



OR COM
SYSTEMS

1001 S.W. Disk Drive
Bend, Oregon 97702
(503) 389-0120

Peggy Z
CITY OF NEWBERG
CITY RECORDER INDEX NO. *1803*
Agreement File

November 19, 1991

Duane R. Cole
City of Newberg
414 East First
Newberg, OR 97132

Dear Mr. Cole,

Enclosed is the executed Service Agreement for City of Newberg. You can be confident that you have made the right choice! As the leading vendor in the utility data capture industry, Itron has gained a reputation for leading edge technology and outstanding customer support.

Itron is very much committed to satisfying and enhancing the data collection requirements of the utility industry. Itron's efforts have resulted in approximately a 50% market share. This is a clear indication of the level of confidence Itron has earned from utilities throughout North America.

If I can answer any questions or be of assistance, please don't hesitate to call. Again, welcome to the Itron family!

Sincerely,

Clint McAuliffe
Marketing Manager

ATTACHMENT C

ITRON, INC. SERVICE AGREEMENT

CONTRACT NO. _____

This Agreement is made this 7th day of October, 19 91, by and between Itron, Inc., a Washington corporation, hereinafter "Itron", and City of Newberg, Oregon

WHEREAS, Customer desires that Itron provide services for the equipment and/or software listed on Schedule A, hereinafter the "Products", and
WHEREAS, Itron desires to provide services for the Products.
NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Itron and Customer hereby agree as follows:

SECTION 1. ELIGIBILITY AND TERM OF AGREEMENT

Customer represents that it is the owner or licensee of the Products serviced under this Agreement, or, if not the owner or licensee, has authority from the owner or licensee to include the Products under this Agreement.

This Agreement shall be effective from the date accepted by Itron and shall remain in force for at least one (1) year after the warranty expiration date on the initial Products, the "Anniversary Date". The one (1) year period from one Anniversary Date to the next Anniversary Date shall be deemed the "Anniversary Year".

Either party may, at any time after the initial Anniversary Date, withdraw Product models from this Agreement upon ninety (90) days prior written notice. When a Product is withdrawn from this Agreement, the Customer will receive credit for any charges already paid for service beyond the date of withdrawal.

After the initial Anniversary Date, this Agreement may be terminated by either party upon ninety (90) days prior written notice.

SECTION 2. SERVICE

Itron shall provide services, hereinafter "Service", to keep the Products listed on Schedule A in good working order in accordance with the then current applicable Itron Service Policy. A copy of such Policy for the first year of Service is attached hereto as Exhibit A. Service shall include labor, parts, tools, and test equipment necessary for the service and support of the Products being serviced. New or equivalent to new standard parts shall be used in effecting repairs. Parts shall be provided on an exchange basis and replaced parts shall become the property of Itron. Itron shall have reasonable access to the Products to provide Service thereon.

SECTION 3. QUARTERLY CHARGES

Service charges, as specified in Schedule A for each Product and any Products purchased or licensed subsequent to the effective date of this Agreement, shall commence upon the expiration of the warranty period for said Product. The quarterly charges shall be prorated based upon actual warranty expiration dates. Quarterly charges shall be invoiced thirty (30) days prior to the first day of each calendar quarter for which Services are to be provided. All invoices for quarterly charges shall be paid by Customer thirty (30) days from date of receipt of invoice.

Itron may change the quarterly charge upon ninety (90) days prior written notice. Any such adjusted rates shall become effective on the date specified in the notice and such change shall not be effective prior to the initial Anniversary Date. In no event shall the rates be modified more than once during each Anniversary Year.

Changes requested by Customer, to Product specifications or functionality, attachments, or features, may result in an adjustment of the specified basic quarterly charge.

There shall be no additional charge for travel expense associated with Services performed except that actual travel expense shall be charged in those instances when the site at which the item is located is not

normally accessible by private automobile or scheduled public transportation.

SECTION 4. TAXES

In addition to the charges due under this Agreement, Customer agrees to pay amounts equal to any taxes and duties resulting from this Agreement, or any activities hereunder, exclusive of taxes based upon net income.

In the event Customer is a tax exempt entity, Customer shall provide Itron with a copy of its Tax Exemption Certificate upon execution of this Agreement.

SECTION 5. ENGINEERING CHANGES

Engineering changes or software releases, determined applicable by Itron shall be controlled and provided by Itron at no additional charge to Customer on Products covered by this Agreement.

SECTION 6. EARLY TERMINATION

This Agreement is effective from the date on which it is accepted by Itron and will remain in effect until terminated at the option of either party as provided in Section 1 herein, or upon the occurrence of any of the following:

- (a) If a party becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings.
- (b) If a party breaches a material provision of this Agreement, the other party may give written notice of the breach. If the breaching party fails to make progress to cure the breach to an extent satisfactory to the nonbreaching party within thirty (30) days, the nonbreaching party may terminate this Agreement upon written notice.

Upon the occurrence of such default, the other party may, at its option and without notice to or demand on the party in default, declare this Agreement terminated. Customer shall receive a credit for any charges already paid for Services beyond the date of termination, however, in the event of nonpayment, all accrued charges shall become immediately due and payable.

SECTION 7. GENERAL

- (a) Sublease and Assignment. Neither party may sublease or assign its rights or obligations under this Agreement without the written consent of the other party.
- (b) Governing Law. This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Washington, U.S.A.
- (c) Enforceability and Attorney Fees. If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of litigation to enforce the terms of this Agreement, the

prevailing party shall be entitled to reasonable attorney fees, both at the time of trial and on appeal.

- (d) Concurrent Remedies. No right or remedy herein conferred upon or reserved to either party is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise and may be enforced concurrently therewith or from time to time.
- (e) Notices and Requests. Notices hereunder shall be in writing and shall be given by either party to the other by delivery or by mailing the same by prepaid registered mail addressed as specified below or to such other address as may be substituted by written notice by either party to the other:

Customer: Notices to Customer at
address provided below.
Itron: ITRON, INC.
E. 15616 Euclid Ave.
Spokane, WA 99216
Attn: Contract Administrator

Any such notice so given shall be deemed to have been received by the party to whom addressed on the day of delivery thereof.

- (f) Entire Agreement. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties with respect to Services. Any terms and conditions appearing on Customer's authorizations shall not apply to or become a part of this Agreement; this Agreement may be modified or altered only by a written instrument that refers to and incorporates this Agreement and is duly executed by an authorized representative of each party.
- (g) Headings Not Controlling. Headings used in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this Agreement.

SECTION 8. SERVICES FOR ADDITIONAL CHARGE

The services for additional charge described in this Section 8 are not Services as described in Section 2 and the Itron Service Policy. Such services, if available, will be provided by Itron under this Agreement at Itron's then current rates for labor, materials, expenses and shipping costs, all as applicable:

- (a) painting or refinishing the Products or furnishing material thereof;
- (b) making Customer sponsored specification changes; or adding or removing accessories, attachments or other devices;
- (c) performing services connected with relocation of Products, repair of damage resulting from accident, transportation subsequent to delivery, neglect, misuse or abuse, lack of reasonable care, failure of electrical power, air conditioning, or humidity control, causes other than ordinary use, or failure or malfunction of attached, related, collateral or ancillary equipment not covered by this Agreement;
- (d) performing repairs if persons other than authorized Itron representatives have altered the Products or have performed maintenance or repair of the Products, and as a result, further repair by Itron is required.

SECTION 9. FORCE MAJEURE

Neither party hereto shall be responsible for any failure or delay in the performance of any obligation hereunder if such failure or delay is due to a cause beyond the party's control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

SECTION 10. LIABILITY AND DISCLAIMER OF WARRANTY

IN NO EVENT SHALL ITRON BE LIABLE, WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR ON ANY OTHER BASIS, FOR COVER OR FOR INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION IN THE OPERATION OF THE PRODUCTS.

ITRON OFFERS NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement the day and year first above written by their duly authorized representative.

CUSTOMER: Duane R. Cole

By: Duane R. Cole

Title: City Manager

Address: 414 East First
Newberg, OR 97132

ITRON, INC.

By: [Signature] 11/14/91

Title: V.P. Utility Systems

Tax Exempt: No ☐ Yes ☒ If yes, attach copy of Tax Exemption Certificate.

If a corporation, name the State or Province in which incorporated Oregon

SCHEDULE A

BASELINE EQUIPMENT AND LICENSED SOFTWARE SUPPORT CHARGES

Item	Part No.	Description	Qty.	Maint Per Unit	Extended Quarterly Maintenance
1	500-0112-004	DataCap H (1.5) 256K with Battery Pack	2	42.00	84.00
2	500-0052-005	BCS 604 3 Port Battery Charger	1	10.00	10.00
3	610-001-005	DCMU 300 3 Port Management Unit	1	30.00	30.00
4	510-006-004	AST Interface 232	1	12.00	12.00
5	850-0351-001	Encore Meter Reading Software License/RDMS	1	360.00	360.00
SYSTEM QUARTERLY MAINTENANCE TOTAL					496.00

EXHIBIT A

ENCORE BASE LINE SERVICE POLICY

ENCORE APPLICATIONS

Itron provides its Clients with a Base Line Support Policy, consisting of a twenty-four (24) hour Client Service hotline service, on-going consulting services, complete record keeping and documentation control, equipment services, and software services. Although primary support service for third-party equipment and software is provided by the respective third-party vendors, Itron provides problem determination through the Encore Base Line Service Policy.

The Client Account Analyst described in the following sections shall be an employee of Itron or of another entity designated by Itron. Itron shall notify the Client of the designated Client Account Analyst and Itron Service Center upon System installation.

Client Services

Client Account Analysts are available twenty-four (24) hours per day, seven (7) days per week via a Client Service hotline. All Client requests of Itron should be focused through the dedicated Client Account Analyst during normal working hours, 6:00 a.m. to 5:00 p.m. PST. For emergency support outside of these hours, an answering service ensures that the client is put into immediate contact with an available Client Account Analyst.

A response to a request or a plan for resolving the reported issue will be provided by the Client Account Analyst within a twenty-four (24) hour period. The Client Account Analyst is responsible for troubleshooting equipment and software, record keeping, service contracts, spare part orders, status reporting, and problem resolution/ escalation procedures. The Client Account Analyst is the Client's in-house spokesperson for Itron.

Phone consultations provide the Client with the ability to discuss such things as installation instructions, equipment and software inquiries, operating procedures, modifications to the existing System and other concerns that may arise. The Client has access to a team of trained professionals, drawing upon the expertise not only of the Client Service group, but also any other organization within Itron necessary to resolve a problem or address a concern.

All telephone contacts are documented to assist Client Account Analysts in tracking the issue or problem (Problem Tracker), and the status is monitored until final resolution. The Client Account Analyst maintains a log reflecting the current status of any outstanding equipment/software issues and/or client requested modifications. These logs include problem reference numbers, date reported, description, priority and scheduled release date.

Software Services

Itron provides all of the labor and material necessary to maintain the software in accordance with the System Specification Document. Software support services are furnished via Itron software releases. Itron provides a warranty on all Itron-manufactured software supplied with the System. At the end of the warranty period, the Encore Base Line Service Policy begins providing continued on-going support.

All software issues or modification requests shall be reported through the Client Service hotline. Once a problem is verified by Itron, it will be given to the Software Services groups for correction. If a problem is not verifiable by Itron, the Client Service Rep may request additional documentation or data from the client. During the period of time between major System releases, only problems determined to be "critical" in nature will be acted upon immediately. "Critical" problems will be defined as those that impact the collection or pass-through of data which ultimately affects mainframe processing.

All modification requests made by the Client shall be submitted to Itron in writing. The requests should include the appropriate modified pages from the System Specification Document, including any marked-up report pages when applicable. If the modification is significant in size or scope, Itron may elect to send a Client Account Analyst on-site to finalize the design of the modification. The time and expense to complete the design is billable at applicable rates. All Client requested modifications will be bid by Itron, prior to scheduling, at the applicable time and materials rate. The modification bid shall include programming, documentation, testing and implementation for the modification. Upon Client approval of the bid, the modification will be scheduled.

Any release of Itron software is accomplished through the transportation of magnetic media to the client site. Included with the release will be the Problem Tracker or Modification description, description of the change, documentation, and installation procedures. Full consultation may be provided via the Client Service hotline to ensure proper installation. Once this software has been released, it will become the new software base from which all future changes will be derived.

Itron maintains a current backup of all client related software, source code, and appropriate documentation. If required, Itron can provide full software recovery within twenty-four (24) hours of notification. Complete software contingency planning consulting services are available from Itron at applicable time and expenses.

The Encore Base Line Service Policy excludes support of the following items:

1. Client modified software.
2. Third-party software installed by the Client not supplied by Itron or designated in the System Specification Document.
3. Any software changes required to integrate Third-Party software/firmware into the System, requested by the Client, when such software is provided by the Client.
4. System corruption due to accident, misuse or negligence.
5. Software not included in the Service Agreement between Itron and the Client.
6. Communication problems related to Client supplied modems and/or telephone lines.

Equipment Services

Itron provides all labor and material necessary to maintain the equipment in accordance with the System Specification Document. Equipment services and on-site critical problem resolution are furnished via Itron designated Service Centers. Itron provides a 90 day warranty on all Itron-manufactured equipment supplied with the System. At the end of the warranty period for each piece of equipment, the Encore Base Line Service Policy begins providing continued support services.

Itron provides regional Service Centers for expeditious service and turnaround of Client equipment. Itron provides a seven (7) day in-house turnaround upon arrival at the Service Center during normal business hours for handheld equipment. Up to a two (2) week in-house turnaround time is provided for all other equipment. Service Center hours of operation are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding holidays. Regional Service Centers are located across the country, accommodating the differing time zones. Shipping charges to and from the designated Service Center will be borne by the Client. Return shipment will be in the same manner in which received. If the need should arise to expedite the service and/or return shipment of services equipment, a call to the Client Account Analyst should be placed. The cost of the expedited service shall be borne by the Client.

When the Client has procured the recommended handheld sparing levels for its System, Itron will provide a handheld loaner service should the Service Center be unable to meet the seven (7) day in-house turnaround. Handheld loaners will be provided for a maximum of ten (10) days without charge. If handheld units are not returned to the Service Center within fifteen (15) days, the published monthly rental charge will be assessed with a minimum one month charge.

Complete equipment contingency planning consulting services are available from Itron at applicable rates and expenses.

The Encore Base Line Service Policy excludes support of the following items:

1. Consumables: shoulder straps, holsters, hand straps, wrist straps, and keyboard overlays.
2. Physical damage resulting from accident, misuse, abuse or neglect.
3. Client sponsored specification changes; or adding or removing accessories, attachments or other devices.
4. Damage or malfunction resulting from stationary equipment relocation by Client.
5. Damage resulting from failure of electrical power, air conditioning or humidity control.
6. Non-Itron supplied components and equipment.
7. The furnishing of supplies or accessories; painting or refinishing the equipment or furnishing material thereof.
8. Performing repairs if persons other than authorized Itron representatives have altered the products or have performed maintenance or repair of the products and as a result, further repair by Itron is required.
9. Hardware or equipment not included in the Service Agreement between Itron and the Client.