

STATE OF NORTH CAROLINA

Contract # 2022-00000213

COUNTY OF WAKE

AMENDMENT #2 TO FDM TOOLS AND
FIELD TOOLS SOLUTION AGREEMENT

THIS AMENDMENT is entered into this the 30th day of May, 2024, by and between Itron, Inc. ("Itron"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town").

PREMISES:

WHEREAS, the Parties entered into FDM Tools and Field Tools Solution Agreement dated June 9th, 2022 (the "Agreement"), which includes in Paragraph 3 the contemplation of an amendment to the Agreement whereby the Parties agree to extend the Subscription for Mobile Device Software; and

WHEREAS, the Parties desire to extend the Agreement for one (1) year.

WITNESSETH:

The Town and Itron, for the consideration stated herein, agree to amend the Agreement as follows: In Paragraph 3, the first and second sentences are deleted and hereby replaced with the following sentence: The term of this Agreement expires on June 9th, 2025.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this 30th day of May, 2024.

Itron, Inc.

Name: Joel Vach

DocuSigned by:
Joel Vach
D4BB7D03A21E4BB...
(Signature)

Title: VP Tax, Treasury, MD&A

Attest:

DocuSigned by:
Jenell Roberts
C5FC3B1B0170470...
(Secretary, if a corporation)

Town of Apex

DocuSigned by:
Randal Vosburg
4F2B7C4B5FA3479...
Randal E Vosburg, Town Manager

Attest:

DocuSigned by:
Allen Coleman
C1F24B7AF04C4FF...
Allen L. Coleman, CMC, NCCCC Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

DocuSigned by:
Antwan Morrison
C1FEC1A957074406...
Antwan Morrison, Finance Director



Date Printed: 18-MAR-2024

Service Pricing

Page: 1 of 1

Customer Name: Town of Apex, North Carolina
Customer Number: 1397
Bill To Contact: Michael Mote
Customer Address: PO Box 250
Apex,NC 27502-0250

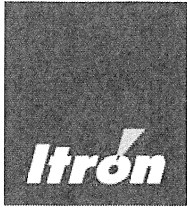
Contract Number: SC00000668
Description: Town of Apex, North Carolina - FCS / FTA

Contract Duration: 01-AUG-24 - 31-JUL-25

Description	Serial Number	Start Date	End Date	Quantity	Total Amount
SOFTWARE					
FCS SFTW MAINTENANCE, 25001-50000 ENDPOINTS, ELECTRONIC DELIVERY		01-AUG-24	31-JUL-25	1	5,753.57
			Subtotal :	1	5,753.57
	SOFTWARE		Subtotal :	1	5,753.57
FIELD TOOLS ADVANCED, 25001-50000 ENDPOINTS, SUBSCRIPTION		01-AUG-24	31-JUL-25	1	2,039.33
			Subtotal :	1	2,039.33
			Subtotal :	1	2,039.33
Contract Grand Total:				2	7,792.90

NOTE: This is not an invoice

FDM Tools and Field Tools Solution Agreement



FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT

THIS FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT (THIS “AGREEMENT”) GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES, AS DEFINED IN THE DEFINITIONS SECTION BELOW, THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH “ITRON”).

This Agreement is made by and between Itron, Inc. (“Itron”), and entity organized under the laws of Washington having an address at 2111 N. Molter Road, Liberty Lake, WA 99019 and *Town of Apex*, an entity organized under the laws of North Carolina, having an address at 73 Hunter Street, Apex, NC 27502 (“Customer”) and is effective as of the date of the last signature (the “Effective Date”).

1. Definitions.

Affiliate means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

Annual Adjustment means Itron’s annual price increase.

Billing Cycle means a period of one year beginning on the Effective Date or any anniversary thereof.

Claim means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney’s fees) or other relief.

Client Services Guidelines Documents means the following documents as they may be updated by Itron from time to time: “Product Contact Information Sheet”, “After Hours Support”, and “Working Effectively with Itron Global Services”. Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

Confidential Information means any confidential, trade secret or other proprietary information disclosed by a Party or a Party’s Affiliate related to its business that is designated as “confidential” or which a

reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party. Confidential Information shall not include "public records" as defined by Chapter 132 of the North Carolina General Statutes.

Covered Product means Software.

Customer means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

Customer Data means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

Defended Party means a Party entitled to defense and indemnification from the other Party under Section 11 ("Third-Party Claims") of this Agreement.

Defending Party means a Party obligated to provide defense and indemnification to the other Party under Section 11 ("Third Party Claims") of this Agreement.

Documentation means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services or Software provided by Itron, which Itron customarily makes available to its customers.

Endpoint means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device which Customer will configure and/or manage as part of a Service Offering.

Error means a material failure of Software to comply with applicable published Itron specifications.

Fees means all amounts payable to Itron by Customer for Services provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Fix means a correction or workaround for an Error.

Global Support Services means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

Improvement means an update, modification, enhancement and/or extension to Software functionality that is included in a Release.

Intellectual Property and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

M&S Commencement Date means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be the Service Offering Commencement Date.

Maintenance Services means maintenance and support services described in Section 8 ("Maintenance Services") of this Agreement.

Mobile Device Software means Itron's FDM Tools or Field Tools mobile application for FDM Tools or Field Tools, as applicable.

One-Time Setup Fee means the one-time setup fee(s) for each Service Offering (if any) identified in the applicable Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Operating Condition means performance in accordance with applicable published Itron specifications.

Party means Customer or Itron and **Parties** means Customer and Itron.

Primary Services Contacts means Customer's primary support staff who provides internal support to Customer's operations personnel and who are key interface to Itron for all Maintenance Services.

Quote means a valid quote for Services provided to Customer by Itron.

Release means a collection of Fixes and/or Improvements made available by Itron to Customer.

Service Offering means the FDM Tools or Field Tools software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

SaaS Software means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

Servers means the physical computer hardware owned by Itron or its designated provider on which SaaS

Software will be installed, operated, and maintained by or on behalf of Itron.

Service Offering Commencement Date means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

Service Levels means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A to this Agreement.

Services mean the Service Offering(s) and Maintenance Services.

Software means Mobile Device Software and SaaS Software.

Subscription Fees means annual fees identified in the applicable Quote or, if no Quote, Itron's then- current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

Subscription Term means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

Territory means the country in which Itron provides Services to Customer.

2. Purchase Order Requirement. Customer shall purchase Services by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

3. Term. The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Prior to the expiration of the Subscription for the Mobile Device Software, the Parties will sign an amendment that extends the Subscription for the Mobile Device Software for one (1) year. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 14 ("Termination") of this Agreement.

4. Fees, Invoicing, Taxes and Payment

4.1. . Fees. Itron offers a basic Service Offering and a premium Service Offering under this Agreement. The basic Service Offering is provided free of charge and the premium Service Offering is provided at the initial fees set forth in Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. Fees for Software Maintenance Services are included in the Subscription Fee, if any, for the applicable Service Offering. Itron reserves the right to add, remove and/or change features within a Service Offering at Itron's sole discretion and will notify Customer of such changes at least sixty (60) days in advance of implementing such changes within Service Offering.

4.2. Invoicing. Customer shall pay Subscription Fees (if any) in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees shall be prorated based on the number of months remaining in the current Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of non-renewal no less than 90 days prior to the commencement of a Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming Billing Cycle.

4.3. Payment. Customer shall pay the Itron entity designated in the applicable invoice. Unless otherwise specified in the applicable invoice, Customer shall pay such Itron entity in USD. Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

4.4. Invoice Disputes. Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 17 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

4.5. Late Payment. Except for invoiced payments that Customer has timely disputed, all late payments

shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

4.6. No Setoff. Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

4.7. Taxes. All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer shall indemnify and hold Itron harmless from any tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein .

5. Documentation. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

6. Service Offerings

6.1. Access Rights and Restrictions.

6.1.1. Access Rights. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees (if any), Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

6.1.2. Restrictions on Use. Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related

Documentation to provide services to third parties, or otherwise use any Service Offering on a “service bureau” or “timesharing” or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron’s or its providers’ Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron’s or its providers’ Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron’s or its providers’ systems or networks; (m) merge any Service Offering with any other product or service without Itron’s prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

6.1.3. Content Restrictions. Customer may not distribute, download, or place on any Itron or its providers’ website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as “Prohibited Content”). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys’ fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers’ website or Server or used with any Service Offering by Customer.

6.2. Breach of Restrictions. Customer’s breach of the restrictions set forth in Section 6.1.2 (“Restrictions on Use”) or Section 6.1.3 (“Content Restrictions”) shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer’s breach of these restrictions.

6.3. SaaS Software Availability. Itron will endeavor to make the SaaS Software available to Customer

through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

6.4. Third-Party Radio Devices. Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("Third-Party Radio Device"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

6.5. Sizing of Software-as-a-Service. Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

6.6. Application Upgrade and Fixes. SaaS Software is updated regularly using a continuous delivery method.

6.7. Conditions on Use of Service. Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

6.8. Suspension or Restriction of Service. Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 ("Restrictions on Use"), Section 6.1.3 ("Content Restrictions") or Section 6.7 ("Conditions on Use of Service"), until such breach is cured to Itron's reasonable satisfaction.

