*") as soon as practicable for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Principal Services Contacts, Customer and Itron acknowledge that each Principal Services Contact should have the appropriate technical skills and training for the position. If Customer replaces a Principal Services Contact, Customer will provide updated contact information to Itron; and the new Principal Services Contact will undergo the same initial training as described in Section 3.2.

**3.2. Training of Principal Services Contacts.** Before a Principal Services Contact interfaces with Itron, the Principal Services Contact must attend training sessions offered by Itron, an Itron approved trainer, or Customer's training program approved by Itron to ensure that the Principal Services Contact is (a) knowledgeable about the operation of the Covered Products, and (b) qualified to perform problem determination and remedial functions with respect to the Covered Products. Such training sessions will be at Itron's then-current rates. Customer will be solely responsible for all travel and other expenses incurred in connection with each Principal Services Contact's attending the training sessions. The Principal Services Contact should have the skills and capabilities to train other Customer personnel on Covered Products ("*train-the-trainer*").

**3.3. Additional Training.** If Itron notifies Customer that additional training of a Principal Services Contact is necessary, Customer will promptly ensure that the Principal Services Contact receive such training.

### **4. Technical Support Services & Service Requests.**

**4.1. Support Services.** Itron will provide Technical Support Services during its then-current normal business hours. Technical Support Services include troubleshooting, problem diagnosis, release or system management, and recommendations for fully utilizing the Covered Products. Customer acknowledges and agrees that Technical Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services – all of which can be purchased separately. Nor will Customer use Technical Support Services in lieu of having qualified and trained support personnel of its own. Itron's current Technical Support Services contact and support hours are described in the Contacts Document.

**4.2. Service Request Process.** Customer shall submit Service Requests in the manner required by the Contact Documents and Service Levels.

**4.3. Field Support.** Upon mutual agreement of the Parties, Itron will dispatch support personnel to Customer's location to provide technical support. Such support will be billed at Itron's then-current hourly rates (with reasonable travel and living expenses invoiced at Itron's cost without markup), unless the cause of the reported problem is found to be the fault of Itron.

### **5. Software Maintenance.**

**5.1. Fixes.** Itron shall make commercially reasonable efforts to provide a Fix in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, and (iii) assigning its most qualified personnel to help Itron address the Error.

**5.2. Documentation.** Itron will make an electronic copy of the Documentation available to Customer at no additional charge via physical media or download access. Itron will maintain a copy of its most recent supported version of the executable Covered Software to be made available to Customer as necessary in the event of corrupted or inoperative Covered Software.

**5.3. Improvements.** Itron shall provide Improvements, if any, at its then-current price for such Improvements (or at no charge if such Improvements are made available to Itron customers generally at no charge).

**5.4. Software Releases.**

**5.4.1 Release Numbering Convention.** Fixes and/or Improvements are made available to customers through periodic Software Releases. For informational purposes, Itron's current typical practice (which may be changed at any time in Itron's discretion) is to provide Software Releases using the numbering convention "XX.YY.ZZ."

- The "XX" in Itron's numbering convention refers to a "*System Release*," which is a new version of the item of Covered Software. A System Release may include Fixes, Improvements or interfaces to new functional modules or platforms not previously supported by Itron.
- The "YY" in Itron's numbering convention refers to a "*Service Pack Release*," which is an update to a System Release. Service Pack Releases may include Fixes or Improvements and are provided to Itron customers generally on a periodic basis.
- The "ZZ" in Itron's numbering convention refers to a "*Hot Fix Release*," which is an unscheduled release provided to one or more customers as a short-term, temporary fix to a Severity Level 1 Error. While not utilized by all Itron software product lines, Hot Fix Releases are not made available to Itron customers generally but may be included in the next scheduled Service Pack for general release.

**5.4.2 Support for Releases of Itron Enterprise Edition and Openway Software.** This Section 5.4.2 applies only to Covered Software that are Itron Enterprise Edition or OpenWay software products. Services for Itron Enterprise Edition and OpenWay software products under this Addendum shall be limited to the most recent System Release and the prior System Release (and the most current Service Pack Release associated with such System Release). Customer will test and install Service Pack Releases associated with the System Release in use by Customer within twelve (12) months of such Service Pack Releases being made available to Customer. Customer will fully test and upgrade to the latest System Release at least every twenty-four (24) to thirty-six (36) months.

**5.4.2.1** Itron may elect to provide Services under this Addendum for an unsupported Software Release of Covered Software at its then-current rates for customer support.

**5.4.3 Support for Releases of all Other Covered Software.** This Section 5.4.3 applies to all Covered Software *other than* Itron Enterprise Edition and OpenWay Software products. Services under this Addendum for all Covered Software other than Itron Enterprise Edition and OpenWay software products shall be limited to the most recent System Release and the two prior Service Pack Releases. Customer will test and install System Releases and Service Pack Releases within twelve (12) months of such Releases being made available to Customer. Itron may elect to provide Services under this Addendum for an unsupported Software Release of Covered Software at its then-current rates for customer support.

**5.4.4 Installation Services for Software Releases.** This Section 5.4.4 applies to all Covered Software. Installation services under this Addendum will include limited, remote phone support, for all Covered Software, on Itron certified server configurations, are applicable for one production server and one non-production server owned (test, training, or back-up – for example) / operated by the Customer. At Customer's request, Itron may provide Software Release installation services for install of System Releases or Service Packs on additional production or non-production servers at Itron's then-current hourly rates.

**5.4.4.1** Itron may elect to provide Services under this Addendum for installation of System Release of Covered Software on uncertified server configurations at its then-current rates for customer support.

**5.5 Mandatory Revision.** In the event that Itron, in its sole reasonable discretion, determines that any Covered Software is, or may (as applicable) be: (i) subject to a material Error; (ii) the subject of a material security breach; or, (iii) be subject to a third party infringement claim or suit of any kind, Itron may issue a Mandatory Revision.

**5.6 DISCLAIMER OF LIABILITY.** ITRON DISCLAIMS ALL LIABILITY AND OBLIGATIONS THAT ARISE DUE TO, OR ARE RESULT OF, CUSTOMER'S FAILURE TO TEST AND INSTALL A MANDATORY REVISION IN A TIMELY FASHION.

**5.7 Interoperability.** Itron makes no representation or warranty regarding the ability of the Covered Software to interoperate with third party hardware or software other than software or hardware identified as compatible with the Covered Software in Itron's Documentation for the applicable Covered Software.

**5.8 Restoring Software to Maintenance Services.** If Customer declines Services under this Addendum after the end of warranty or discontinues Services under this Addendum for any Covered Software, and thereafter wishes to resume such Services for the most recent Software Release of that Covered Software, Customer shall, prior to receiving Services, notify Itron in writing of its request for Services and pay Itron's then-current re-initiation fee.

**5.9 Exclusions.** Itron shall have no obligation to Customer for any Services under this Addendum to the extent any Covered Software is adversely affected by: (i) use of the Covered Software in combination with other software, equipment or communications networks that are not referenced in the Documentation; (ii) any modification to the software, operating environment, system installation, operating instructions, scripts, or database configuration that is made other than by Itron; (iii) the use of a version of the Covered Software that is not supported by Itron; (iv) Customer's failure to implement a Fix provided by Itron; (v) the maintenance and/or support of the Covered Software other than by Itron; (vi) viruses introduced through no fault of Itron; (vii) use of the Covered Software other than as authorized by Itron and the applicable license, including Covered Software operated on Covered Equipment that has been serviced or repaired by a third party that is not Itron certified; or (viii) Customer's failure to perform Customer responsibilities in accordance with this Addendum.

**5.10 Customer Software Responsibilities.**

**5.10.1 Support Tools.** Customer will support remote access to the Covered Software by Itron Personnel assigned to provide Services under this Addendum for purposes of remote diagnosis and troubleshooting of the Covered Software.

**5.10.2 System Configuration and Administration.** Customer will ensure that its equipment, system peripherals, operating system, and data communications environment associated with the Covered Software is configured, operated, and maintained in accordance with the Documentation and any applicable third party documentation. These administrative activities shall include but not be limited to: checking audit logs, clearing discovered exceptions, and performing daily, weekly, and monthly operational tasks and system responsibilities. Customer is responsible for any change they make to the software system, operating system, database or network configuration or change to installation procedures, scripts, and provisions that may affect the usability or operation of the Software or Data. Customer will consult with Itron prior to making changes that may affect the operation of the Covered Software.

**5.10.3 Network Administration.** Customer will monitor and maintain, repair, replace and upgrade its local, and wide area network components (if any)—including network servers, network clients, network hubs; routers, modems, and other software components necessary for efficient and reliable network operations associated with the Covered Software—to ensure continued conformance with the Documentation and any applicable third party documentation. In addition, Customer will administer related host names, Internet Protocol addresses, network interfaces, access, security, communications, and equipment and software version control.

**5.10.4 Database Administration.** Customer will administer the agreed upon database(s) associated with the Covered Software, including hardware and software components, in accordance with the Documentation or any applicable third party documentation, which administration shall include, monitoring the database server, backing up electrical power sources, and configuring and administering of database schema, application interfaces, networking operating system, communications, and file transfer software. Customer will maintain database files (e.g., truncate, cleanup, and delete files consistent with industry standard practices) and perform regular data backup and data archiving.

**5.10.5 Data Review.** If Itron determines that it is necessary to evaluate Customer data in order to reproduce error conditions not reproducible with Itron's standard test data sets, Customer will provide Itron with access to such data. Itron will manage such data in a secure manner while in use and delete the data from Itron systems upon completion of the investigation. Itron shall not be liable for any delay or failure to resolve the problem if access to such production data is denied to Itron.

## **6. Equipment Maintenance.**

**6.1. Preventive and Corrective Maintenance.** Upon receipt of an item of Covered Equipment, Itron shall (i) perform the preventive Services under this Addendum that Itron determines are reasonably necessary to maintain the Covered Equipment in Operating Condition, and (ii) diagnose and correct any failure in such Covered Equipment as necessary to meet Operating Condition (excluding minor cosmetic deficiencies such as blemishes, dents or scratches).

**6.2. Maintenance Procedures.** Customer shall initiate a request under this Addendum for Services for Covered Equipment by delivering the item in question to the applicable Itron address identified on the Itron Equipment Repair Table (the "*Repair Table*"), which can be obtained by calling (877) 487-6602. Return of the Covered Equipment shall be at Customer's expense and in accordance with the applicable Return Material Authorization ("*RMA*") procedures. Upon receipt of Covered Equipment (with the required information) under Itron's RMA procedures, Itron shall assess the item to determine (a) whether it is in fact Covered Equipment and (b) whether the maintenance requested is included within the Services ordered by Customer and not otherwise excluded from coverage as provided herein. If the returned equipment is determined to be Covered Equipment and the maintenance requested is in fact included in the Services ordered by Customer, Itron shall then provide the applicable Services and shall make commercially reasonable efforts to return the item of Covered Itron Equipment to Customer at Itron's

expense within the applicable turnaround time identified on the Repair Table. Returned equipment that is found not to be Covered Equipment, or if maintenance or support that is requested is determined not to be included in the Service ordered by Customer, then Itron will provide a quote to Customer under Section 6.4, below.

**6.3. Exclusions.** The Services described herein do not include repairs related to: (i) damage due to external causes, including accident, abuse, misuse, inadequate maintenance, problems with electrical power, acts of God; usage not in accordance with product instructions or in a configuration not approved by Itron; (ii) service or repair processes (including installation or de-installation of equipment, parts, or firmware/software) not performed or authorized by Itron; (iii) use of parts, configurations or repair depots not certified by Itron; or (iv) Customer's failure to perform Customer responsibilities in accordance with this Addendum, including caring for Products in accordance with System Documentation.

**6.4. Estimation Fees.** Itron will provide Customer with a price quote for the estimated cost, including labor, materials and shipping, for any repairs that are requested, but not included under this Addendum (whether because the item is not covered or because the nature of the repair is not included). If Customer elects to have Itron proceed with the requested maintenance on any such item, Itron shall provide such services at Itron's then-current rates. If Customer elects not to proceed with the requested repair, Itron will return the item of equipment at Customer's expense. Itron may charge Customer its then-current handling, inspection and shipping fees for any such returned equipment.

**6.5. Adding/Restoring Equipment to Maintenance Services.** Following the effective date of this M&S Addendum, additional Covered Equipment purchased by Customer, of a similar type and model already covered by Services under this Addendum, shall automatically be deemed to be Covered Equipment following expiration of the warranty for such equipment. If Customer declines coverage after the end of warranty, discontinues Services for any Covered Equipment or has Covered Equipment serviced or repaired by a third party that is not Itron certified, and thereafter wishes to add such equipment as Covered Equipment, Itron may, prior to such equipment being included as Covered Equipment, (i) inspect such equipment at its then-current rates to determine whether it is in Operating Condition and/or (ii) charge its then-current re-certification fee, in addition to the Covered Equipment's first term maintenance fee.

**6.6. Customer Equipment Responsibilities.** Itron shall make available, and Customer shall obtain, a copy of Itron's user documentation for Covered Equipment and Customer shall perform regular preventive maintenance for each such item in accordance with such documentation. Customer shall also keep accurate records of Covered Equipment serial numbers and locations to assist Itron with the Services.

**6.7. Loaner Equipment Program.** Subject to the requirements below, Itron shall make commercially reasonable efforts to provide Customer Loaned Mobile/Handheld Equipment for the Customer to use (each an item of while a Mobile Collector or Handheld unit that is Covered Equipment is receiving Services under this Loaned Mobile/Handheld Equipment. Itron shall provide Loaned Mobile/Handheld Equipment if all the following criteria are satisfied:

**6.7.1.** Customer has maintained an inventory of spare Mobile Collectors or Handheld units equal to at least ten (6) percent of the number of Mobile Collectors or Handheld units deployed in Customer's service territory (having at least one spare Mobile Collector) and such inventory has been depleted;

**6.7.2.** Itron has provided preventive Maintenance Services for each of Customer's Mobile Collectors or Handheld Devices (as applicable) that are Covered Equipment in the 12-month period prior to Customer's request for Loaned Mobile/Handheld Equipment; and

6.7.3. Itron is unable to return the Mobile Collector or Handheld Devices, as applicable, receiving Services within the applicable turnaround time set forth in the Repair Table.

6.7.4. Loaned Mobile/Handheld Equipment will remain the property of Itron and shall be returned to Itron promptly upon receipt of the corresponding item of Covered Equipment. For Loaned Mobile/Handheld Equipment that is not returned within fourteen (14) days from shipment of the corresponding item of Covered Equipment, Itron may charge a late fee equal to ten (10) percent of the then-current list price for the item of Loaned Mobile/Handheld Equipment for each thirty (30) day period during which the item of Loaned Mobile/Handheld Equipment remains unreturned. Itron shall pay the cost of delivering Loaned Mobile/Handheld Equipment to Customer and Customer shall pay the cost of returning Loaned Mobile/Handheld Equipment to Itron.

7. **Fees and Invoicing.** As compensation for the Services under this Addendum, Customer shall, in advance, pay to Itron the Annual Fee for each Maintenance Year in which it receives Services under this Addendum. Itron shall invoice Customer for Services to be provided during the first Maintenance Year as soon as practicable following the Effective Date. For Services provided during any subsequent Maintenance Year, including Services for newly purchased or licensed Covered Products, Itron shall provide Customer with a renewal notice at least one-hundred twenty (120) days prior to the commencement of each Maintenance Year. Customer may discontinue Maintenance Services for a Product by providing Itron with written notice of non-renewal for such Product no less than ninety (90) days prior to the commencement of any subsequent Maintenance Year. Approximately twenty (20) days prior to the commencement of any subsequent Maintenance Year, Itron shall provide Customer with an invoice for the Annual Fee payable by Customer for the forthcoming Maintenance Year (including the Annual Adjustment). Itron may, in its discretion, invoice Customer for Services for a Covered Product that is added during the course of any Maintenance Year as soon as such Covered Product has been added or at the beginning of the next Maintenance Year.

8. **Support For Third Party Products.** For any Covered Product that is a "Third-Party Product" (each, a "Third Party Covered Product") Itron shall provide first-tier Customer support by handling all initial Customer inquiries, identifying the component involved in the problem and obtaining appropriate documentation of such inquiry or problem. In addition, Itron shall make commercially reasonable efforts to facilitate Customer's receipt of maintenance and support for such Third Party Products consistent with the maintenance terms identified on the Order Document for such Third Party Products. Notwithstanding anything else to the contrary, Itron's sole obligation with respect to maintenance and support for Third Party Products shall be as set forth in this Section.

*[Attachment A and B Follow]*

**Attachment A to the Maintenance & Support Services Addendum  
– Software Maintenance and Support Service Pricing –**

**Attachment B to Maintenance & Support Services Addendum**

– Software Maintenance & Support Service Levels –

Severity Level	Response Times	Effort Level and Escalation Path
<p><b>Severity Level 1. Critical Business Impact / System Down:</b> An Error for which there is no work-around, which causes the Product / Software or a critical business function / process of the Itron system to be unavailable. System use and operation cannot continue.</p> <p>*Severity 1 errors must be reported by phone to initiate the Severity 1 response process. SRs initiated by email or web interface are logged as a Severity 3 until reviewed by Itron Technical Support Services and validated as a higher priority.</p>	<p>During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, which will validate receipt of the critical support call and begin the SR process. During regular business-hours Itron will begin the SR process during Customer's initial call.</p> <p>Following the start of the SR process Itron will respond to Customer's SR within 2 business hours with an investigation response.</p> <p>Following the investigation response, Itron will update Customer at three hour intervals during each day the SR remains unresolved, or as otherwise agreed by the Parties.</p> <p>Customer will respond to an Itron inquiry or request within three hours.</p>	<p>Itron will make diligent efforts on a 24x7 basis*, or as otherwise agreed by the Parties. A SR shall be escalated to Itron's TSS Management Team if a Fix is not provided within 1 business day of Itron's receipt of the Customer's call and creation of the SR.</p> <p>*24X7 support for Severity Level 1 Errors is not currently available for Itron Meter Products, Energy Forecasting and Load Research Products, and Distribution Products.</p>

Severity Level	Response Times	Effort Level and Escalation Path
<p><b>Severity Level 2. Moderate Business Impact / Degraded Operation:</b> An Error other than a Severity Level 1 Error, for which there is no work-around, which limits access or use of the software or a business function, causing the system to miss required business interface or deadlines. The system remains available for operation but in a restricted fashion.</p> <p>*Severity 2 errors must be reported by phone to initiate the Severity 2 response process. SRs initiated by email or web interface are logged as a Severity 3 until reviewed by Itron Technical Support Services and validated as a higher priority.</p>	<p>Itron will respond to Customer SR within 1 business day and will update the SR at least every other day.</p> <p>Customer will respond to an Itron inquiry or request within 1 business day.</p>	<p>Itron will make diligent efforts during normal business hours. SRs shall be escalated to Itron's TSS Management Team if a Fix is not provided within 3 business days of Itron's receipt of Customer's call and creation of the SR.</p>
<p><b>Severity Level 3. Minor Business Impact / Compromised Operation:</b> An Error other than a Severity Level 1 or Severity Level 2 Error that has an inconvenient use of or access to a software function. (e.g., a feature is not working as documented but a work-around is available and significant business functions are not materially impaired).</p>	<p>Itron will respond to Customer SR within 2 business days.</p>	<p>Itron technical representatives will make diligent efforts during normal business hours.</p>
<p><b>Severity Level 4. No Business Impact / Standard Operation:</b> An Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error. Generally a cosmetic Error or an Error which does not degrade Customer's use of the system.</p>	<p>Itron will respond to Customer SR within 3 business days, or as otherwise agreed by the Parties.</p>	<p>Itron support representatives will devote commercially reasonable efforts during normal business hours.</p>
<p><b>Severity Level 5. Customer SR for an enhancement or new functionality.</b></p>	<p>N/A</p>	<p>The SR will be evaluated as a potential, future product enhancement. If the enhancement or new functionality requires more immediate attention for Customer, Itron will engage Itron's Professional Services Group to create a customized proposal for Customer, at Itron's then-current services rates.</p>

## TECHNOLOGY & SERVICES ADDENDUM

### – Installation/Implementation Services –

1. **Scope.** This Addendum applies where: (a) Customer is purchasing installation services for Equipment, or (b) Customer is purchasing implementation services for the set-up, configuration, and validation of Licensed Software, Software-as-a-Service, Managed Services, or Cloud Infrastructure Service.
2. **Invoicing.** Itron will invoice Customer for Services as set forth in the applicable SOW or pricing summary. Services performed on a time and materials basis will be invoiced at the end of the calendar month in which they are performed. Services performed on a fixed fee basis will be invoiced as set forth on the applicable SOW or, if not set forth on a SOW, upon completion.
3. **Authorized Services.** Customer will not pay for, and Itron is not required to provide any services, for which both a statement of work and purchase order have not been issued by Customer and accepted by Itron. All changes to scope of work must be approved pursuant to the change request procedures of the Agreement or applicable statement of work.
4. **Customer Responsibilities.** Customer shall timely perform all of its assigned, implied or assumed responsibilities under each statement of work using qualified personnel. Customer shall also provide Itron with reasonable cooperation in connection with the services, including for example, by providing Itron with reasonable access to Customer's facilities, service territory, personnel, systems, and information.
5. **Reference Information.** If Customer provides Itron any reference information, designs, technical information, or other information required to be provided by Customer in connection with the services (collectively, the "Reference Information"), Itron shall be entitled to rely on the accuracy of such Reference Information.
6. **Delays.** To the extent Customer's failure to adhere to Section 4 or Section 5 results in any delay or increases Itron's cost of performing the services, the delay shall be excused, and Itron reserves the right to increase its fees as necessary to offset its increased costs of performing the services. Itron will provide Customer with reasonable evidence of its increased costs of performing the services and will make commercially reasonable efforts to minimize such costs to the extent practicable under the circumstances.
7. **Express Warranties for Professional Services.** The warranty period for services provided is ninety (90) days beginning from the completion date of the services. Unless otherwise expressly provided in a statement of work or other document expressly incorporated into the Agreement, as the sole and exclusive warranties offered by Itron in connection with this Addendum and each statement of work under it, Itron warrants to Customer that:
  - 7.1. **Services.** Services will be provided in a timely, professional, and workmanlike manner.
  - 7.2. **Itron Personnel.** Itron personnel will have the requisite experience, skills, knowledge, training and education to perform Services in a professional manner and in accordance with this Addendum and applicable statement of work.
  - 7.3. **Remedies.** As Itron's sole and exclusive liability and Customer's sole and exclusive remedy for any material noncompliance by Itron with the warranties provided under this Section, Itron shall correct the noncompliance within a reasonable period of time under the circumstances, if Customer gives Itron written notice (which notice must describe the noncompliance in sufficient detail to enable Itron to provide the required corrective action) within the applicable notice period. If Itron, in its sole discretion, is unable to correct the noncompliance, its sole obligation will be to refund to Customer the amount paid for the services.

*[End of Addendum]*

## TECHNOLOGY & SERVICES ADDENDUM

### - Itron Mobile -

1. **Annual Subscription Term Commitment.** Itron Mobile requires a minimum one-year commitment. The initial Itron Mobile Subscription Term begins upon completion of Itron Mobile set-up, as validated by Itron. The Itron Mobile Subscription Term will renew automatically for one-year terms, unless either party gives the other 90 days' prior written notice of its intent not to renew.
2. **Relationship to Licensed FCS Software and Maintenance & Support.** In order to ensure full functionality of Itron Mobile, Customer may be required update or upgrade its licensed FCS software. In the event of termination or expiration of Customer's FCS software license, Customer's subscription and right to use Itron Mobile will terminate.
3. **Fee Adjustments.** The Itron Mobile Subscription Term fee is subject to annual adjustment. In addition, because the Itron Mobile Subscription Term fee is charged on the number of provisioned meters or endpoints in Customer's system (i.e., a tier limitation), any increase in that number during an Itron Mobile Subscription Term will result in additional charges. The additional charges will be invoiced to Customer, normally within thirty to sixty days depending on when the provisioning occurs.
4. **Compatible Mobile Devices.** Itron Mobile is designed to work in connection with mobile devices that meet Itron specifications. Itron will provide those specifications to Customer. Itron is not required to make Itron Mobile work with any other mobile devices.
5. **Customer's Obligation to Protect Customer Information On Mobile Devices.** Customer must take steps to protect customer information stored on Mobile Devices including secure access to Mobile Devices, whether purchased through Itron or a third-party. User identification codes, passwords, and any information provided to Customer as part of Itron's security procedures must be treated as confidential and must not be disclosed to any third party. Customer is at all times be responsible for its employees and subcontractors' use of Itron Mobile. Itron has the right to disable any user identification codes or passwords if, in Itron's opinion, Customer or its employees and contractors have failed to comply with any of the provisions of the Contract Documents.
6. **Internet Connectivity.** Itron Mobile requires Internet connectivity. Customer is solely responsible for obtaining and paying for Internet connectivity.
7. **Disclaimer of Liability.** ITRON ACCEPTS NO RESPONSIBILITY FOR ANY INTERNET SERVICES FAILURE, MOBILE DEVICE FAILURE, OR ITRON MOBILE SERVICE FAILURE, OR FOR ANY LOSS OR DAMAGE OF ANY KIND CAUSED BY SUCH FAILURE.
8. **Itron Mobile Set-Up.** Itron Mobile set-up is an activity separate and distinct from FCS software installation. In all cases where a Customer is subscribes to Itron Mobile, Itron will perform Itron Mobile set-up, for which Itron will charge a one-time set-up fee.

*[End of Addendum]*

**CITY OF FORT WAYNE, INDIANA**

Itron, Inc.

(Vendor Name)

**VENDOR DISCLOSURE STATEMENT RELATING TO:**

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTEREST;**
- 3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

**Section 1: Disclosure of Financial Interest in Vendor**

a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5%

(ii) Distributable income share exceeding 5%

(iii) Not Applicable (If N/A, go to Section 2)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship       stock   
partnership interest       units (LLC)   
other (explain) \_\_\_\_\_

c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):  
ownership interest:

Name: \_\_\_\_\_ %

Name: \_\_\_\_\_ %

**Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)**

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:  
Yes \_\_\_\_\_ No \_\_\_\_\_

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- b. City employment of "Member of Immediate Family" (defined herein as: *Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild*)

Including contractual employment for services in the previous 3 years:

Yes \_\_\_\_\_ No \_\_\_\_\_

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- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years:  
Yes \_\_\_\_\_ No \_\_\_\_\_

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**Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION**

- a. Does Vendor have current contracts (including leases) with the City? Yes X No \_\_\_\_\_

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

Services Agreement dated March 5, 2003

Purchase Agreement dated December 4, 2013

Purchase Agreement dated October 8, 2014

Purchase Agreement dated February 17, 2016

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes X No \_\_\_\_\_

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Master Sales Agreement (contract date shall be last date signed)

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c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes \_\_\_\_\_ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

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Name / Position / Payment Terms:

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Name / Position / Payment Terms:

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d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: \_\_\_\_\_

Company / Name / Payment Terms: \_\_\_\_\_

**Section 4: CERTIFICATION OF DISCLOSURES**

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers,

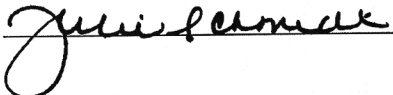
directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

<u>Itron, Inc</u> (Name of Vendor)	<u>2111 North Molter Rd., Liberty Lake, WA 99019</u> Address <u>509-924-9900</u> Telephone <u>n/a</u> E-Mail Address
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The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) Julie Schmidt Title Director, Finance  
Signature  Date 2.4.18

**NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.**

# Interoffice Memo

Date: February 14, 2018  
To: Common Council Members  
From: John Clark, Deputy Director Utilities Capital Asset Management  
RE: **Water Meter Radios for City of Fort Wayne Water Maintenance**

Approval requested for the purchase of water meter radios from Itron, Inc as needed for City of Fort Wayne Water Maintenance.

The purchase order shall not exceed \$365,800.00.

CC: BOW  
Kumar Menon  
Diane Brown  
Chrono  
File

**BILL NO. S-18-02-17**

**REPORT OF COMMITTEE ON CITY UTILITIES**

**March 6, 2018**

***Glynn Hines Chair***

***Russell Jehl Co-Chair***

***All Council Members***

An Ordinance approving purchase agreement for Water Meter Radios by the City of Fort Wayne, Indiana, by and through its Board of Public Works and Itron Incorporated for the Water Maintenance Department

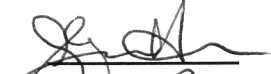




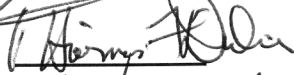


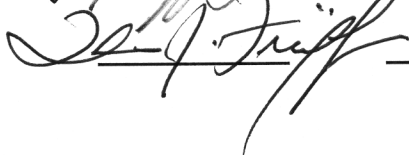
**COMMITTEE ON CITY UTILITIES HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

DO PASS

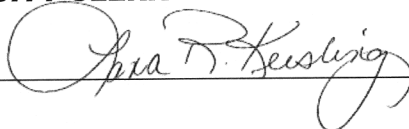
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Hines.

Read the second time by title and referred to the City Utilities Committee.

Read the third time in full and on motion by Councilman Hines, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


DATED: March 13, 2018

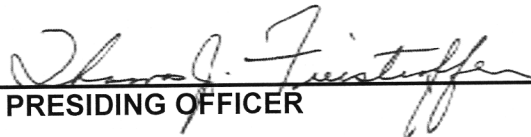
  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as


Special Ordinance No. S-18-02-17 on the 13th day of March, 2018

ATTEST:

  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

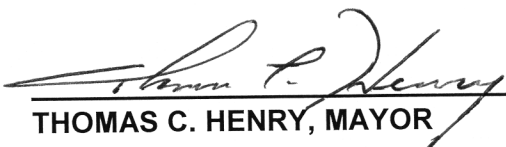
  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th of March 2018, at the hour of 9:50 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 14<sup>th</sup> day of MARCH

2018, at the hour of 1:30 O'clock PM E.S.T.

  
 \_\_\_\_\_  
 THOMAS C. HENRY, MAYOR