

**MAINTENANCE SERVICE AGREEMENT
TERMS AND CONDITIONS**

This Master Sales Agreement (the "**Agreement**") is made and entered into as of July 1, 2023 (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 Glendale, Arizona, an Arizona municipal corporation with a principal place of business at 5850 W. Glendale Avenue, Glendale, Arizona 85301 ("**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 that will be provided under this Agreement.
2. **Technology & Services Addendum.** Technology & Services will be provided according to the Addendum attached to this Agreement. The Addendum may set forth additional terms and conditions applicable to specific 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 (Attachment A).
 - 4.2. **Taxes.** Prices and charges for 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.** 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.** The term of this Agreement begins on the Effective Date and continues for a period of three (3) years.
 - 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 for 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. Public Records. Itron recognizes that Customer is a municipality and, among other things, is subject to Arizona public records laws under which Customer may disclose the terms and conditions of this Agreement if it is subject to City Council review and approval, and may be required to disclose all records characterized as public under state law, unless an exemption applies. For that reason, Customer agrees that if a record regarding Itron Confidential Information is requested under public records laws, Customer will provide Itron with prompt written notice of such request prior to producing any records so that Itron has an opportunity to seek court protection of the requested records, unless otherwise prohibited by law. Customer also agrees to reasonably cooperate with Itron to mitigate the disclosure of such Itron Confidential Information to the extent requested by Itron and allowed by applicable public records laws.

6.5. 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, unless such destruction or return is prohibited by state public laws or a subject to legal process from a court of competent jurisdiction. 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 6 control if they conflict with this Section 7. 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. Except as permitted under Section 6.4 ("*Public Records*"), neither Party shall disclose, advertise, or publish the detailed terms and conditions of this Agreement without the prior written consent of the other Party.

9. Warranties.

9.1. Services & Deliverables Warranties. Express warranties for services provided under this Agreement, if any, (the Express Warranties") will be stated in the applicable Technology & Services Addendum hereto for the period stated therein (the "*Express Warranty Period*").

9.2. CERTAIN WARRANTY EXCLUSIONS. THE WARRANTIES UNDER THIS AGREEMENT AND THE ADDENDUM 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 THE ADDENDUM, OR OTHERWISE INCORPORATED IN THIS AGREEMENT, CONSTITUTE AND EXPRESS THE ENTIRE STATEMENT OF THE PARTIES WITH RESPECT TO WARRANTIES. THE PARTIES DISCLAIM 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. 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 FIFTY PERCENT (50%) 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, elected official, 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.

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 will be governed by the terms and conditions of this Agreement and the applicable Technology & Services Addendum and may require City Council approval.

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 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, the controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

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 Solution 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 the attach Technology & Serves Addendum hereto shall constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede

Confidential Information

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. Neither Party will assign this Agreement, directly or indirectly, without the prior written consent of an authorized executive officer of the other Party, provided that either Party may assign all or any part of this Agreement to its successor in a merger, consolidation or comparable transaction or to the purchaser of all or substantially all of its assets (or the assets associated with a particular line of business) so long as such successor or purchaser agrees in writing to comply with the terms and conditions of this Agreement.

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. If Customer learns of any violation of the above restriction, it will use reasonable efforts to promptly notify Itron's Law Department via the contact information in the notices section. Further, Itron acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on Customer's behalf is also an employee, agent, or consultant of any other party to 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 Addendum and any performance hereunder will be
Confidential Information

governed by and construed in accordance with the laws of the State of Arizona without reference to their conflicts of law principles or the United Nations Convention on Contracts for the Sale of Goods.

16.11. 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.

16.12. 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.

16.13. 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.

16.14. 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.

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

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

16.17. Lack of Appropriations. Nothing in this Agreement guarantees that some or all of the funds necessary to comply with all of the Customer's obligations under this Agreement will be appropriated or otherwise be available. The Customer agrees to seek such appropriations in good faith from the City Council and agrees not to use the lack of appropriation as a substitute for termination for convenience. If sufficient funds are not appropriated or otherwise available, the Customer may unilaterally terminate this Agreement after providing thirty (30) days written notice. In the event the Customer provides such notice, the Customer will not be entitled to a refund or offset of any amounts previously paid but will not pay any amounts that become due after providing such notice.

16.18. E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractor with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

16.19. No Boycott of Israel. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

16.20. Non Discrimination. Itron must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability.


[Signature Page Follows]

**SIGNATURE PAGE
TO
MAINTENANCE SERVICES AGREEMENT
TERMS AND CONDITIONS**

AGREED:

Itron, Inc.

Customer



Signature
JOEL VACH

Printed Name
VP TAX & CORPORATE TREASURER

Title
MAY 23, 2023

Date

Signature

Printed Name

Title

Date

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 in the pricing summary 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 pricing summary to this Addendum.

“**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 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 1 to this Addendum.

“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 Itron terminates the Agreement for cause or Customer terminates the Agreement for convenience, Customer shall not be entitled to a prorated refund of the applicable Fee. If Customer terminates the Agreement for cause or Itron terminates the Agreement for convenience, Customer shall be entitled to a pro-rated refund of fees paid for the current Maintenance Year.

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 travel costs and expenses invoiced at agreed upon rates), unless the cause of the reported problem is found to be the fault of Itron, in which case Itron shall pay and be responsible for all travel costs and expenses.

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). Improvements released as new / separate Software modules, not previously defined in the Documentation, will not be released to Customer without approval by both Parties.

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, Customer will provide its authorization to proceed in writing and 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 initial 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. Any fees for additional services not included in Itron's Maintenance and Support Services outlined in this Agreement, such as for additional Field Support or otherwise, will be at jointly reviewed under mutually agreed upon rates.

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 1 Follows]

Attachment 1 to Maintenance & Support Services Addendum
- Software Maintenance & Support Service Levels -

Severity Level	Response Times	Effort Level and Escalation Path
<p>Severity Level 1. Critical Business Impact / System Down: 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 Customers 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>Severity Level 2. Moderate Business Impact / Degraded Operation: 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>Severity Level 3. Minor Business Impact / Compromised Operation: 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>Severity Level 4. No Business Impact / Standard Operation: 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>Severity Level 5. Customer SR for an enhancement or new functionality.</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>



Knowledge to Shape Your Future

1762 - City of Glendale
7070 W Northern Ave
Glendale, AZ 85303

Maintenance Proposal Pricing
2/24/2023

Attachment A

Hardware	Qty	Component Name	Annual Fee/Unit	Annual Increase Applied		
				10%	10%	10%
				7/1/23 - 6/30/24	7/1/24 - 6/30/25	7/1/25 - 6/30/26
	12	IMR - Itron Mobile Radio	\$ 156.40	\$ 2,160.80	\$ 2,299.97	\$ 2,529.96
	1	MC3 Lite	\$ 1,452.00	\$ 1,597.20	\$ 1,756.92	\$ 1,932.61
Hardware Subtotal				\$ 3,688.00	\$ 4,056.89	\$ 4,462.58
Software						
	1	FCSCC - FC'S SFTW, 50,001-75,000 ENDPOINTS	\$ 5,171.33	\$ 5,688.46	\$ 6,257.31	\$ 6,883.04
	1	IMA D-CC-SUB-ED - IMA DRIVEBY, 50,001-75,000 ENDPOINTS, S	\$ 2,970.00	\$ 3,267.00	\$ 3,593.70	\$ 3,959.07
			\$.			
Software Subtotal				\$ 8,955.46	\$ 9,851.01	\$ 10,836.11
Hardware & Software Total				\$ 12,643.54	\$ 13,907.90	\$ 15,298.69
Annual Maintenance Fee Subtotals						\$ 41,850.13
Total Maintenance Fees (1' SD)						\$ 41,850.13

Customer Signature of Acceptance: _____ Date: _____

The Maintenance Commencement Date for Itron Software is the first day of the month following shipment or electronic delivery by Itron. The Maintenance Commencement Date for Itron Equipment is the warranty.

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

Glendale, AZ City of Attachment A Pricing - Internal Rev 04/04/2022 (version 1)
1 of 1

Confidential Information

ADDENDUM to MAINTENANCE SERVICE AGREEMENT ("Agreement")

The City of Glendale, Arizona ("City") and Itron, Inc. ("Contractor") further agree as follows:

I. Conflicts. Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

II. Lack of Appropriations. Nothing in this Agreement guarantees that some or all of the funds necessary to comply with all of the City's obligations under this Agreement will be appropriated or otherwise be available. The City agrees to seek such appropriations in good faith from the City Council and agrees not to use the lack of appropriation as a substitute for termination for convenience. If sufficient funds are not appropriated or otherwise available, the City may unilaterally terminate this Agreement after providing thirty (30) days written notice. In the event the City provides such notice, the City will not be entitled to a refund or offset of any amounts previously paid but will not pay any amounts that become due after providing such notice.

III. E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractor with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

IV. Attestation of PCI Compliance. The Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

V. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

VI. Dispute Resolution. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

VII. Non-Discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

VIII. Governing Law and Venue. This Agreement and Addendum shall be governed by and enforced using the law of the State of Arizona. The parties agree that any judicial action brought to enforce the terms and conditions of this Agreement shall be brought in a court of competent jurisdiction in Maricopa County, Arizona.

IX. Addendum and Agreement Conflict. In the result of any conflict between the Agreement and this Addendum, the terms of this Addendum shall prevail.

CITY OF GLENDALE:

CONTRACTOR:

By: Ron Serio, P.E.
Its: Director



By: JOEL VACH
Its: Authorized Representative

Date

MAY 23, 2023

Date

ATTEST:

Julie K. Bower
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney