



McCleary City Council Agenda

February 22nd, 2017 6:30 PM

Flag Salute

Roll Call: ___ Pos. 1- Orffer, ___ Pos. 2-Richey , ___ Pos. 3- Peterson, ___ Pos. 4- Blankenship, ___ Pos. 5- Ator

Presentation

Public Hearing

Budget Amendment

Mayor Comments

Council Workshops, Public Hearing March 8th.

Public Comment

Executive Session

Minutes

Tab A

Introduction **X** Action **X**

Approval of Vouchers

Introduction **X** Action **X**

Staff Reports

Tab B Dan Glenn

Tab C Todd Baun

Old Business

Tab D 2017 Budget Amendment- Sewer

New Business

Tab E FOP Amendment

Tab F Gravel Purchase

Tab G Financial Policy Workshop Schedule

Tab H Municipal Code Update Workshop Schedule

Tab I Gray and Osbourne WWTP Sludge Analysis

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Ordinances

Tab K Supplement Budget Ordinance

Resolutions

Tab L Connection Fee

Mayor Council Comments

Public Comments

Executive Session

Adjournment or Recess Meeting

Please turn off Cell Phones- Thank you

Americans with Disabilities Act (ADA) Accommodation is Provided Upon Request

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CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, February 8, 2017

ROLL CALL AND FLAG SALUTE	Councilmembers Orffer (by phone), Richey, Peterson, Blankenship, and Ator were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, Chief Blumer, Paul Morrison and Dan Glenn.
PRESENTATION	The Port of Grays Harbor gave a presentation on all of the new businesses that are opening at the Satsop Business Park and gave an update on what the Port has accomplished over the past year.
PUBLIC HEARING	None.
EXECUTIVE SESSION	None.
MINUTES APPROVED	It was moved by Councilmember Richey, seconded by Councilmember Peterson to approve the minutes from the January 25, 2017 meeting. Motion Carried 5-0.
VOUCHERS	Accounts Payable checks approved were 42267 - 42303 including EFT's in the amount of \$198,617.30. It was moved by Councilmember Ator, seconded by Councilmember Blankenship to approve the vouchers. Motion Carried 5-0.
MAYOR'S COMMENTS	The Washington State Department of Transportation is scheduled to begin work on February 27, 2017.
PUBLIC COMMENT	None.
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council and is available to address any questions.
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun provided the Hearing Examiner Report of Recommendation from the Public Hearing that was conducted on January 24, 2017 regarding adding a definition of "residential treatment facility", change the current definition of "hospital" and reduce the current time that a legal nonconforming use may continue before being discontinued from 4 years to 1 year [MMC 17.36.020 (D)]. Mayor Schiller asked that the next Public Hearing be held during the first meeting in March. Dan Glenn added that the City will not be seeking further public comment at the hearing as it will be a closed record hearing.
POLICE CHIEF BLUMER	Chief Blumer reported there is a decrease in crime in McCleary. The police are doing a lot more traffic enforcement education. He will be bringing in the radar trailer from Elma to help remind drivers to slow down. This is in an effort to get the public to slow down and become aware of their speed when the construction starts later this month. A higher traffic volume is expected from detouring through the City.
CONNECTION FEES AND INCENTIVES	At the January 25th meeting, it was requested that the City look into keeping the connection fees set at the amount as stated in Resolution 686. Staff was also asked to provide a proposal for providing incentive fees for developers who build more than one single family home in one-year time frame. Todd Baun and Paul Morrison provided some ideas for the Council to examine. The Council will review the incentive options and requested to have Dan Glenn write a resolution to keep the connections fees at the 2016 rate. Neil King owns King Built Homes and stated he had a vision for the City twelve years ago. He is building higher-end homes that are more expensive and will be built for baby boomers. The homes will be ADA accessible. He plans on building nine homes and is in support of the lower connection fees and an incentive program. It was moved by Councilmember Blankenship, seconded by Councilmember Ator to have the attorney draft a Resolution to keep connection fees at the 2016 rate. Motion Carried 5-0.

INTERNATIONAL PROPERTY MAINTNANCE CODE	After discussion, the item was tabled.
2017 BUDGET SUPPLEMENT IN SEWER FUND	The Wildcat Lift Station Project was budgeted in 2016. The City did not accept the project as complete until January 25th, which was after the 13th month payment window. The payment of \$156,088.94 was made out of the 2017 budget. The amount will cause a shortage to the budgeted expenditures, requiring Council to authorize an amendment to the 2017 budget by increasing expenditures of \$156,088.94 to the Capital Improvement System (BARS 594.35.63.00). Tonight is the introduction of the budget amendment and action will be taken at the Council meeting on February 22, 2017.
DISCUSS UPDATING MMC, TITLE 6	Dan Glenn will present a draft at the next meeting.
APPENDIX FOR POLE ATTACHMENT AGREEMENT	The final part of the Pole Attachment Agreement is the Appendix's, which Todd Baun provided for the Council to review. It was moved by Councilmember Ator, seconded by Councilmember Richey to accept the Pole Attachment Appendix Agreement. Motion Carried 5-0.
SUMMIT PLACE 2 - TODD HANSON BOND RELEASE	Dan Glenn asked the Council to consider releasing the bond on Summit Place 2. The builder went bankrupt, and considering the City will not receive any money on the bond, Dan advised the Council to release the bond and bring closure. It was moved by Councilmember Ator, seconded by Councilmember Peterson to authorize Todd Baun to write a release of the Summit Place 2 Bond with Todd Hanson. Motion Carried 5-0.
PUBLIC COMMENT	<p>Mayor Schiller commented on Great Rivers Behavioral Health Organization renting the Mark Reed Hospital building. He doesn't know much because the City has reached out to them and they have not contacted us yet. We do know they have advertised for request for proposals for architectural work, however, that is all we know at this stage. He understands this is a very concerning subject for many people.</p> <p>Mayor Schiller heard of a possible service center being planned on a 35-acre parcel on the Mox-Chehalis Road. Mayor Schiller asked them to come talk to the City and sit down to discuss what their project is all about, but has not heard back at this time.</p> <p>Mayor Schiller extended his appreciation to Mayor Pro Tem Orffer for chairing the last meeting in his absence.</p>
MEETING ADJOURNED	<p>It was moved by Councilmember Ator, seconded by Councilmember Richey to adjourn the meeting at 7:47 pm. The next meeting will be Wednesday, February 22nd , 2017 at 6:30 pm. Motion Carried 5-0.</p> <p><i>Approved by Mayor Brent Schiller and Clerk-Treasurer Wendy Collins.</i></p>

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: February 16, 2017
RE: LEGAL ACTIVITIES as of FEBRUARY 22, 2017

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. **UTILITY CONNECTION FEE "FREEZE" RESOLUTION:**
Pursuant to the discussions at the last meeting, I have prepared a draft resolution which would suspend the annual adjustment provisions of Section IV of Resolution 656. The suspension of the annual adjustment would remain in effect until further action of the Council. If you would prefer a different approach, that suspension language could be modified to run until the end of a particular calendar year unless the Council chose to extend. I have opted for the first approach to reduce the risk of an oversight.