6.9. Incident Management. Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers.

6.10. Customer Technical Responsibilities. Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense.

6.11. User IDs and Passwords. Itron shall provide Customer with a user identification and password ("User ID") to access each Service Offering. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

6.12. Maintenance. System maintenance, whenever reasonably practicable, will be performed during off-business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

6.13. Business Continuity. Application data is fully backed up weekly and differentially backed up daily unless backup is prevented by loss of datacenter or datacenter connectivity or other circumstances outside Itron's reasonable control. Itron's hosted environment is on fault tolerant systems with specific mechanisms for high availability.

6.14. Recovery of Customer Data. At the end of the Term of the Agreement or SaaS service (unless the Agreement or SaaS service is renewed pursuant to duly executed amendment or a new agreement), or in the event of its early termination in accordance with the terms of the Agreement, Customer will confirm to Itron in writing, no later than on the effective date of expiration or termination, its decision to close the SaaS service ("Closure Confirmation"). Provided that Itron has received the Closure Confirmation from Customer within the aforementioned period, Itron will maintain Customer's access to the system for a maximum period of three (3) months from receipt of the Closure Confirmation, for the sole purpose of enabling Customer to retrieve the following Customer data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by the SaaS service, or the format already supported by the SaaS service. At the end of this three (3) month period, the Customer data will be permanently deleted and will no longer be recoverable.

7. Mobile Device Software License.

7.1. License Grant. Subject to the terms of this Agreement, Itron grants Company a limited, non-exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a "Mobile Device")

strictly in accordance with the Documentation.

7.2. License Restrictions. Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

7.3. Updates. Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Based on Customer's Mobile Device settings, when Customer's Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

7.4. Compatible Mobile Devices. Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device Software work with any other mobile devices.

7.5. Disclaimer of Liability. Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

8. Maintenance Services.

8.1. Primary Services Contacts.

8.1.1. Designation by Customer. Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall

promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

8.2. Training of Principal Services Contacts. Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer- proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section. Global Support Services & Service Requests.

8.2.1. Global Support Services. Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

8.2.2. Service Request Process. Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its

urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

8.2.3. Field Support. At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

8.3. Software Maintenance.

8.3.1. Fixes. Itron shall provide Fixes 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, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

8.3.2. Improvements. Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

8.3.3. Exclusions. Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

8.3.4. Customer Responsibilities. Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

9. Warranty Disclaimer. ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES, 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. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM ITS DATA CENTERS OR DATA CENTERS OF ITS VENDORS VIA WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

10. Intellectual Property.

10.1. Reservation of Intellectual Property. Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right, title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

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

11. Third-Party Claims.

11.1. General Claims. The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

11.2. Infringement Claims. Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party's Intellectual Property Rights within the Territory ("IP Claims"). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

11.3. Conditions to Defense. As a condition to the Defending Party's obligations under Section 11.1 or Section 11.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

11.4. Exclusions to Infringement Claim Defense. Itron will have no obligation under Section 11.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative

of Itron, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, or (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

11.5. EXCLUSIVE REMEDY. THIS SECTION 11 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

12. Data Protection. The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that, during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party..

13. Confidentiality. Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

14. Termination. 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, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

15. Survival. The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 6.1.2 ("Restrictions on Use"), 6.2 ("Breach of Restrictions"), 9 ("Warranty Disclaimer"), 10 ("Intellectual Property"), 12 ("Data Protection"), 13 ("Confidentiality"), 15 ("Survival"), 16 ("Limitation of Liability"), 17 ("Disputes"), 18 ("Governing Law and Venue"), 23 ("Force Majeure"), and 24 (Miscellaneous).

16. Limitation of Liability. Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under this Agreement during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

17. Disputes. The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "Dispute") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("Dispute Notice"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("Escalation to Executive Notice"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("Executive(s)"). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the "Escalation to Mediation Date"), either

Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may proceed in accordance with the provisions of Section 18 (Governing Law and Venue). Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

18. Governing Law and Venue. This Agreement and all related documents, including all addenda attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of North Carolina, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the Western District of Texas, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Travis County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the United States District Court for the Eastern District of North Carolina or, if such court does not have subject matter jurisdiction, the courts of the State of North Carolina sitting in Wake County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

19. Legal Compliance. Each Party must comply with all applicable laws. Itron's products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other

applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

20. Publicity. Neither Party may issue a press release related to this Agreement or their relationship without the other Parties' prior written consent.

21. Sub-contractor and Outsourcer. Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

22. Independent Contractor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

23. Force Majeure. Neither Party (the "Impacted Party") shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer's obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including, without limitation: (a) left blank (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "Force Majeure").

24. Miscellaneous. (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any such deleted terms. (b) Section 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. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron's prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

25. Public Records Requirements. To the extent applicable, Itron will comply with the public records requirements in Customer's state. Itron recognizes that Customer is subject to public records laws under which Customer is 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 software and/or documentation 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. Customer also agrees to reasonably cooperate with Itron to mitigate the disclosure of such software and/or documentation to the extent requested by Itron and allowed by applicable public records laws.

In witness thereof, the Parties, by their authorized agents, affix their signatures and seals this 9th day of June, 22

Itron

DocuSigned by:

Name: _____

(type or print)

Joel Vach

D4BB7D03A21E4BB...

By: Joel Vach

(Signature)

Title: VP-Tax and Corporate Treasurer

Attest: _____

DocuSigned by:

Chris Ware

7AF480604F544EB...

(Secretary, if a corporation)

CLIENT (Town of Apex)

Catherine Crosby, Town Manager

Attest: _____

Town Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Vance Holloman
Vance Holloman, Finance Director

Attachment A**– Software Maintenance & Support Service Levels –**

Severity Level	Response Times	Effort Level and Restoration	Escalation
Business Impact: Critical Impact / System Down. A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue. Example: a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down	During regular business-hours Itron will begin the Service Request process during Customer's initial call. During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process. Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response. Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties. Customer will respond to an Itron inquiry or request within three (3) hours.	Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to: i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4. Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.	An unresolved Service Request shall be escalated to Itron management as follows: After 30 minutes: Technical Customer Support Team Lead After 8 hours: Manager, Technical Client Services After 16 hours: Director, Global Support Services After 48 hours: Service Request. Vice President, Services and Delivery After 72 hours: President, Itron

Severity Level 2***Business Impact: Major****impact, degraded**

Operation. An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.

Example: a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission.

Severity Level 3****Business Impact:****Minor Business Impact, compromised operations.**

An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.

Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.

During regular business-hours Itron will respond

to Customer regarding Service Request within one (1) business day.

While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within one (1) business day.

Itron will make diligent efforts during normal

business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.

An unresolved Service Request shall be

escalated to Itron management as follows:

After 1 hours:

Technical Customer Support Team Lead

After 8 hours:

Manager, Technical Client Services

After 24 hours:

Director, Global Support Services

After 30 Days:

Vice President, Services and Delivery

During regular business-hours Itron will respond

to Customer regarding Service Request within two (2) business days.

While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within two (2) business days.

Itron will work during normal business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4

Severity Level 4 Business Impact: Standard Operations intact. A low or no- impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality Example: Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.	During regular business- hours Itron will respond to Customer regarding Service Request within three (3) business days.	Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.
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* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

** Service Request opened on Non-production servers / environments are entered as a Severity Level 3.



Electric / Gas / Water
Information collection, analysis and application

2111 N. Molter Rd.
Liberty Lake, WA 99019
fax: 866-787-6910
www.itron.com

Pricing Summary for
Town of Apex, North Carolina

BMR# 24686-22 Ver1 Apr
April 25, 2022

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Itron Cloud Services						(1,2)
Setup Fees						
1	FTA-SETUP-FEE	Field Tools Advanced Value-Add Setup Fee			\$275.00	
Annual Subscription Fees						
2	FTA E-SUB	Field Tools Advanced, From 25,001 - 50,000 Endpoints, Electronic Delivery			\$1,749.00	
Itron Cloud Services Total					\$2,024.00	

Notes and Assumptions

- (1) Every new Field Tools Advanced customer must have Itron setup their Business Unit to make the Advanced Value-add features available to the Field Tools app or mobile client.
- (2) Subscriptions are an annual fee shown in List Price, to gain access to the Advanced Value-add features of Field Tools. Quantity pricing is based on the total number of distinct endpoints owned by the utility.
- (3) Unless otherwise agreed by the parties, Itron reserves the right to renew Recurring Services after the first year at the then-current price list.
- (4) Pricing is based on existing agreements or Itron's standard terms and conditions.
- (5) Freight and taxes are not included. Prices are in US dollars. Prices are valid for 60 days.



MINUTES - REGULAR TOWN COUNCIL MEETING

May 10, 2022 AT 6:00 PM

COUNCIL CHAMBERS – APEX TOWN HALL, 73 HUNTER STREET

WELCOME AND COMMENCEMENT

Mayor Jacques Gilbert called the meeting to order and welcomed the community to the meeting of the Town Council. Nathan Mariner provided the Invocation. The Mayor then asked all attending to join him in the Pledge of Allegiance.

Town Council and Administration:

In attendance were Mayor Jacques K. Gilbert, and Mayor Pro Tem Killingsworth, Council Members Brett D. Gantt, Terry Mahaffey, Cheryl F. Stallings and Edward Gray. Also, in attendance were Town Manager Catherine Crosby, Assistant Town Manager Shawn Purvis, Interim Town Clerk Julie Reid, and Town Attorney Laurie L. Hohe.

CONSENT AGENDA

The Mayor explained that all Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

CONSENT AGENDA

A motion was made to approve the consent agenda items as submitted. (Motion: Mayor Pro Tem Killingsworth/Second: Council Member Gray/Vote: 5-0)

- CN1 Approved the minutes of the April 26, 2022 meeting of the Regular Town Council Meeting.
- CN2 Approved the Apex Tax Report dated April 3, 2022.
- CN3 Approved a 3-year contract renewal with LexisNexis.
- CN4 Set the Public Hearing concerning the proposed Fiscal Year 2022-2023 Budget including expenditures for Economic Development (pursuant to NCGS 158-7.1), for Tuesday, May 24, 2022 at 6:00 p.m. at the Apex Town Hall.
- CN5 Approved the contract for audit services for the 2022 fiscal year with Cherry Bekaert LLP of Raleigh, North Carolina.
- CN6 Approved award of contract to National Transformer Sales for 3 Phase Pad Mount and Single Overhead Transformers.
- CN7 Approve award of contract to Crossroads Ford of Apex for the purchase of a 2022 F750 Chipper Truck.

- CN8 Appointed Sarah Soh as a new Planning Board member to serve the remaining term of Tommy Pate, December 31, 2022.
- CN9 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #22CZ01 Arden at Summit Pines PUD. The applicant, Collier Marsh, FC Apex, LLC., seeks to rezone approximately 11.74 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 8200 Jenks Road.
- CN10 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #21CZ31 Sears Property PUD. The applicant, Jeff Roach, Peak Engineering and Design, LLC., seeks to rezone approximately 26.218 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 & 2108 Old US 1 Highway.
- CN11 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 24, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the R. Michael Strickland Trustee of Family Trust property containing 13.541 acres located at 8200 Jenks Road, Annexation #727 into the Town’s corporate limits.
- CN12 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Peak 360, LLC property containing 7.6631 acres located at 7825 and 7809 Jenks Road, Annexation #732 into the Town’s corporate limits.
- CN13 Set the Public Hearing for the May 24, 2022 Town Council meeting regarding various amendments to the Unified Development Ordinance (UDO).
- CN14 Approved an Agreement with NCDOT for up to \$1,395,356 in federal funds, up to 80% reimbursement, of the total cost of right of way acquisition, utility relocation, and construction of project BL-0047, Downtown Apex Safe Routes to School, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN15 Approved a Review and Oversight Agreement with NCDOT for design review and project oversight activities for project BL-0047, Downtown Apex Safe Routes to School, requiring payment of a \$10,000.00 deposit, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN16 Approved the Triangle Area Water Supply Project Phase IX Five-Year Interlocal Agreement and authorized the Town Manager to execute it on behalf of the Town.
- CN17 Approved an agreement with Itron and authorized the Town Manager to execute the agreement on behalf of the Town.

PRESENTATIONS

The Mayor and Town Council Members read the following proclamations in turn.

- PR1 Presentation of LGBTQIA Pride Month 2022 Proclamation
- PR2 Presentation of Azerbaijan Independence Day Proclamation

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: May 14, 2024

Item Details

Presenter(s): Michael S. Deaton, PE, Director

Department(s): Water Resources

Requested Motion

Motion to approve an agreement with Itron and to authorize the Town Manager to execute Amendment #2 to the Itron FDM Tools and Field Tools Contract on behalf of the Town.

Approval Recommended?

Yes

Item Details

Town Council action is required to approve this Amendment #2 to FDM Tools and Field Tools Solution Contract # 2022-00000213 dated June 9, 2022 because the Contractor (Itron) did not delete the indemnity language as requested by the Town's Legal Department.

Field Deployment Manager (FDM) software is required to obtain water and electric meter reads and receive meter data such as consumption and meter health. This Amendment #2 extends the Contract for a period of one year to received continued support for FDM functions. The total subscription fees for this service is \$7,792.90.

Attachments

- Cover Sheet
- Amendment #2
- Itron Quote
- Contract #2022-00000213 Itron FDM Tools and Field Tools Solution Agreement



View results

Respondent

282

Jessica Sloan

12:49

Time to complete

1. DEPARTMENT *

Water Resources

2. CONTRACTOR/VENDOR NAME *

Itron, Inc.

3. CONTRACTOR/VENDOR ADDRESS *

2111 N Molter Road, Liberty Lake, WA 99019

4. CONTRACTOR/VENDOR CONTACT INFO (Provide FULL NAME and EMAIL of vendor/contractor/person recipient who will sign contract) *

Joel Vach joel.vach@itron.com

5. PURPOSE OF CONTRACT *

Field Deployment Manager (FDM) software is required to obtain water and electric meter reads and receive meter data such as consumption and meter health. This Amendment #2 extends the Contract for a period of one year to received continued support for FDM functions.

6. AMOUNT *

\$7,792.90

7. BUDGET CODE *

Split 50/50 32-8010 44509 and 30-8300 44509

8. TYPE OF CONTRACT *

- ☐ NEW
- ☐ RENEW
- ☒ AMENDMENT

9. HAS LEGAL REVIEWED AND IF SO, WHO? *

- ☒ Yes, Christopher Welch
- ☐ Yes, Laurie Hohe
- ☐ Yes, Brian Meyer
- ☐ No, Legal has NOT reviewed
- ☐ Other

10. SUMMARY OF CONTRACT BEING SUBMITTED *Required for Town Manager* *

The FDM Tools and Field Tools Solution are required for an additional year as the Meter Upgrade Project will not be fully implemented for another year. The software is instrumental in ensuring consumption is billed accurately to our customers.

11. MISC. COMMENTS?

Approved at Council on 5/14/24

12. ATTACHMENTS/EXHIBITS/CONTRACTS INCLUDED *(reminder to attach all files IF needed such as SSA, MSA, Certificate of Insurance and if new vendor attach application with W9)* *

- ☒ YES
- ☐ N/A

13. UPLOAD ALL FILES HERE, PLEASE ENSURE THE NEW TOWN MANAGER IS LISTED ON THE SSA OR MSA *

 [Council Coversheet Jessica Sloan.docx](#)

 [FDM Quote Jessica Sloan 1.pdf](#)

 [Itron 2022 Agreement Jessica Sloan.pdf](#)

 [Itron Amendment #2 ITRON SIGNED Jessica Sloan.pdf](#)

FDM Tools and Field Tools Solution Agreement



FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT

THIS FDM TOOLS AND FIELD TOOLS SOLUTION AGREEMENT (THIS “AGREEMENT”) GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES, AS DEFINED IN THE DEFINITIONS SECTION BELOW, THAT ARE PROVIDED BY ITRON, INC. OR ANY OF ITS SUBSIDIARIES (EACH “ITRON”).

This Agreement is made by and between Itron, Inc. (“Itron”), and entity organized under the laws of Washington having an address at 2111 N. Molter Road, Liberty Lake, WA 99019 and *Town of Apex*, an entity organized under the laws of North Carolina, having an address at 73 Hunter Street, Apex, NC 27502 (“Customer”) and is effective as of the date of the last signature (the “Effective Date”).

1. Definitions.

Affiliate means any legal entity that directly or indirectly controls, is controlled by, or is under common control with, a Party to this Agreement, where "control" means ownership of at least fifty (50) percent of the equity having the power to vote on or direct the affairs of the entity.

Annual Adjustment means Itron’s annual price increase.

Billing Cycle means a period of one year beginning on the Effective Date or any anniversary thereof.

Claim means an unaffiliated third-party claim, action, cause of action, or demand for damages, cost, or expense (including reasonable attorney’s fees) or other relief.

Client Services Guidelines Documents means the following documents as they may be updated by Itron from time to time: “Product Contact Information Sheet”, “After Hours Support”, and “Working Effectively with Itron Global Services”. Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to Customer.

Confidential Information means any confidential, trade secret or other proprietary information disclosed by a Party or a Party’s Affiliate related to its business that is designated as “confidential” or which a

reasonable person knows or should understand to be confidential, regardless of the form of disclosure and whether of a technical, business or financial nature, including but not limited to processes and methods, product design and details of operation, product plans, prototypes, schedules, results, reports, computer programs, databases, compilations of data, engineering activity, manufacturing activity, analytical methods, strategies, and the like, but excluding information that: (i) is now or becomes generally available to the public through no fault or breach of the receiving Party; (ii) is rightfully in the receiving Party's possession, or known by it, prior to its receipt from the disclosing Party; (iii) is rightfully disclosed to the receiving Party by a third-party, free of any obligation of confidentiality; (iv) is developed by the receiving Party independently and without reference to the disclosing Party's Confidential Information, or (v) is rightfully disclosed pursuant to the applicable laws or regulations, or rules of any stock exchange, or orders of the court or other government authorities with notice to the disclosing Party. Confidential Information shall not include "public records" as defined by Chapter 132 of the North Carolina General Statutes.

Covered Product means Software.

Customer means you or, if you are accepting on behalf of your employer or another entity, such employer or entity.

Customer Data means all data about Customer's existing or prospective end users that Itron acquires, develops, or derives in connection with performance under this Agreement. Such customer data may include, without limitation, any personally identifying information relating to a Customer's existing or prospective end user, or any other information that, either individually or when combined with other information could be used to identify a particular Customer end user or a prospective Customer end user, which information is not generally available to the public.

Defended Party means a Party entitled to defense and indemnification from the other Party under Section 11 ("Third-Party Claims") of this Agreement.

Defending Party means a Party obligated to provide defense and indemnification to the other Party under Section 11 ("Third Party Claims") of this Agreement.

Documentation means user manuals, training materials, product descriptions and specifications, technical manuals, supporting materials and other information relating to Services or Software provided by Itron, which Itron customarily makes available to its customers.

Endpoint means an electric meter, gas or water endpoint receiver-transmitter, battery-powered device, or any other device which Customer will configure and/or manage as part of a Service Offering.

Error means a material failure of Software to comply with applicable published Itron specifications.

Fees means all amounts payable to Itron by Customer for Services provided under this Agreement, as set forth in a Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Fix means a correction or workaround for an Error.

Global Support Services means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Customer's Primary Service Contacts with questions or issues related to the operation of Covered Products.

Improvement means an update, modification, enhancement and/or extension to Software functionality that is included in a Release.

Intellectual Property and **Intellectual Property Rights** mean all industrial and intellectual property, including, without limitation, patents, patent applications, invention registrations, and all other rights in inventions, copyrights in published and unpublished works, whether registered or unregistered, know-how, trade secrets, and confidential and proprietary information, whether such intellectual property has been created, applied for or obtained anywhere throughout the world.

M&S Commencement Date means the date upon and after which a Covered Product will be entitled to receive Maintenance Services purchased by Customer, which unless otherwise specified in a Quote provided by Itron, will be the Service Offering Commencement Date.

Maintenance Services means maintenance and support services described in Section 8 ("Maintenance Services") of this Agreement.

Mobile Device Software means Itron's FDM Tools or Field Tools mobile application for FDM Tools or Field Tools, as applicable.

One-Time Setup Fee means the one-time setup fee(s) for each Service Offering (if any) identified in the applicable Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron.

Operating Condition means performance in accordance with applicable published Itron specifications.

Party means Customer or Itron and **Parties** means Customer and Itron.

Primary Services Contacts means Customer's primary support staff who provides internal support to Customer's operations personnel and who are key interface to Itron for all Maintenance Services.

Quote means a valid quote for Services provided to Customer by Itron.

Release means a collection of Fixes and/or Improvements made available by Itron to Customer.

Service Offering means the FDM Tools or Field Tools software-as-a-service offering identified on the applicable Purchase Order whereby Itron or its designated provider hosts and provides Customer with access to SaaS Software on Servers via the internet.

SaaS Software means the Itron proprietary data collection and management computer program(s) for the Service Offering(s) purchased by Customer.

Servers means the physical computer hardware owned by Itron or its designated provider on which SaaS

Software will be installed, operated, and maintained by or on behalf of Itron.

Service Offering Commencement Date means, with respect to each Service Offering, the date Itron makes access credentials for the Service Offering available to Customer.

Service Levels means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A to this Agreement.

Services mean the Service Offering(s) and Maintenance Services.

Software means Mobile Device Software and SaaS Software.

Subscription Fees means annual fees identified in the applicable Quote or, if no Quote, Itron's then- current list price at the time of Purchase Order acceptance by Itron, for each Service Offering, plus the Annual Adjustment, if any.

Subscription Term means the subscription term purchased by Customer for each Service Offering, which begins upon the applicable Service Offering Commencement Date.

Territory means the country in which Itron provides Services to Customer.

2. Purchase Order Requirement. Customer shall purchase Services by issuing a purchase order or similar ordering document accepted by Itron ("Purchase Order") indicating specific Services, Itron part numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and contract reference. No contingency contained on any Purchase Order shall be binding upon Itron. The terms of this Agreement shall apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation submitted by Customer to Itron, and any such additional or conflicting terms are deemed rejected by Itron.

3. Term. The initial term of this Agreement begins on the Effective Date and expires one (1) year following the Effective Date. Prior to the expiration of the Subscription for the Mobile Device Software, the Parties will sign an amendment that extends the Subscription for the Mobile Device Software for one (1) year. Any accepted Purchase Orders as of the expiration date of this Agreement shall be completed by the Parties and the term of this Agreement will be extended solely for that purpose until completion. This Section is subject to Section 14 ("Termination") of this Agreement.

4. Fees, Invoicing, Taxes and Payment

4.1. . Fees. Itron offers a basic Service Offering and a premium Service Offering under this Agreement. The basic Service Offering is provided free of charge and the premium Service Offering is provided at the initial fees set forth in Quote or, if no Quote, Itron's then-current list price at the time of Purchase Order acceptance by Itron. Fees for Software Maintenance Services are included in the Subscription Fee, if any, for the applicable Service Offering. Itron reserves the right to add, remove and/or change features within a Service Offering at Itron's sole discretion and will notify Customer of such changes at least sixty (60) days in advance of implementing such changes within Service Offering.

4.2. Invoicing. Customer shall pay Subscription Fees (if any) in advance for each Billing Cycle for which it has purchased a Service Offering. Itron will invoice Customer for the One-Time Setup Fee and initial Subscription Fees for each Service Offering upon the Service Offering Commencement Date. Initial Subscription Fees shall be prorated based on the number of months remaining in the current Billing Cycle following the Service Offering Commencement Date. Itron may discontinue a Service Offering by providing Customer with written notice of discontinuance no less than 180 days prior to the commencement of a Billing Cycle. Otherwise, Itron will provide Customer with a renewal notice for the Service Offering at least 120 days prior to the commencement of each Billing Cycle. Customer may discontinue a Service Offering by providing Itron with written notice of non-renewal no less than 90 days prior to the commencement of a Billing Cycle. Otherwise, approximately 20 days prior to the commencement of each Billing Cycle, Itron will provide Customer with an invoice for Subscription Fees payable by Customer for the forthcoming Billing Cycle.

4.3. Payment. Customer shall pay the Itron entity designated in the applicable invoice. Unless otherwise specified in the applicable invoice, Customer shall pay such Itron entity in USD. Customer must pay each invoice within thirty (30) days of the invoice issuance date. Payment must be made by electronic transfer to a bank account designated by Itron.

4.4. Invoice Disputes. Customer shall notify Itron in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) days from the original invoice date. Invoices for which no such timely notification is received shall be deemed accepted by Customer as true and correct, and Customer shall pay all amounts due under such invoices within the period set forth in Section 4.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 17 ("Disputes"). Notwithstanding anything to the contrary, each Party shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, payment by Customer of all undisputed amounts due and payable under this Agreement.

4.5. Late Payment. Except for invoiced payments that Customer has timely disputed, all late payments

shall bear interest at the lesser of the rate of one percent (1%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Itron for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Itron does not waive by the exercise of any rights hereunder), Itron shall be entitled to suspend the provision of any Services if Customer fails to pay any undisputed amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof.

4.6. No Setoff. Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any setoff of any claim or dispute with Itron, whether relating to Itron's breach, bankruptcy, or otherwise.

4.7. Taxes. All prices are exclusive of any taxes, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon this Agreement. Customer shall pay any taxes related to products and services provided pursuant to this Agreement (except for taxes based on Itron's net income) or shall present an exception certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice. The Parties agree to fully cooperate with one another regarding taxes and any related issues arising from this Agreement. Customer shall indemnify and hold Itron harmless from any tax liability assessed against Itron but rightfully owed by Customer arising from or related to transactions set forth herein .

5. Documentation. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees, Itron hereby grants to Customer a non-exclusive, non-transferable, non-assignable, limited right to access and use the Documentation with the Services for its internal business purposes in the Territory. Itron will make its standard Documentation available via download. Itron will provide Customer with download instructions.

6. Service Offerings

6.1. Access Rights and Restrictions.

6.1.1. Access Rights. Subject to Customer's compliance with this Agreement, including payment of all applicable Fees (if any), Itron hereby grants to Customer, for the Subscription Term(s) purchased, a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering(s) for its internal business purposes in the Territory.

6.1.2. Restrictions on Use. Customer and its authorized users may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than authorized users, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering or related

Documentation to provide services to third parties, or otherwise use any Service Offering on a “service bureau” or “timesharing” or subscription basis; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron’s or its providers’ Intellectual Property Rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron’s or its providers’ Intellectual Property Rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron’s or its providers’ systems or networks; (m) merge any Service Offering with any other product or service without Itron’s prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.

6.1.3. Content Restrictions. Customer may not distribute, download, or place on any Itron or its providers’ website or Server, or use with any Service Offering, any content that: (a) Customer knows or has reason to believe infringes the Intellectual Property Rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as “Prohibited Content”). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to Customer. Customer will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys’ fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers’ website or Server or used with any Service Offering by Customer.

6.2. Breach of Restrictions. Customer’s breach of the restrictions set forth in Section 6.1.2 (“Restrictions on Use”) or Section 6.1.3 (“Content Restrictions”) shall constitute a material breach of this Agreement and shall result in revocation and immediate suspension or termination, as determined by Itron in its sole discretion, of all rights and licenses granted under this Agreement with respect to the Service Offerings. Revocation does not preclude Itron from pursuing any legal and equitable remedies for Customer’s breach of these restrictions.

6.3. SaaS Software Availability. Itron will endeavor to make the SaaS Software available to Customer

through the Service Offering(s) purchased by Customer at least 99.5% of the time, excluding any downtime resulting from maintenance or circumstances beyond Itron's reasonable control.

6.4. Third-Party Radio Devices. Customer may use a Service Offering to collect Customer Data from Endpoints equipped with radio communication devices not manufactured or provided by Itron ("Third-Party Radio Device"). Itron makes no representations or warranties whatsoever, directly or indirectly, express or implied, as to the suitability, durability, and fitness for use, merchantability, condition, quality, performance or non-infringement of, and disclaims all liability with respect to, Third-Party Radio Devices. Without limiting the foregoing, Itron shall have no liability (a) if a Third-Party Radio Device is not responding or communicating or (b) for unread Endpoints due to defective or unreachable Third-Party Radio Devices. Customer shall contact the supplier of such device for support.

6.5. Sizing of Software-as-a-Service. Itron will size Service Offerings, Servers, and systems for Customer's specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require a written agreement of the Parties and may result in a change in Subscription Fees.

6.6. Application Upgrade and Fixes. SaaS Software is updated regularly using a continuous delivery method.

6.7. Conditions on Use of Service. Customer will use of the Service Offerings only in accordance with the Documentation, this Agreement, and applicable laws and government regulations. The rights of any user to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user), and Customer shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

6.8. Suspension or Restriction of Service. Itron may suspend or restrict all or part of the Service Offerings at any time to protect the integrity and functionality of the Software, Servers, platforms, and systems, or for a breach of Section 6.1.2 ("Restrictions on Use"), Section 6.1.3 ("Content Restrictions") or Section 6.7 ("Conditions on Use of Service"), until such breach is cured to Itron's reasonable satisfaction.

6.9. Incident Management. Itron will provide Customer support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers.

6.10. Customer Technical Responsibilities. Customer is responsible for selecting, acquiring, securing and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Customer's sole expense.

6.11. User IDs and Passwords. Itron shall provide Customer with a user identification and password ("User ID") to access each Service Offering. Customer shall be solely responsible for all use of Customer's subscriptions and accounts. Customer shall maintain the confidentiality of all User IDs assigned to or created by Customer. User IDs may not be shared or used by more than one user.

6.12. Maintenance. System maintenance, whenever reasonably practicable, will be performed during off-business hours based on the regions covered by the Service Offering. Itron will minimize Service Offering disruptions to the extent reasonably practical.

6.13. Business Continuity. Application data is fully backed up weekly and differentially backed up daily unless backup is prevented by loss of datacenter or datacenter connectivity or other circumstances outside Itron's reasonable control. Itron's hosted environment is on fault tolerant systems with specific mechanisms for high availability.

6.14. Recovery of Customer Data. At the end of the Term of the Agreement or SaaS service (unless the Agreement or SaaS service is renewed pursuant to duly executed amendment or a new agreement), or in the event of its early termination in accordance with the terms of the Agreement, Customer will confirm to Itron in writing, no later than on the effective date of expiration or termination, its decision to close the SaaS service ("Closure Confirmation"). Provided that Itron has received the Closure Confirmation from Customer within the aforementioned period, Itron will maintain Customer's access to the system for a maximum period of three (3) months from receipt of the Closure Confirmation, for the sole purpose of enabling Customer to retrieve the following Customer data: access account information, meter details, history of index reading data and photographs. Customer may, at no additional cost, export said system data in the standard file format used by the SaaS service, or the format already supported by the SaaS service. At the end of this three (3) month period, the Customer data will be permanently deleted and will no longer be recoverable.

7. Mobile Device Software License.

7.1. License Grant. Subject to the terms of this Agreement, Itron grants Company a limited, non-exclusive, and non-transferrable license to download, install, and use the Mobile Device Software on Itron-approved mobile devices owned or otherwise controlled by Customer (each a "Mobile Device")

strictly in accordance with the Documentation.

7.2. License Restrictions. Customer shall not: (a) copy the Mobile Device Software; (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Mobile Device Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Mobile Device Software or any part thereof; (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Mobile Device Software, including any copy thereof; or (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Mobile Device Software, or any features or functionality of the Mobile Device Software, to any third party for any reason.

7.3. Updates. Itron may from time to time in its sole discretion develop and provide Mobile Device Software updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Based on Customer's Mobile Device settings, when Customer's Mobile Device is connected to the internet either: (a) the Mobile Device Software will automatically download and install all available Updates; or (b) Customer may receive notice of or be prompted to download and install available Updates. Customer shall promptly download and install all Updates and acknowledge and agree that the Mobile Device Software, the Service Offering, or portions thereof may not properly operate should Customer fail to do so. Customer further agrees that all Updates will be deemed part of the Mobile Device Software and be subject to all terms and conditions of this Agreement.

7.4. Compatible Mobile Devices. Mobile Device Software is designed to work in connection with Mobile Devices that meet Itron minimum requirements. Itron will provide the minimum specifications to Customer. Itron is not required to make Mobile Device Software work with any other mobile devices.

7.5. Disclaimer of Liability. Mobile Device Software requires Internet connectivity, which Customer is solely responsible for procuring. Itron accepts no responsibility for any internet services failure, Mobile Device failure, or for any loss or damage of any kind caused by such failure.

8. Maintenance Services.

8.1. Primary Services Contacts.

8.1.1. Designation by Customer. Customer shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Primary Services Contacts shall

promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Customer's sole right to choose its Primary Services Contacts, Customer and Itron acknowledge that each Primary Services Contact must have the appropriate technical skills and training for the position. If Customer replaces a Primary Services Contact, Customer will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.

8.2. Training of Principal Services Contacts. Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Customer's training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. Customer may perform Itron-approved training or may engage Itron to perform training of Primary Services Contacts at Itron's then current rates. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the Parties. Customer shall be responsible for all Customer's associated travel-related expenses and, if the Parties agree that training will be provided at a location other than an Itron-designated facility (e.g., at a Customer- proposed facility), Customer will also reimburse Itron's travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train other Customer personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, Customer shall promptly provide such training to its Primary Services Contacts in accordance with this Section. Global Support Services & Service Requests.

8.2.1. Global Support Services. Itron will make support representatives available to provide technical support during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products; release or system management consulting; and recommendations for fully utilizing Covered Products. Customer acknowledges and agrees that Global Support Services are not intended as a substitute for training of Customer personnel, field support, or Itron professional services. Nor will Customer use Global Support Services in lieu of having qualified and trained support personnel of its own.

8.2.2. Service Request Process. Customer shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. Customer may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When Customer submits a Service Request, Customer will reasonably assess its

urgency according to the appropriate Severity Level in Attachment A to this Agreement. Itron will designate the initial Severity Level and the Parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

8.2.3. Field Support. At Customer's request, and Itron's approval, Itron will dispatch support personnel to Customer's location to provide onsite Global Support Services ("Requested Field Support") related to a reported problem which cannot be addressed remotely. Requested Field Support will be billed at Itron's then-current rates, and Customer will reimburse Itron's travel-related expenses, unless the cause of the reported problem is found to be the fault of Itron.

8.3. Software Maintenance.

8.3.1. Fixes. Itron shall provide Fixes 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, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

8.3.2. Improvements. Itron shall provide Improvements, if any, at no charge to Customer if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements created as new add-on modules/features and not part of the products original specifications, will be created at Itron's discretion and will be billable at Itron's then current rates. Access to new add-on modules may also require additional licensing and subscription fees.

8.3.3. Exclusions. Itron shall have no obligation to provide Maintenance Services for, or liability to Customer for Software adversely affected by (i) use of Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Software; (ii) failure to perform customer responsibilities describe in this Agreement, (iii) viruses introduced through no fault of Itron.

8.3.4. Customer Responsibilities. Customer will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Customer's Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

9. Warranty Disclaimer. ITRON MAKES NO WARRANTY OF ANY KIND RELATING TO SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES, 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. ITRON AND ITS SUPPLIERS DO NOT WARRANT OR REPRESENT THAT SERVICES OR EQUIPMENT WILL BE FREE FROM BUGS, ERRORS OR THAT THEIR USE WILL BE UNINTERRUPTED OR ERROR-FREE. ITRON ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM ITS DATA CENTERS OR DATA CENTERS OF ITS VENDORS VIA WAN, CELLULAR OR OTHER PUBLIC COMMUNICATIONS OR BROADBAND SYSTEMS (INCLUDING OUTAGES, DEVICE NON-REACHABILITY, LOSS OR INACCURATE READING) OR FOR ANY CONSEQUENCES, LOSSES, OR DAMAGES ARISING FROM CHANGES MADE BY CUSTOMER TO THE CONTENT OR PROGRAMMING OF EQUIPMENT (UNLESS CAUSED BY A DEFECTIVE PRODUCT). THESE DISCLAIMERS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER THIS AGREEMENT.

10. Intellectual Property.

10.1. Reservation of Intellectual Property. Subject to the limited rights expressly granted by Itron to Customer under this Agreement: (i) Itron reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Itron owns all rights, title and interest in and to its Confidential Information and the products, services and related deliverables provided by Itron under this Agreement. Subject to the limited rights expressly granted by Customer to Itron under this Agreement, Customer reserves all rights, title and interest in and to all of its Intellectual Property, and (ii) as between the Parties, Customer owns all right, title and interest in and to its Confidential Information and Customer Data. All rights, titles, and interests not specifically and expressly granted by either Party hereunder are hereby reserved.

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

11. Third-Party Claims.

11.1. General Claims. The Defending Party will defend the Defended Party from and against Claims arising from personal bodily injury, death, or damage to tangible personal property or real property, and will indemnify the Defended Party from resulting settlements approved by the Defending Party and final judgments entered against the Defended Party, to the extent caused by the negligence of the Defending Party.

11.2. Infringement Claims. Itron, as the Defending Party, will defend Customer, as the Defended Party, from and against Claims alleging that any Itron-branded products or services, as delivered to Customer, infringe upon any third party's Intellectual Property Rights within the Territory ("IP Claims"). Itron will also indemnify Customer for settlements approved by Itron and final judgments entered against Customer to the extent resulting from IP Claims. If Itron receives notice of an alleged infringement by any products or services provided to Customer under this Agreement, or if Itron reasonably believes that an IP Claim is likely, Itron may stop delivery of the affected products or services without liability for failure to deliver them. Itron will have the right, at its sole option, to obtain the right for Customer to continue use of the affected products or services, or to replace or modify the affected products or services so that they are no longer alleged or believed to infringe, if it can be done without significant loss of functionality. If neither of the foregoing options are available to Itron on commercially reasonable terms, Itron may terminate Customer's use of the affected products or Services without further liability under this section, in which case Itron will refund to Customer the depreciated value of the affected product and any prepaid unused portion of the service.

11.3. Conditions to Defense. As a condition to the Defending Party's obligations under Section 11.1 or Section 11.2 above, the Defended Party must: (i) promptly notify the Defending Party in writing of the Claim; (ii) give the Defending Party all reasonably requested information and assistance in connection with the Claim in a timely manner; and (iii) give the Defending Party the sole right to control the defense and settle of the Claim. The Defending Party shall not enter into any settlement of a Claim against a Defended Party without the Defended Party's prior written consent unless: (a) there is no admission of fault of the Defended Party; (b) there is no injunctive or other non-monetary relief against the Defended Party; and, (c) the settlement includes the claimant's or plaintiff's release of the Defended Party from all liability in respect of the Claim.

11.4. Exclusions to Infringement Claim Defense. Itron will have no obligation under Section 11.2 above for any infringement Claim in which infringement is alleged or caused by (i) the combination, operation or use of any product or service provided by Itron with any product or service (including third-party software and equipment) not provided by Itron, (ii) any modification to products or services made either without Itron's prior written consent or by a person other than Itron or an authorized representative

of Itron, (iii) failure to use updated or modified products or services as provided by Itron, (iv) use of any release of Itron software or any firmware other than the most current release made available to Customer, (v) use of products or services not in accordance with this Agreement and applicable Documentation, or (vi) Itron's compliance with any designs, specifications, or instructions provided by Customer. In addition, Itron shall not be liable for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

11.5. EXCLUSIVE REMEDY. THIS SECTION 11 CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

12. Data Protection. The Parties must implement and establish reasonable security protocols for the protection and retention of Customer Data. As between Customer and Itron, Customer will retain its rights in Customer Data; provided, however, Customer hereby grants Itron a non-exclusive, royalty-free, perpetual, worldwide license to copy, modify, use, sublicense, distribute, display, create derivative works of all Customer Data for the purposes of (i) providing products and services to Customer, (ii) testing, troubleshooting, and optimizing performance and quality of Itron's products and services, and (iii) so long as Customer is not identifiable and all personally identifiable information is either removed or anonymized, developing new products and services. Itron assumes no responsibility for Customer or third-party content carried on Customer's or Itron's systems. Customer warrants and represents that, during the term of this Agreement, (a) it has the legal right and authority to grant Itron access to view, store, and use the Customer Data to provide products and services, and (b) Itron's transmission, use and storage of any such Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligation between Customer and any third-party..

13. Confidentiality. Each Party receiving, possessing, accessing or otherwise acquiring Confidential Information of the other Party acknowledges that the disclosing Party's Confidential Information is the property of and confidential to, or a trade secret of, the disclosing Party. The receiving Party: (a) must keep the disclosing Party's Confidential Information confidential and may not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the disclosing Party's prior written approval; (b) must take all reasonable steps to secure and keep secure all disclosing Party's Confidential Information coming into its possession or control; (c) may not disclose any Confidential Information to anyone other than the receiving Party's employees, agents, contractors or subcontractors and professional advisors, or those of its Affiliates, who have a need to know such Confidential Information; (d) must use the Confidential Information solely for purposes related to the subject matter of this Agreement or for potential future commercial transactions between the Parties not otherwise covered by a separate agreement; and (e) must ensure that any person to whom it discloses Confidential Information in accordance with this provision is subject to binding confidentiality obligations that are at least as restrictive as those set forth in this Agreement.

14. Termination. 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, or (ii) commits a material breach of this Agreement that remains uncured for thirty (30) days following delivery of written notice of such breach. Any notice of breach must specify (a) the nature of the breach, and (b) the specific act or acts that the non-breaching Party contends would correct such breach. For the avoidance of doubt, Customer's failure to pay invoices timely will be deemed a material breach of this Agreement.

15. Survival. The following sections of this Agreement shall survive termination or expiration of this Agreement: 1 ("Definitions"), 3 ("Term"), 4 ("Fees, Invoicing, Taxes and Payment"), 6.1.2 ("Restrictions on Use"), 6.2 ("Breach of Restrictions"), 9 ("Warranty Disclaimer"), 10 ("Intellectual Property"), 12 ("Data Protection"), 13 ("Confidentiality"), 15 ("Survival"), 16 ("Limitation of Liability"), 17 ("Disputes"), 18 ("Governing Law and Venue"), 23 ("Force Majeure"), and 24 (Miscellaneous).

16. Limitation of Liability. Except for Customer's violation of Itron's Intellectual Property Rights, neither Party will be liable to the other Party for any consequential, indirect, special, incidental, punitive or exemplary damages arising out of this Agreement or products or services provided hereunder (including, but not limited to, damages for loss of data, goodwill, profits other than amounts payable by Customer to Itron hereunder, investments, use of money or facilities; interruption in use or availability of data; stoppage of other work or impairment of other assets), whether or not foreseeable and even if such Party has been advised of the possibility of such damages. Except for Customer's payment obligations hereunder or violation of Itron's Intellectual Property Rights, neither Party's total, aggregate liability to the other Party arising out of or related to this Agreement or any products or services provided hereunder shall exceed the amounts paid and payable by Customer under this Agreement during the twelve month period immediately preceding the date upon which the liability arose, regardless of whether any action or claim is based on contract, warranty, indemnity, negligence, strict liability or other tort or otherwise.

17. Disputes. The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a "Dispute") in accordance with this Section. A Party shall send written notice to the other Party of any Dispute ("Dispute Notice"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) Business Days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party ("Escalation to Executive Notice"), refer such Dispute to the executives of each Party designated by such Party in a written notice to the other Party ("Executive(s)"). If the Executives cannot resolve any Dispute during the period ending thirty (30) Business Days after the date of the Escalation to Executive Notice (the last day of such time period, the "Escalation to Mediation Date"), either

Party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation or agree to any settlement proposed by the mediator, within sixty (60) Business Days after the Escalation to Mediation Date, either Party may proceed in accordance with the provisions of Section 18 (Governing Law and Venue). Notwithstanding the foregoing, nothing in this Section shall be construed as preventing a Party from seeking available equitable relief, including without limitation, specific performance and injunctive relief in a court of competent jurisdiction.

18. Governing Law and Venue. This Agreement and all related documents, including all addenda attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of North Carolina, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the United States District Court for the Western District of Texas, if such court does not have subject matter jurisdiction, the courts of the State of Texas sitting in Travis County, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the United States District Court for the Eastern District of North Carolina or, if such court does not have subject matter jurisdiction, the courts of the State of North Carolina sitting in Wake County. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

19. Legal Compliance. Each Party must comply with all applicable laws. Itron's products and services delivered under this Agreement are subject to the U.S. Export Administration Regulations ("EAR"; 15 CFR part 730 et seq.) and any applicable laws and regulations of the particular country to which such items are shipped or received. Customer shall comply with all applicable export control laws and shall not cause, directly or indirectly, the export, re-export, or transfer of any such items or services to destinations or persons without obtaining any required prior authorization from the U.S. Government and any other

applicable local authorities. Customer shall not do anything to cause Itron to violate such export control laws, including, but not limited to, requesting support for a product that has been unlawfully re-exported or requesting delivery of a product or service intended for a U.S. sanctioned region or person. Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Customer shall maintain any required export records related to Itron's products or services and make such records available to Itron upon request. The Parties must comply with all anti-bribery laws and may not make any payments or transfer any item of any value for the purpose of bribing any individual or group, or accepting or participating in any extortion, kickbacks, or other unlawful or improper means to obtain business related to this Agreement or products and services orderable under this Agreement.

20. Publicity. Neither Party may issue a press release related to this Agreement or their relationship without the other Parties' prior written consent.

21. Sub-contractor and Outsourcer. Itron may hire, engage, or retain the services of one or more subcontractors and/or outsourcing providers to perform any or all of its obligations related to its product development, network operations, and/or any portion of services provided under this Agreement. Subcontractors and outsourcing providers that have access to Customer Data will be bound by written obligations of confidentiality and data security requirements as restrictive as those required under this Agreement.

22. Independent Contractor. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. The Parties are independent contractors. Neither Party has any authority to act on behalf of, or to bind the other to any obligation.

23. Force Majeure. Neither Party (the "Impacted Party") shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for Customer's obligations to make payments to Itron under this Agreement), when and to the extent such failure or delay is caused by or results from acts or omissions (whether in effect on or after the Effective Date of this Agreement) beyond the Impacted Party's reasonable control and without the Impacted Party's negligence, including, without limitation: (a) left blank (b) severe weather, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in applicable laws or regulations; (e) embargoes or blockades; (f) action or inaction by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; (i) shortage of adequate materials, qualified labor, power or transportation; (j) epidemics, pandemics or quarantines; and (k) other similar or dissimilar circumstances outside the Impacted Party's reasonable control and without the Impacted Party's negligence (each a "Force Majeure").

24. Miscellaneous. (a) If any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction or arbitration panel, such provision will be deleted and the remaining terms will be construed so as to give maximum lawful effect to any such deleted terms. (b) Section 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. (c) No waiver by either Party of any breach under this Agreement will constitute a waiver of any other breach. (d) This Agreement is not made for the benefit of any third parties. (e) All notices under this Agreement must be sent to such other address as such Party has notified the other in writing, will be effective on the date received (unless the notice specifies a later date) and must be sent by a courier service that confirms delivery in writing, or by certified or registered mail, postage prepaid, return receipt requested. All communications and notices to be made or given pursuant to this Agreement must be in English. (f) Customer may not assign this Agreement or any of its rights hereunder without Itron's prior written consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but any assignment in violation of this provision will be void.

25. Public Records Requirements. To the extent applicable, Itron will comply with the public records requirements in Customer's state. Itron recognizes that Customer is subject to public records laws under which Customer is 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 software and/or documentation 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. Customer also agrees to reasonably cooperate with Itron to mitigate the disclosure of such software and/or documentation to the extent requested by Itron and allowed by applicable public records laws.

In witness thereof, the Parties, by their authorized agents, affix their signatures and seals this 9th day of June, 22

Itroth

DocuSigned by:

Name: _____

Joel Vach

D4BB7D03A21E4BB...

(type or print)

By: Joel Vach

(Signature)

Title: VP-Tax and Corporate Treasurer

Attest: _____

DocuSigned by:

Chris Ware

7AF489604F544EB...

(Secretary, if a corporation)

CLIENT (Town of Apex)

Catherine Crosby, Town Manager

Attest: _____

Town Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Vance Holloman
Vance Holloman, Finance Director

Attachment A**– Software Maintenance & Support Service Levels –**

Severity Level	Response Times	Effort Level and Restoration	Escalation
Business Impact: Critical Impact / System Down. A Production System Error for which there is no work-around, which causes Software or a critical business function / process of said product to be unavailable such that system operation cannot continue. Example: a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down	During regular business-hours Itron will begin the Service Request process during Customer's initial call. During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, to validate receipt of the critical support call and begin the Service Request process. Following the start of the Service Request process Itron will respond to Customer's Service Request within two (2) business hours with an investigation response. Itron will update Customer at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties. Customer will respond to an Itron inquiry or request within three (3) hours.	Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to: i) restore Software with a change to eliminate root cause, ii) provide a workaround which restores Software and downgrades the Severity Level to S2, S3, S4. Customer Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.	An unresolved Service Request shall be escalated to Itron management as follows: After 30 minutes: Technical Customer Support Team Lead After 8 hours: Manager, Technical Client Services After 16 hours: Director, Global Support Services After 48 hours: Service Request. Vice President, Services and Delivery After 72 hours: President, Itron

Severity Level 2***Business Impact: Major****impact, degraded**

Operation. An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Software to miss required business interface or deadlines. Software remains available for operation but in a highly restricted fashion.

Example: a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Software operating slow, missing data, data delivery, daily mission.

Severity Level 3****Business Impact:****Minor Business Impact, compromised operations.**

An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing Customer from performing daily activities.

Example: The Service Request affects use by Software users, allowing Customer's functions to continue to meet daily business needs.

During regular business-hours Itron will respond

to Customer regarding Service Request within one (1) business day.

While Service Request remains unresolved, Itron will update the Customer and the Service Request at least every other business day, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within one (1) business day.

During regular business-hours Itron will respond to Customer regarding Service Request within two (2) business days.

While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties.

Customer will respond to an Itron inquiry or request within two (2) business days.

Itron will make diligent efforts during normal

business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrade the Severity Level to S3, S4.

Itron will work during normal business hours to:

i) restore Software with a change to eliminate root cause, ii) a workaround which restores Software and downgrades the Severity Level to S4

An unresolved Service Request shall be

escalated to Itron management as follows:

After 1 hours:

Technical Customer Support Team Lead

After 8 hours:

Manager, Technical Client Services

After 24 hours:

Director, Global Support Services

After 30 Days:

Vice President, Services and Delivery

Severity Level 4 Business Impact: Standard Operations intact. A low or no-impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality Example: Generally, a cosmetic Error or an Error which does not degrade Customer's use of the product or system.	During regular business-hours Itron will respond to Customer regarding Service Request within three (3) business days.	Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.
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* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

** Service Request opened on Non-production servers / environments are entered as a Severity Level 3.



Electric / Gas / Water
Information collection, analysis and application

2111 N. Molter Rd.
Liberty Lake, WA 99019
fax: 866-787-6910
www.itron.com

Pricing Summary for
Town of Apex, North Carolina

BMR# 24686-22 Ver1 Apr
April 25, 2022

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Itron Cloud Services						(1,2)
Setup Fees						
1	FTA-SETUP-FEE	Field Tools Advanced Value-Add Setup Fee			\$275.00	
Annual Subscription Fees						
2	FTA E-SUB	Field Tools Advanced, From 25,001 - 50,000 Endpoints, Electronic Delivery			\$1,749.00	
Itron Cloud Services Total					\$2,024.00	

Notes and Assumptions

- (1) Every new Field Tools Advanced customer must have Itron setup their Business Unit to make the Advanced Value-add features available to the Field Tools app or mobile client.
- (2) Subscriptions are an annual fee shown in List Price, to gain access to the Advanced Value-add features of Field Tools. Quantity pricing is based on the total number of distinct endpoints owned by the utility.
- (3) Unless otherwise agreed by the parties, Itron reserves the right to renew Recurring Services after the first year at the then-current price list.
- (4) Pricing is based on existing agreements or Itron's standard terms and conditions.
- (5) Freight and taxes are not included. Prices are in US dollars. Prices are valid for 60 days.



MINUTES - REGULAR TOWN COUNCIL MEETING

May 10, 2022 AT 6:00 PM

COUNCIL CHAMBERS – APEX TOWN HALL, 73 HUNTER STREET

WELCOME AND COMMENCEMENT

Mayor Jacques Gilbert called the meeting to order and welcomed the community to the meeting of the Town Council. Nathan Mariner provided the Invocation. The Mayor then asked all attending to join him in the Pledge of Allegiance.

Town Council and Administration:

In attendance were Mayor Jacques K. Gilbert, and Mayor Pro Tem Killingsworth, Council Members Brett D. Gantt, Terry Mahaffey, Cheryl F. Stallings and Edward Gray. Also, in attendance were Town Manager Catherine Crosby, Assistant Town Manager Shawn Purvis, Interim Town Clerk Julie Reid, and Town Attorney Laurie L. Hohe.

CONSENT AGENDA

The Mayor explained that all Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately.

CONSENT AGENDA

A motion was made to approve the consent agenda items as submitted. (Motion: Mayor Pro Tem Killingsworth/Second: Council Member Gray/Vote: 5-0)

- CN1 Approved the minutes of the April 26, 2022 meeting of the Regular Town Council Meeting.
- CN2 Approved the Apex Tax Report dated April 3, 2022.
- CN3 Approved a 3-year contract renewal with LexisNexis.
- CN4 Set the Public Hearing concerning the proposed Fiscal Year 2022-2023 Budget including expenditures for Economic Development (pursuant to NCGS 158-7.1), for Tuesday, May 24, 2022 at 6:00 p.m. at the Apex Town Hall.
- CN5 Approved the contract for audit services for the 2022 fiscal year with Cherry Bekaert LLP of Raleigh, North Carolina.
- CN6 Approved award of contract to National Transformer Sales for 3 Phase Pad Mount and Single Overhead Transformers.
- CN7 Approve award of contract to Crossroads Ford of Apex for the purchase of a 2022 F750 Chipper Truck.

- CN8 Appointed Sarah Soh as a new Planning Board member to serve the remaining term of Tommy Pate, December 31, 2022.
- CN9 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #22CZ01 Arden at Summit Pines PUD. The applicant, Collier Marsh, FC Apex, LLC., seeks to rezone approximately 11.74 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 8200 Jenks Road.
- CN10 Set a Public Hearing for the May 24, 2022 Town Council meeting regarding Rezoning Application #21CZ31 Sears Property PUD. The applicant, Jeff Roach, Peak Engineering and Design, LLC., seeks to rezone approximately 26.218 acres from Rural Residential (RR) to Planned Unit Development-Conditional Zoning (PUD-CZ). The proposed rezoning is located at 0 & 2108 Old US 1 Highway.
- CN11 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 24, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the R. Michael Strickland Trustee of Family Trust property containing 13.541 acres located at 8200 Jenks Road, Annexation #727 into the Town’s corporate limits.
- CN12 Adopted a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for May 10, 2022, on the Question of Annexation – Apex Town Council’s intent to annex the Peak 360, LLC property containing 7.6631 acres located at 7825 and 7809 Jenks Road, Annexation #732 into the Town’s corporate limits.
- CN13 Set the Public Hearing for the May 24, 2022 Town Council meeting regarding various amendments to the Unified Development Ordinance (UDO).
- CN14 Approved an Agreement with NCDOT for up to \$1,395,356 in federal funds, up to 80% reimbursement, of the total cost of right of way acquisition, utility relocation, and construction of project BL-0047, Downtown Apex Safe Routes to School, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN15 Approved a Review and Oversight Agreement with NCDOT for design review and project oversight activities for project BL-0047, Downtown Apex Safe Routes to School, requiring payment of a \$10,000.00 deposit, and authorized the Town Manager to execute the agreement on behalf of the Town.
- CN16 Approved the Triangle Area Water Supply Project Phase IX Five-Year Interlocal Agreement and authorized the Town Manager to execute it on behalf of the Town.
- CN17 Approved an agreement with Itron and authorized the Town Manager to execute the agreement on behalf of the Town.

PRESENTATIONS

The Mayor and Town Council Members read the following proclamations in turn.

- PR1 Presentation of LGBTQIA Pride Month 2022 Proclamation
- PR2 Presentation of Azerbaijan Independence Day Proclamation

CONTRACT ROUTING CONTROL SHEET

Routing Order: (1) Department Director, (2) Purchasing and Contract Manager (3) Legal,
(4) Risk Manager, (5) Vendor for Signature (6) Finance Director, (7) Town Clerk, (8) Town Council/Town Manager

EVERY SECTION MUST BE COMPLETED

DEPARTMENT:	
Department Contact Person for Contract: <u>Michael Mole</u> Extension: <u>919-372-7512</u>	
Contractor/Vendor Name and address: <u>Iron 2111 N Molter Road, Liberty Lake, WA 99019</u>	
Contractor/Vendor Phone: Contractor/Vendor Contact Person: <u>Tracy Wright 865-356-3546</u>	
Purpose of Contract: <u>FDM Software Upgrade and annual support to assist with meter services.</u>	
Amount: <u>\$2,024</u> Budget Code: <u>32-8010 44509 & 30-8300 44509</u>	
Type of Contract: ☒ New ☐ Renew ☐ Amendment Exhibits/Attachments included: ☒ Yes ☐ N/A	
Department Director's Signature: <u>Michael S Deaton</u> Date: <u>4/25/2022</u>	
<i>All Contracts should be sent to the Purchasing and Contract Manager (Steve Maynard). Steve will determine whether the contract will need to go to the Legal Department for review or not.</i>	
LEGAL	
Reviewed by: <u>Christopher Welch</u> Digitally signed by Christopher Welch Date: 2022.04.25 10:36:16 -0400 Date: <u>04/25/2022</u>	
Comments: <u>Iron accepted some changes but did not remove indemnity; Council approval required</u>	
☒ Town Council approval required ☐ Town Manager authorized to approve	
☐ N/A – Purchasing and Contract Manager to forward	
☐ Other Approvals required/permitted:	
RISK MANAGER	
Reviewed by and approved: _____ Date: _____	
☒ N/A – Purchasing and Contract Manager to forward	
☐ Insurance specifications meet requirements.	
☐ Insurance specifications have been revised.	
☐ A pre-project safety review between the contractor and contracting department is required.	
<i>Return to Department Contact Person to have contract signed by Contractor prior to forwarding to Finance Director</i>	
<i>Obtain a copy of Certificate of Insurance that includes the proper coverage and shows the Town as an additional insured</i>	
FINANCE DIRECTOR	
☒ Sufficient funds are available in the proper category to pay for this expenditure. <u>PO # 2022-1278</u>	
☐ This contract is conditioned upon appropriation by the Town Council of sufficient funds.	
☐ A budget amendment is necessary before this agreement is approved.	
☐ A budget amendment is attached as required for approval of this agreement.	
Finance Director: <u>Vance H</u> Date: <u>5/5/2022</u>	
TOWN CLERK	
Date Received: <u>6/6/2022</u> Signed by Contractor: ☒ YES ☐ NO--Return to Department	
Council Action Required: <u>forward to Town Manager</u> Agenda Date: <u>5/10/2022</u>	
Approved by Council: ☒ YES ☐ NO	
TOWN MANAGER	
This document has been reviewed and approval is recommended by the Town Manager: ☒ YES ☐ NO	
Town Manager: <u>[Signature]</u> Date: <u>6/9/2022</u>	
After approval and signatures, contract will be sent to the Purchasing and Contracts Manager who will return it to the Department Contact Person for Department to administer.	
Scan signed contract to Department contracts folder (include Routing Sheet and copy of Certificate of Insurance)	

Ship To

TOWN OF APEX
PUBLIC WORKS
105-A UPCHURCH ST
APEX, NC 27502

Bill To

TOWN OF APEX
ACCOUNTS PAYABLE
PO BOX 250
APEX, NC 27502

Purchase Order

No. 2022-00001278

DATE 06/01/2022

VENDOR NO. 1762

Vendor

ITRON, INC.
PO BOX 200209
DALLAS, TX 753200209



PURCHASE ORDER NUMBER MUST APPEAR ON
ALL INVOICES, SHIPPERS, BILL OF LADING AND
CORRESPONDENCE

DELIVER BY
FREIGHT TERMS

PAGE 1 of 1

ORIGINATOR: Steve Maynard

REFERENCE

QTY	UNIT	DESCRIPTION	VENDOR PART #	UNIT COST	TOTAL COST
1.0000	Each	Software Maintenance - FCS Software License Fee 30-8300 44509 - Software License & Maintenance 1,012.00 32-8010 44509 - Software License & Maintenance 1,012.00		2,024.0000	\$2,024.00

Purchase Order terms and conditions: <http://www.apexnc.org/terms>.

SUBTOTAL \$2,024.00

SALES TAX \$146.74

TOTAL DUE \$2,170.74

Special Instructions

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT
BUDGET AND FISCAL CONTROL ACT. Purchasing Agent: Steve Maynard