All other provisions of Resolution 656 will continue to govern the connection to your water and sewer utilities.

2. **NUISANCE PENALTY MODIFICATION ORDINANCE:** About twenty years ago the penalty provisions in relation to violations of the nuisance code provisions were modified to reflect an approach of two infractions in a six month period with the third in that period becoming a criminal violation. Unfortunately, while that tended to work back then with the cited property owners correcting the deficiencies, the pattern of a "second chance" correction no longer seems to be appreciated by major offenders. Thus, the draft would eliminate the second infraction provision and provide that it goes to a criminal violation if the second offense is within the six month period.

The intention is to continue the opportunity for a violation to be treated as a civil infraction the first time

within that six month window, but move to the criminal side, with the greater enforcement capabilities, on the second violation.

3. ZONING CODE AMENDMENT: At the last meeting you received Mr. Aaland's report, with findings and recommendation. As I mentioned at that meeting, the Council either could direct that a full second public hearing (open record hearing) be held or move on to what is referred to frequently as a closed record hearing. The former requires published notification while the later does not. (I have set out at the end of the Report the relevant code section.) It is my understanding the Council determined it appropriate to exercise the second option. Thus, no formal publication of notice of consideration will be required.

As Mr. Aaland noted in his report, there are areas, including the issue of whether to allow different periods of viability of a non-conforming use for various uses. Also, to discuss within what zone the one use would be permitted. Thus, you may want to consider a workshop at a date before the first meeting in March to discuss these areas.

4. THE LEGISLATURE: During the summers between the three third years of law school I had the opportunity to serve as an intern in Governor Evan's office. I learned a lot from that opportunity. It is my memory that James Dolliver, then serving as Governor Evan's "chief assistant and later the Chief Justice of our State Supreme Court, had a plaque on his office wall which indicated that the life and property of no person was safe while the legislature in session. Why do I mention that? Well, they have pending legislation which initially would have basically removed the tax revenue generated from liquor sales from a city which did not allow marijuana sales. That would obviously have affected McCleary. The good news is that, through the efforts of AWC and others, a substitute bill has been developed which has been summarized as follows by the legislative folks:

"Establishes that effective January 1, 2018, a municipality that refuses to allow the siting or operation of retail marijuana businesses **absent the formal adoption of an ordinance or resolution explicitly prohibiting the operation of such businesses within its jurisdictional boundaries** forfeits the following: (1) 70 percent of the municipality's share of the monies in the Liquor Revolving Fund and (2) all of its share of state marijuana excise tax revenues to which it might otherwise be entitled. Makes a city, town, or county subject to the revenue forfeiture provisions of the act if it has an ordinance or regulation that authorizes a specific number of

state-licensed marijuana retail outlets that is less than the number of such outlets allotted or approved for operation within that jurisdiction by the Liquor and Cannabis Board."

It is my perception the bolded language indicates it would not effect McCleary since you have adopted a specific ordinance not allowing such uses. However, we will have to watch this bill with care.

5. **SUPPLEMENTAL BUDGET ORDINANCE ADOPTION:** This ordinance was introduced at the last meeting. Thus, prior to consideration for adoption, the opportunity for public comment should be provided. You may then go forward with taking such action as you deem appropriate.

6. **JAIL SERVICES WITH CHEHALIS TRIBE:** Given a situation which has arisen in relation to the City of Yelm's use of the Nisqually Tribal Jail, the matter of the use of tribal jails is being reviewed by many cities.

The situation is that an individual placed into custody by the Yelm Police Department and incarcerated at the Nisqually Tribal Jail died while in custody. Representatives of the decedent have filed a claim for damages and, as part of its summary, included an Attorney General's Opinion that cities do not have the authority to contract with Tribes for jail services. Right now it is a matter of the absence of two or three words from the applicable statute which was the basis for the AGO's conclusion.

In any event, we have a contract in place under which the Tribe waives its immunity within certain limits for liability arising out of its provision of services. I have spoken to the Yelm City Attorney and their insurer is working through the situation. I have also contacted the appropriate staff members at AWC and MRSC about the subject. It apparently appears unlikely any specific legislative action will be taken during this session to clarify the matter.

7. **CONSIDERATION OF CREATING SUBJECT AREA COMMITTEES:** As I believe I have mentioned in an email, the situation at the last meeting in terms of questions about matters which had been pending raised to my mind the potential benefit of the Council creating perhaps two more committees which would do initial review of draft ordinances. You have already created a Finance Committee to review matters in that area. I would like to suggest that you consider creating a Public Works Committee and

a Public Safety Committee. These are the two other areas which are most frequently the subject matter of issues.

As an associated matter, I would ask/invite any of you who have questions on issues, whether related to drafts you are reviewing or just general issues, to direct those questions to me, whether electronically or by giving me a call. The common goal is to achieve the most effective consideration and resolution of issues.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

Section 17.40.130.D: Upon receipt of the commission's recommendation on the matter heard by the commission, the city council shall at the next regular meeting of the council either set a time and place of public hearing thereon and order public notice as herein provided, or, if determines that no additional public hearing is necessary, set the matter on for consideration at its next regular council session. If at the time set for consideration without public hearing, the majority of the council determines it appropriate to schedule a public hearing, such hearing may be scheduled and held as provided for herein. So long as the council determines it has adequate information from the applicant and/or planning commission to make a decision, the council shall take final action within sixty days after the later of (1) any public hearing held by it or (2) the date of the consideration without public hearing. The council may issue decision by passing an amendatory ordinance, by declining to amend, or by referring the matter back to the planning commission for further consideration. To the extent required by law, the council shall issue written findings of fact and conclusions of law in relation to the decision it makes. Written notice of the action take by the city council shall be transmitted by the clerk-treasurer to the planning commission and/or to the applicant, if the matter was initiated by the filing of an application: provided that, for purposes of an appeal, the date of issuance of the council's decision shall be determined as provided in RCW 36.70C.040(4), as now existing or hereafter amended or succeeded.

STAFF REPORT

To: Mayor Schiller
From: Todd Baun- Director of Public Works
Date: February 17, 2017
Re: 2017 Budget Amendment- Sewer

This is specifically for the Wildcat lift station project that was budgeted for in the 2016 budget. The project was completed in December, but we did not accept the project as complete until the Jan. 25th council meeting and for a payment of \$156,088.94. I did not have this in 2017 budget, due to the anticipation that it would be completed and accepted in 2016.

This fund is extremely tight, so I have also added \$60,000 transfer from reserves to revenue in case we need it later in the year.

I have attached the budget amendment for the Sewer fund. The highlighted lines are the only lines that have the changes.

Action Requested:

Please approve the budget amendment for the Sewer Fund.

STAFF REPORT

To: Mayor Schiller
 From: Todd Baun- Director of Public Works
 Date: February 17, 2017
 Re: Gravel Purchase

Our rock/gravel supplier is closing their pit. Since they will be closing, they are selling their rock at reduced prices. I would like to purchase the rock we normally purchase though out the year at these reduced prices at this time. Over the last 5 years, we have averaged \$5,100 a year in gravel purchases. We can buy the same amount of gravel for about \$4,500. We have areas that we can store the rock.

We also have a water line replacement project that will need \$5,200 in rock/gravel. I suggest that we buy this rock/gravel while we have a good price.

Fund	Cost to Budget
Light and Power- supply	\$1125
Sewer- supply	\$1125
Water- supply	\$1125
Storm- supply	\$1125
Water- Cap. Imp. System	\$5200

Action Requested:

Please approve request for the purchase of rock/gravel.

STAFF REPORT

To: Mayor Schiller
From: Todd Baun- Director of Public Works
Date: February 17, 2017
Re: Municipal Code Update Workshop Schedule

The staff and I would like to schedule a council workshop to discuss Municipal Code Updates.

We have found 3 sections of the Municipal codes that we would like to update. The sections are title 6- Animals, 8.16 Nuisances, and title 10- Vehicles and Traffic. The changes we are proposing are quite extensive and staff feels that it would be more productive to go over the items in a workshop before presenting the changes in a council meeting.

Action Requested:

Please discuss and set a date for a council workshop to work on updates for the Municipal Code.

WASTEWATER TREATMENT PLANT SLUDGE HANDLING ALTERNATIVE EVALUATION

The City of McCleary WWTP must produce a Class B or Class A biosolids product that is acceptable to the current contractor that land applies the biosolids at the contractor's site. A new treatment process is required at the WWTP because the contractor is not able to land apply unclassified sludge during the winter, and the WWTP does not have adequate digestion facilities to sufficiently stabilize the sludge. To be acceptable to the contractor, the City's waste sludge will need to be treated to meet pathogen reduction criteria for Class B biosolids and vector attraction criteria for land surface application, as determined by the requirements of WAC 173-308 Biosolids Management.

The City has requested engineering services from Gray & Osborne, Inc. to assist the WWTP staff with the evaluation of handling and treatment of sludge generated at the WWTP. The Scope of Work for these engineering services is described below.

Task 1 – Estimate Current and Future Annual Sludge Production

Existing daily monitoring reports (DMRs) in conjunction with hauling records will be evaluated to determine current annual sludge production. Design sludge production, as shown on the WWTP plans, will be used to estimate future sludge production. Current annual sludge production will be compared to future sludge production to verify sludge production estimates are still accurate. This information will be used to determine the required size and capacity of new sludge handling facilities.

Task 2 – Evaluation of Sludge Handling Alternatives

The five alternatives to be evaluated for WWTP sludge handling include:

1. Purchase a used sludge dryer to produce Class A biosolids
2. Modify the abandoned anaerobic digester tank to convert it to additional aerobic digester volume to produce Class B biosolids
3. Install a membrane thickening unit in the existing waste sludge digester tanks to produce Class B biosolids
4. Add dry lime to dewatered sludge at the discharge of the existing belt filter press to produce Class B biosolids
5. Haul unclassified sludge to a treatment and disposal facility by contract

Each of these five alternatives will be evaluated to determine the facilities and work required to install these systems. Advantages and disadvantages will be provided for each alternative and manufactures information will be solicited and provided for any new equipment required.

Task 3 – Lime Bench Testing

Gray & Osborne staff will assist the City staff in evaluating the quantity of dry lime necessary to produce Class B biosolids after the belt filter press. Laboratory work will be completed at the City WWTP.

Task 4 – Capital and Annual Cost

Capital and annual O&M cost estimates will be developed for each of the five identified biosolids disposal alternatives.

Task 5 – Draft Memorandum

A draft memorandum will be prepared which will document the findings and results of Tasks 1-4. This memorandum will include a net present value analysis to determine the most economical alternative and will provide a preliminary recommendation.

Task 6 – Meet with City

After the draft memorandum has been provided to the City, Gray & Osborne will meet with the City to review and discuss the draft memorandum and preliminary recommendation.

Task 7 – Final Memorandum

The draft memorandum will be revised based on items discussed in Task 6. A hard copy final memorandum will be provided as well as a copy in PDF format.

MEMORANDUM

DATE: February 17, 2017

TO: Todd Baun; Kevin Trehella

FROM: Jon Hinton, City Engineer

SUBJECT: McCleary Bio solids issue

Kevin/Todd;

Here is my understanding of the issue. Please let me know if there are any inaccuracies or if you want this information presented in a different format for council packets.

The City of McCleary began having bio solid truckloads fail testing for high fecal counts in 2016 (the two loads in 2014 and the one load in 2015 passed). The City had a truckload of sludge fail testing in June /July 2016 due to a fecal count of over 2 million per gram and the sample for the August/September production also failed testing with 4 million Fecal count per gram.

The Department of Ecology has indicated that the City's current method of sending sludge to a landfill is only approved on a temporary basis and must be replaced by a plan to produce class B bio solids by January 2017. The City has been exploring alternatives/equipment that would both resolve this issue and be cost effective to the City. After discussing several alternatives with G&O City staff would like G&O's help in evaluating the alternatives to resolve the bio solids handling issue and discuss same with Ecology to provide a recommendation that is both cost effective for the City and acceptable to Ecology as a long term solution.

The City currently processes about 13,000 gallons twice a week from the digester (course bubble diffuser) to the belt filter press which dewater to about 12%. In 6 weeks they typically have about 25 tons of sludge to haul off. If the sludge is held in the digester for a longer period of time (3 weeks) the bio solids will more reliably pass testing but the treatment plant has more difficulty operating and has a higher probability of violating discharge permit requirements.

G&O is recommending discussions be held with staff and City Council to confirm if the City is more interested in a low capital cost solution that will have higher annual operating costs, or spend more money for an alternative that will provide lower annual operating costs. The time required to implement the alternative should also be taken into account, as Ecology may require the improvement be implemented within a certain time frame. Once we have been provided direction regarding that issue we would perform an alternative evaluation for the City's and Ecology's review.

Jon Hinton, P.E.
Gray & Osborne, Inc.

EXHIBIT "B"

ENGINEERING SERVICES SCOPE AND ESTIMATED COST

City of McCleary WWTP Sludge Handling Alternative Evaluation

	Tasks	Principal Hours	Project Manager Hours	Project Engineer Hours	Civil Eng. Hours	WWTP Operations Specialist
1	Estimate Annual Sludge Production				4	
2	Evaluate Alternatives		1	2	8	
3	Lime Bench Testing					8
4	Capital and Annual Cost		1	2	16	
5	Draft Memorandum	1			8	
6	Meet with City		4	2		
7	Final Memorandum	1			4	
Hour Estimate:		2	6	6	40	8
Fully Burdened Billing Rate Range:*		\$112 to \$177	\$99 to \$177	\$106 to \$145	\$77 to \$126	\$99 to \$168
Estimated Fully Burdened Billing Rate:*		\$170	\$160	\$130	\$105	\$110
Fully Burdened Labor Cost:		\$340	\$960	\$780	\$4,200	\$880

Total Fully Burdened Labor Cost:	\$	7,160
Direct Non-Salary Cost:		
Mileage & Expenses (Mileage @ current IRS rate)	\$	-
Printing	\$	-
Subconsultant:		
Subconsultant Overhead (10%)	\$	-
TOTAL ESTIMATED COST:	\$	7,160

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost

STAFF REPORT

Date: February 16, 2017

To: Todd Baun, Director of Public Works

From: Kevin Trehwella, Water & Wastewater Manager

Subject: WWTP Sludge

The plant, on the whole, operates exactly as it was designed. The plant effluent, the water that goes to Wildcat Creek, meets or beats all criteria set forth by the Washington State Department of Ecology (DOE). The problem we are currently facing is our sludge, the solids that are removed from the water.

Historically, before the upgrade in 2006, the sludge was treated onsite in the Anaerobic Digester. Once a week 3,000 gallons was hauled to landfill in Shelton.

After the upgrade, the solids were sent across the Belt Filter Press to remove water. Those solids were conveyed into a dumpster or trailer and trucked to Fire Mountain Farms which was a Beneficial Use Facility (BUF). They were able to land apply the solids.

In 2013, due to different interpretations of the regulation in regards to the handling of Bio-solids/Bio-sludge Fire Mountain Farms was no longer able to accept our Bio-solids. This change caused problems not only for the City of McCleary, but for almost every small city in western Washington.

We eventually found a company that would haul our Bio-solids to Central Washington for land application. There were a series of Lab test that we had to pass before the DOE would allow our solids to be land applied. The lab testing was to see if we were able to produce a Class "B" solids. I had a real concern about this, in 2013 I had been told by an engineer that this plant was never designed to produce a Class "B" product. Fortunately for us we were able to pass twice. Once in 2014 and once in 2015. In 2016 we failed 3 times. In an attempt to pass these tests we have made changes in the process and hold times. Still the results were not enough to pass. To pass, we must have less than 2,000,000 fecal coliforms per gram. Our test are showing we have we have greater than 4,000,000 fecal coliforms per gram.

Since we have not been able to pass the tests we have been having to send our solids to landfill which is doubling our cost of disposal. The DOE states that hauling to landfill is only a short term solution and that we need to come up with a permanent solution. The law states that WWTP sludge must be treated so that it will have a beneficial use.

As of today's date the DOE has stated that we cannot continue to send solids to landfill. We must send our sludge to another treatment plant for further treatment. This change will dramatically impact the cost of sludge removal. In 2016 we spent \$13,132.88 for hauling and disposal of the City's thickened Bio-solids. With this change our 2017 projected costs for hauling and disposal will be \$69,966. To haul 6,500 gal a week will cost us 11.5 cents a gallon and to dispose of will cost 9.2 cents per gallon. We will have to haul 52 weeks a year.

These costs will continue to increase over time. If we invest in a process that will get us producing a Class "B" product our costs will go back down to 2016 costs.

STAFF REPORT

To: Mayor Schiller
From: Todd Baun, Director of Public Works
Date: February 17, 2017
Re: Itron Maintenance Renewal

Attached you will find a maintenance contract regarding the maintenance renewal of our meter reading equipment.

The agreement includes maintaining in good working order the handheld meter reading equipment, docks, mobile collector unit, and associated software, including technical support as necessary.

Staff Recommendation:

Itron has provided quality products and respectable service during our tenure working together. The recommendation from staff is to continue the service with the annual contract amount revised as attached.

Action Requested:

Please consider confirming the maintenance agreement, as attached, with Itron.

INDIRECT SALES AGREEMENT

This Indirect Sales Agreement (the "**Agreement**") is entered into as of [month/day/year] (the "Effective Date") by and between Itron, Inc. ("**Itron**") and [redacted] ("**Customer**"). Itron and Customer may each be referred to as a "**Party**" and together as the "**Parties**."

Customer shall execute this Agreement prior to its receipt of any Itron software, services or equipment by an authorized Itron distributor (each a "**Distributor**"). The terms of Customer's agreement with a Distributor shall govern Customer's purchase of Itron equipment or services from a Distributor (it being understood that Distributor will pass certain Itron warranties through to Customer). The terms of this Agreement shall govern (i) any software provided by Itron, regardless of whether the order for such software is placed with a Distributor or directly with Itron, and (ii) any order of equipment or services placed directly with Itron.

The Parties agree as follows:

1. Software Terms

a. Definitions.

"**Delivery**," with respect to Software, means that Itron has either made the Software available to Distributor via electronic means or has provided the Software to a carrier on physical media for delivery to Distributor.

"**Documentation**" means all printed or electronic materials published or otherwise that are provided to Customer and that describe or relate to the functional, operational or performance capabilities of the Software.

"**Endpoint**" means (i) a physical device (e.g., a meter, encoder-transmitter-receiver or other measuring or monitoring device) that is the source of data used in the Software application or (ii) a virtual device created in the Software application to simulate the existence of a physical device. An example of a virtual device that is an Endpoint would include a single electricity meter that serves 10 apartment units. If the consumption data from that electricity meter was divided between the 10 units (e.g., on the basis of square footage) and used in the Software application as if that single electricity meter was actually 10 electricity meters, it would count as 10 Endpoints. Further, each account, whether active or inactive, in the application that is associated with a single physical device counts as a separate Endpoint.

"**Object Code**" means the binary, machine-readable version of the Software.

"**Software**" means software identified on Attachment A that is owned by Itron and any modifications, corrections, improvements or enhancements thereto provided by Itron.

"**Source Code**" means human-readable computer programming code, associated procedural code and related documentation.

"**Specifications**" means the applicable published Itron functional specifications for an item of Software.

"**Third Party Software**" means software that is not owned by Itron but is identified on Attachment A as being provided by Itron.

"**Use**" means the ability to run, execute, display and, subject to the restrictions described below, duplicate and distribute internally.

"**Warranty Period**," with respect to a particular item of Software, means the warranty term beginning on the warranty start date, as set forth on Attachment A.

b. License Grant.

Subject to the terms of this Agreement, Itron grants to Customer a nonexclusive, nontransferable, perpetual Object Code license to Use the Software and Documentation for its internal business purposes only in connection with the number of Endpoints set forth in Attachment A.

c. Restrictions.

As a condition to the foregoing license grant, Customer shall not (i) violate any restriction set forth on Attachment A, (ii) modify or create any derivative work from the Software, (iii) include the Software in any other software, (iv) use the Software to provide processing services to third parties or on a service bureau basis, (v) reverse assemble, decompile, reverse engineer or otherwise attempt to derive Source Code (of the underlying ideas, algorithms, structure or organization) from Software, or (vi) use the Software to process business information concerning customers derived through merger, asset acquisition or other entity combination. Except as expressly permitted in this Agreement, Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes. Customer may only make copies of Documentation as reasonably necessary for the use contemplated herein. The Software and Documentation shall be considered the confidential information of Itron and, as such, shall be subject to the confidentiality provisions of this Agreement.

d. Invoicing.

Distributor will invoice Customer for the Software and Itron will invoice Distributor.

e. Limited Software Warranty

i. Warranty and Remedy.

For the Warranty Period, Itron warrants to Customer that the Software will perform substantially in accordance with the Specifications. Itron does not warrant that the Software will operate uninterrupted or error-free. 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 to repair or replace the non-conforming Software. If Itron, in its sole discretion, is unable to repair or replace non-conforming Software, Itron will refund to Customer the amount paid for such Software. Software that is repaired or replaced pursuant to this Section will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. Customer's license to Software for which it has received a refund hereunder shall terminate upon its receipt of a refund.

ii. Exclusions.

The warranty provided in this Section shall not apply to the extent that non-compliance relates to or is the result of (i) use of the Software in combination with software, equipment or communications networks not provided by Itron, (ii) a change to the Software's operating environment not made or authorized by Itron, (iii) Customer's failure to install any correction or enhancement provided by Itron, (iv) viruses introduced through no fault of Itron, (v) any use of the Software not authorized by this Agreement. The warranty provided in this Section is valid only if Customer has complied with the terms of this Agreement (including paying the applicable Software license fees) and shall be void to the extent of any modification to the Software not authorized by Itron.

f. *Third Party Software and Documentation.*

Itron shall provide the Third Party Software, if any, identified on Attachment A and any related documentation. Any Third Party Software, and related documentation provided by Itron in connection with this Agreement shall be subject to a separate license agreement between the Customer and the third party software provider and will be subject to separate third party warranties, if any. Customer agrees that it will be bound by and will abide by all such third party software licensing arrangements. Customer is solely responsible for acquiring any software that is required to use the Software or Third Party Software.

g. *Audit.*

Customer will maintain accurate and detailed records as necessary to verify compliance with this Agreement. Itron may audit these records to verify compliance at any time during Customer's regular business hours after giving notice 5 business days in advance of the audit. Except as described below, Itron will bear all costs and expenses associated with the exercise of its audit rights. Any errors in payments identified will be corrected by Customer by appropriate adjustment. In the event of an underpayment of more than 5 percent, Customer will reimburse Itron the amount of the underpayment, reasonable costs associated with the audit, and interest on the overdue amount at the maximum allowable interest rate from the date the obligation accrued.

h. *Obligations Upon Termination for Cause.*

Upon a termination by Itron for cause, Customer's license to any Software and right to receive maintenance and support for such Software shall immediately terminate and Customer shall (i) delete any Software from all of its computers, (ii) immediately deliver to Itron or destroy all copies of such Software and any related Documentation and (iii) certify in writing to Itron within 10 days of any such termination that, to the best of Customer's knowledge, Customer has complied with this Section.

i. *Other Provisions.*

Customer shall not, directly or indirectly, export or transmit the Software to any country to which such export or transmission is prohibited by any applicable regulation or statute. The Parties agree that Software provided under this Agreement shall be deemed to be "goods" within the meaning of Article 2 of the Uniform Commercial Code, except when such a practice would cause an unreasonable result. The Parties agree that the Uniform Computer Information Transaction Act (or a version thereof or substantially similar law) shall not govern this Agreement.

2. Equipment Terms

SUB-ITEMS a., b. AND c. BELOW APPLY ONLY TO EQUIPMENT PURCHASED BY CUSTOMER DIRECTLY FROM ITRON:

a. *Equipment Purchase.*

Customer agrees to purchase the equipment, if any, identified on Attachment A (the "**Equipment**") from Itron at the price(s) and in the quantities set forth thereon pursuant to the terms of this Agreement. Prices set forth on Attachment A are valid for one year from the date of this Agreement.

b. *Ordering*

During the term of this Agreement, Customer shall order quantities of Equipment by issuing a purchase order, change order or release (each an "**Order**") to Itron, in each case specifying the type and quantity of Equipment, the shipment destination and the requested delivery date. Unless otherwise agreed in a separate writing signed by an authorized representative of each Party, the requested delivery date in an Order must be no earlier than ninety days following Itron's receipt of such Order.

c. *Firmware*

The purchase of Equipment manufactured by Itron will include a perpetual, irrevocable license to use and execute any software embedded in the Equipment. The license to any software embedded in third party Equipment provided by Itron shall be between Customer and the manufacturer of such third party Equipment.

d. *Invoicing.*

Itron will invoice Customer for the Equipment upon shipment.

e. *Delivery, Title and Risk of Loss.*

Unless otherwise agreed by the Parties, Itron will make arrangements with its carrier to deliver Equipment to Customer's location at Customer's expense. For Equipment delivered to Canada, title to the Equipment and risk of loss shall pass to Customer upon delivery to the Customer. For Equipment delivered to all other locations, title to the Equipment and risk of loss shall pass to Customer upon Itron's delivery to a carrier for shipment to Customer.

f. *Limited Equipment Warranty*

i. *Warranty and Remedy.*

Except as otherwise set forth on Attachment A, Itron warrants to Customer that the Equipment that is manufactured by Itron will be free from defects in materials and workmanship and will conform to the applicable published Itron specifications for a period of one year from the date of shipment if purchased directly from Itron and 14 months if purchased through a Distributor. Except to the extent otherwise

provided in Attachment A, Itron's sole obligation and Customer's exclusive remedy in connection with the breach of a warranty provided under this Section or under Attachment A shall be for Itron to repair non-conforming Equipment or provide Customer with replacement Equipment after Customer has returned non-conforming Equipment properly packaged and prepaid to a repair facility designated by Itron in accordance with Itron's then-current RMA procedures. If Itron, in its sole discretion, determines that it is unable to repair or replace such non-conforming Equipment, Itron will refund to Customer the amount paid for such Equipment. Equipment that is repaired or replaced pursuant to this Section will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. Customer will pay the cost of returning non-conforming Equipment to the place of repair designated by Itron and Itron will pay the cost of delivering repaired or replacement Equipment to Customer.

ii. *Exclusions.*

The warranty provided herein 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 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. The above warranty does not cover any third party equipment provided by Itron. Any warranty for such equipment will be between Customer and the third party manufacturer.

3. **Cloud Service Terms**

a. *Access to Cloud Service.*

Subject to the terms of this Agreement, Itron grants to Customer, for its internal business purposes only, the non-transferrable, non-exclusive right to access and use the service identified on Attachment A (the "**Cloud Service**") in accordance with the terms of service attached hereto as Attachment B (the "**Terms of Service**").

b. *Use Restrictions.*

Customer is responsible for maintaining the confidentiality of all information required to access the Cloud Service and for the activities of its employees or representatives that access the Cloud Service. Customer will not (i) access or use the Cloud Service other than in accordance with the Cloud Service documentation; (ii) reverse engineer the software underlying the Cloud Service; (iii) engage in any activity that interferes with or disrupts the Cloud Service or any servers or networks connected to the Cloud Service; (iv) allow a third party to access the Cloud Service or operate the Cloud Service for the benefit of a third party, including as a service bureau; (v) modify or create derivative works based on the Cloud Service; or (vi) use the Cloud Service in a manner that violates any law or regulation or the rights of any third party.

c. *Cloud Service Term.*

Itron will make the Cloud Service available to Customer for an initial one-year period beginning on the Effective Date. Thereafter, Itron shall provide the Cloud Service for successive one-year periods unless the Cloud Service is terminated in writing by either Party at least 90 days prior to the end of the then-current one-year period.

d. *Invoicing.*

Itron shall invoice Customer for the initial annual Cloud Service fee identified on Attachment A immediately following the Effective Date. Thereafter, Itron shall invoice Customer for each successive one-year period prior to the commencement of such period. Itron may elect to increase the annual fee for any successive annual period by providing Customer with written notice of such increase at least 90 days prior to the commencement of such period.

e. *Customer Data.*

Customer retains all right, title and interest in and to any electronic data or information contained in any database, table or similar file or document provided by Customer for use in connection with any Cloud Service (the "**Customer Data**"). Customer grants to Itron a license to use the Customer Data to the extent necessary for Itron to provide the Cloud Service, or as required by law. Customer is solely responsible for the Customer Data, including providing the Customer Data required for proper operation of the Cloud Service, and will not provide, post or transmit any Customer Data or any other information or material that: (i) infringes or violates the rights of any third party or any law or regulation or (ii) contains any virus or programming routine that has the effect of damaging, surreptitiously intercepting or expropriating any system, data or personal information. Itron may take any remedial action it deems advisable to address any violation of this Section but Itron is under no obligation to review Customer Data for accuracy or potential liability. Customer agrees to indemnify Itron for any loss or damage suffered by Itron in connection with Customer's breach of its obligations under this Section.

f. *Service Levels.*

Itron agrees to make commercially reasonable efforts to: (i) maintain Appropriate Security Measures (defined below); (ii) provide regular backups for the Customer Data as further described in the Terms of Service; and (iii) make the Cloud Service generally available 24 hours a day and 7 days a week except for (y) planned downtime in accordance with the Terms of Service and (z) downtime caused by circumstances beyond Itron's reasonable control, including telecommunications or network failures or delays, computer failures that could not reasonably have been prevented by Itron or acts of vandalism (e.g., network intrusions and denial of service attacks). Itron's sole obligation, and Customer's exclusive remedy, in connection with a breach of any obligation of Itron with respect to the performance or availability of the Cloud Service shall be for Itron, at its option, to correct the failure or to refund to Customer the amount paid for the Cloud Service for the period in which it was affected. Customer's subscription to the Cloud Service shall terminate upon its receipt of any such refund. "**Appropriate Security Measures**" means customary technical, physical and procedural controls to protect Customer Data against destruction, loss, alteration, or unauthorized disclosure to third parties. Customer acknowledges that, notwithstanding Appropriate Security Measures, use of or connection to the Cloud Service presents the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Cloud Service and Customer Data. Accordingly, Itron does not guarantee the privacy, security or authenticity of any information stored in connection with or transmitted to or from any Cloud Service.

g. *Federal Communications Commission ("FCC") Licensed Facilities.*

Customer acknowledges and agrees that Itron maintains the exclusive right to operate and control any Federal Communications Commission ("FCC") licensed facilities involved in the provision of services, including the transmitter and other components that produce RF energy (e.g. Itron Cell Control Units, Endpoints, etc.). Itron will make all decisions regarding any FCC licenses used to implement the Cloud Services provided for by this Agreement, including the preparation and filing of applications with the FCC.

4. Payment Terms and Taxes.

The following terms shall apply to any equipment, services or software purchased by Customer directly from Itron. For invoices not paid within 30 days of the invoice date, in addition to other remedies to which Itron may be entitled, Itron may charge Customer a late fee of one percent per month applied against overdue amounts. Customer shall also be responsible for collection costs associated with late payment, if any, including reasonable attorneys' fees. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere shall be construed as an accord or satisfaction. Unless otherwise indicated on Attachment A, Customer shall pay all amounts owing under this Agreement in U.S. Dollars. The prices set forth on Attachment A do not include taxes. Customer will be responsible for and pay all applicable sales, use, excise, value-added and other taxes associated with the provision of products or services by Itron, excluding taxes on Itron's income generally. If Customer is a tax exempt entity, or pays taxes directly to the state, Customer will provide Itron with a copy of its Tax Exemption Certificate or Direct Pay Permit, as applicable, upon execution of this Agreement.

5. Changes.

Changes to the products or services ordered by Customer pursuant to this Agreement, including the purchase of additional quantities or entirely new products or services, may be made at Itron's then-current pricing by purchase order or Change Order (in a form acceptable to Itron), provided that any such purchase order must first be accepted by Itron.

6. Confidentiality.

With respect to any information supplied in connection with this Agreement and designated by either Party as confidential, or which the recipient should reasonably believe to be confidential based on its subject matter or the circumstances, the recipient agrees to protect the confidential information in a reasonable and appropriate manner, and to use and reproduce the confidential information only as necessary to realize the benefits of or perform its obligations under this Agreement and for no other purpose. The obligations in this Section will not apply to information that is: (i) publicly known; (ii) already known to the recipient; (iii) lawfully disclosed by a third party; (iv) independently developed; or (v) disclosed pursuant to a legal requirement or order. The recipient may disclose the confidential information on a need-to-know basis to its contractor's, agents and affiliates who agree to confidentiality and non-use terms that are substantially similar to these terms. The parties acknowledge and agree that any software provided by Itron in connection with this Agreement shall be considered the confidential information of Itron.

7. IP Ownership

Between Itron and Customer, all patents, copyrights, mask works, trade secrets, trademarks and other proprietary rights in or related to any product, software or deliverable provided by Itron pursuant to this Agreement are and will remain the exclusive property of Itron. Any modification or improvement to an Itron product or deliverable that is based on Customer's feedback shall be the exclusive property of Itron. Customer will not take any action that jeopardizes Itron's proprietary rights nor will it acquire any right in any such product, software or deliverable or Itron's confidential information other than rights granted in this Agreement.

8. Indemnification

a. General Indemnity.

Itron will defend Customer from any third party claim for (i) wrongful death of or bodily injury, to the extent caused by Itron's gross negligence or intentional torts, or (ii) physical damage to tangible personal property, to the extent caused by Itron's gross negligence or intentional torts, and will pay costs and damages awarded against Customer in any such claim that are specifically attributable to Itron's gross negligence or intentional torts or those costs and damages agreed to by Itron in a monetary settlement of such claim.

b. Infringement Indemnity.

Itron will defend at its own expense any action brought against Customer by an unaffiliated third party to the extent that the action is based upon a claim that any product manufactured, software licensed or service provided by Itron hereunder directly infringes any U.S. patent (issued as of the Effective Date) or any copyright or trademark, and Itron will pay those costs and damages awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to by Itron in a monetary settlement of such action. The foregoing indemnity does not apply to products not manufactured by Itron or software licensed by third parties.

c. Conditions to Infringement Indemnity.

Itron's infringement indemnity obligations under this Section 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, Customer will permit Itron, at Itron's 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 reasonable in Itron's 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 service.

d. Exclusions.

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.

e. Right to Defend.

As a condition to Itron's indemnity obligations under this Agreement, Customer will provide Itron with prompt written notice of the claim, permit Itron to control the defense or settlement of the claim and provide Itron with reasonable assistance in connection with such defense or settlement. Customer may employ counsel at its own expense to assist it with respect to any such claim.

f. Indemnity Disclaimer

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

9. Warranty Disclaimer.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ITRON DISCLAIMS ALL 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. WAIVER OF CONSEQUENTIAL DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ITRON'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

11. CAP ON LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR A BREACH BY CUSTOMER OF (I) ANY INTELLECTUAL PROPERTY RIGHT OF ITRON OR (II) ANY LICENSE GRANTED BY ITRON HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR DAMAGES IN EXCESS OF FIFTY PERCENT (50%) OF THE FEES PAID BY CUSTOMER TO ITRON UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE OF ANY CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE. ITRON'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

12. Term and Termination

a. Term of Agreement.

Unless terminated earlier as provided herein, the term of this Agreement shall be from the Effective Date through December 31st of the year in which any products or services to be provided hereunder have been provided. The term of this Agreement shall thereafter automatically renew for successive one year periods unless either Party provides the other with written notice of its intent not to renew at least 90 days prior to such termination; provided, however, that Customer shall be obligated to purchase and Itron shall be obligated to provide any product or service that is the subject of an unfulfilled order accepted by Itron prior to the time of any such termination. Notwithstanding the foregoing, the term of any license provided by Itron hereunder shall be as set forth in the provision granting such license.

b. Termination for Cause.

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, the Distributor/Customer agreement or the Distributor/Itron agreement that remains uncured for 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).

c. Survival.

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 including, but not limited to, provisions relating to warranties and warranty disclaimers, intellectual property ownership, payment terms, confidentiality, waiver of consequential damages, and cap on liability.

13. Miscellaneous

a. 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 attached hereto or other communications between the Parties subsequent to the execution of this Agreement.

b. *Amendments and Waivers.*

Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by a writing signed by an authorized representative of each Party and declared to be an amendment hereto. 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.

c. *Governing Law; Jury Trial.*

This Agreement and performance hereunder will be governed by and construed in accordance with the laws of the State of Washington without reference to Washington conflicts of law principles or the United Nations Convention on Contracts for the Sale of Goods. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT.

d. *Assignment.*

Customer may not assign or transfer its interests, rights or obligations under this Agreement by written agreement, merger, consolidation, operation of law or otherwise without the prior written consent of an authorized executive officer of Itron. Any attempt to assign this Agreement by Customer shall be null and void. For purposes of this Agreement, the acquisition of an equity interest in Customer of greater than 25 percent by any third party shall be considered an assignment.

e. *Publicity.*

Unless otherwise provided in a separate confidentiality agreement between the Parties, each Party may issue a press release following the execution of this Agreement, subject to the other Party's written approval, which shall not be unreasonably withheld. Each Party hereby consents to the other Party's use of its name, URL and logo on its website and in its customer and partner lists for corporate and financial presentations.

f. *Force Majeure.*

Neither Party will be responsible for any failure or delay in performing any obligation hereunder if such failure or delay is due to a cause beyond the Party's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts (a "**Force Majeure Event**"). Notwithstanding the foregoing, no obligation to make any payment required under this Agreement is excused as a result of a Force Majeure Event.

g. *Notices.*

Any notice required or permitted under this Agreement or required by law must be in writing and must be delivered in person, by facsimile, by certified mail (return receipt requested), or by a nationally recognized overnight service with all freight charges prepaid, to the address set forth below. Notices will be deemed to have been given at the time of actual delivery, if in person, or upon receipt (as evidenced by facsimile confirmation, return receipt or overnight delivery verification). Either Party may change its address for notices by written notice to the other Party in accordance with this Section.

Itron: Attn: General Counsel
Itron, Inc.
2111 North Molter Road
Liberty Lake, WA 99019

Customer:

h. *Miscellaneous.*

Headings used in this Agreement are intended for convenience or reference only and will not control or affect the meaning or construction of any provision of this Agreement. If any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby and such provision shall be interpreted so as to best accomplish the intent of the Parties within the limits of applicable law. Any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement shall not apply to the terms and conditions of this Agreement. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. If available, maintenance and support for products will be provided pursuant to a separate maintenance agreement. Itron shall perform all work to be performed in connection with this Agreement as an independent contractor and not as the agent or employee of Customer. All persons furnished by Itron shall be for all purposes solely Itron's employees or agents and shall not be deemed to be employees of Customer for any purpose whatsoever. This Agreement is entered into only for the benefit of Customer and Itron. No other person or entity shall have the right to make any claim or assert any right hereunder, and no other person or entity shall be deemed a beneficiary of this Agreement.

[Signature Page Follows]

Agreed to and accepted:

Itron, Inc.

Customer

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Tax Exempt: _____ Yes/No (if Yes, attach copy of Tax Exemption Certificate)

ATTACHMENT A-1

Please check the type of Software being licensed or hosted (Itron Cloud Service) and enter the number of meters.

Software	Units	Warranty Start Date	Warranty Term	Itron Cloud Service
*MV-RS	Up to _____ Endpoints	Delivery	14 months	N/A
Field Collection System Software	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
Network Software	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
Network Software – Outage Notification	Up to _____ Endpoints	Delivery	5 months	N/A
Itron Analytics	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
Itron Analytics Customer Portal	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
Itron Security Manager (ISM)	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
Field Deployment Manager (FDM)	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
FDM – Endpoint Tools Enhanced	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
Mlogonline	Up to _____ Endpoints	Delivery	5 months	<input type="checkbox"/>
Mobile Collector Software	[Up to _____ Endpoints]	Delivery	5 months	[N/A]

*Customer receives 5 months of Phone Support at no charge for the MV-RS Product.

PRICING SUMMARY FOR PRODUCTS AND SERVICES PURCHASED DIRECTLY FROM ITRON

ATTACHMENT A-2

Warranty 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.
200W series water endpoints (including battery)	<p>Standard Warranty: Full warranty consistent with the warranty terms in the Agreement for the first 5 years from shipment.</p> <p>Optional Extended Warranty (if purchased by Customer):</p> <p>For warranty claims in years 6 through 10, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 100 percent of its then-current list price for the replacement product.</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 60W 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>
Leak Sensor	<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>

ATTACHMENT B
Terms of Service

(TO BE ATTACHED IF CLOUD SERVICE IS PURCHASED)



2111 North Molter Road
 Liberty Lake, Washington 99019
 509.924.9900 Tel
 509.891.3355 Fax
 800.635.5461
 www.itron.com

ATTACHMENT A
 CUST. NAME

ANNUAL PRODUCT SERVICE CHARGES

Item A.	Qty	First Year Phone Support	First Year Phone Support
1	1	-	\$ -
			\$ -

Item B.	Qty	Software Support/Hosting	Annual Maintenance Price
1	1	FCSHH - FCS SFTW, UP TO 2,500 ENDPOINTS	\$ 720.00
2	1	Mobile Collector Software	\$ 1,196.00
-	-	-	\$ -
-	-	-	\$ -
-	-	-	\$ -
-	-	-	\$ -
Software Subtotal			\$ 1,916.00

Item C.	Qty	Hardware Support After Initial Warranty	Annual Maintenance Price
1	2	FC3SR - FC300, SRead Radio	\$ 870.00
2	2	FC3 DESK DOCK - FC300 Desk Dock	\$ 75.60
3	1	MC3 RF Unit	\$ 2,520.00
4	1	Sidelooker Antenna	\$ 96.00
-	-	-	\$ -
-	-	-	\$ -
-	-	-	\$ -
Hardware Subtotal			\$ 3,561.60

Software & Hardware Total			\$ 5,477.60
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Comments:

The Maintenance Commencement Date for Itron Software is the first day of the month following shipment or electronic delivery by Itron, except the Maintenance Commencement Date for MV-RS Software is the warranty expiration date. The Maintenance Commencement Date for Itron Equipment is the warranty expiration date.

****This is not an invoice****
Prices Valid for 90 Days

2/17/2017

RESOLUTION NO. _____

A RESOLUTION RELATING TO PUBLIC SERVICES;
SUSPENDING THE APPLICATION OF SECTION IV,
RESOLUTION 656, AS THE ANNUAL MODIFICATION
OF THE FEES IN RELATION TO CONNECTION TO THE
CITY'S UTILITY SYSTEMS; AND PROVIDING FOR
EFFECTIVE DATES.

R E C I T A L S:

1. Pursuant to the applicable provisions of the Municipal Code, the Council and Mayor may set by written resolution fees and rates to be charged for specified City provided services and provide for certain mechanisms in relation to the adjustment thereof.

2. The fees and rates are currently established pursuant to the provisions of Resolution 656. That resolution provides for an annual adjustment.

3. After discussion and review of the housing market for the City, the Council finds it appropriate to suspend the annual adjustment provision.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY, THE MAYOR SIGNING IN AUTHENTICATION THEREOF:

SECTION I: On and after the effective date of this resolution, the annual adjustment provisions of Section IV,

Resolution 656, relating to the overall connection fee (OCF) to be paid by a party seeking to obtain connection to the City's water and sewer utility shall be suspended and the amounts required for connections shall be the amounts required in 2016: PROVIDED THAT, the suspension of the annual adjustment provision and the resulting fee stabilization shall continue until further action of the Council.

SECTION II: The provisions of this resolution, including rate structure, shall be effective as of 12:01 a.m. upon the day following adoption hereof: PROVIDED THAT, any completed application meeting the qualifications for submission to the City and on file in the Office of the Clerk-treasurer prior to adoption of this resolution shall be processed under the the provisions of this resolution.

SECTION VII: Other than the suspension of the annual adjustment provisions of Section IV, the other provisions of Resolution 656 shall remain in full force and effect.

PASSED THIS ____ DAY OF _____, 2017 by the City Council of the City of McCleary, and signed in authentication thereof this _____ day of _____, 2017.

CITY OF McCLEARY:

BRENT SCHILLER, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney