

BILL NO. S-13-12-12

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PURCHASE
AGREEMENT FOR WATER METER RADIOS
AND RADIO READING EQUIPMENT between
ITRON INCORPORATED and the City of Fort
Wayne, Indiana, in connection with the Board of
Public Works.

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

SECTION 1. That the PURCHASE AGREEMENT FOR WATER
METER RADIOS AND RADIO READING EQUIPMENT by and between
ITRON INCORPORATED and the City of Fort Wayne, Indiana, in connection
with the Board of Public Works, is hereby ratified, and affirmed and approved
in all respects, respectfully for:

purchase of Itron water meter radios and radio reading
equipment for 2014:

involving a total cost of FIVE HUNDRED TEN THOUSAND, SEVEN
HUNDRED SIXTY-TWO AND 00/100 DOLLARS - (\$510,762.00). A copy of
said Contract is on file with the Office of the City Clerk and made available for
public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

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

WORK ORDER NUMBERS: 66274 AND 75959

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

The BOARD does hereby agree to purchase from Itron the radios, radio reading equipment, and accessories as quoted per the Itron Terms of Sale and Itron Pricing Summary BMR #4110-13 Ver4 Nov dated November 16, 2013. Itron shall agree to hold the prices as quoted through December 31st 2014.

TERMS OF SALE

1. Offer; Acceptance; Exclusive Terms

Each Sale Document is an offer for the sale of equipment to the party identified on the Sale Document (the "**Customer**") and includes and is governed by these Terms of Sale (the "**Terms**"). These Terms supersede all prior agreements, orders, quotations, proposals and other communications regarding the goods or services referenced in a Sale Document, except that an agreement that is signed by the parties and that expressly purports to govern the provision of such goods or services shall supersede these Terms. The Sale Document does not constitute an acceptance of any offer or proposal made by Customer. Customer accepts these Terms and forms a contract by doing any of the following: (a) acknowledging a Sale Document; (b) taking delivery of goods or receiving services; (c) paying an invoice for goods or services; or (d) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Sale Document. The Sale Document is conditioned upon Customer's acceptance of these Terms to the exclusion of all other terms. Any additional or different terms proposed by Customer, whether in Customer's purchase order or similar document, are unacceptable to Itron, are expressly rejected by Itron, and will not become part of the Terms.

2. Equipment Terms

a. Prices; Invoicing; Delivery; Title; Cancellation

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

b. Limited Equipment Warranty

i. Warranty and Remedy.

Except to the extent otherwise provided in Attachment A, Itron warrants to Customer that the Equipment that is manufactured by Itron will be free from defects in materials and workmanship and will conform to the applicable published Itron specifications for a period of one year from the date of shipment. Except to the extent otherwise provided in Attachment A, Itron's sole obligation and Customer's exclusive remedy in connection with the breach of a warranty provided under this Section or under Attachment A shall be for Itron to repair non-conforming Equipment or provide Customer with replacement Equipment after Customer has returned non-conforming Equipment properly packaged and prepaid to a repair facility designated by Itron in accordance with Itron's then-current RMA procedures. If Itron, in its sole discretion, determines that it is unable to repair or replace such non-conforming Equipment, Itron will refund to Customer the amount paid for such Equipment. Equipment that is repaired or replaced pursuant to this Section will be warranted for the remainder of the original warranty period or 30 days, whichever is longer.

ii. Exclusions

The warranty provided herein does not cover damage due to external causes, including accident, abuse, misuse, inadequate maintenance, problems with electrical power, acts of God; service (including installation or de-installation) not performed or authorized by Itron; usage not in accordance with product instructions or in a configuration not approved by Itron; normal wear and tear; and problems caused by use of parts and components not supplied by Itron. The warranty provided herein shall be void if the Equipment is modified in a way not authorized in writing by Itron. The above warranty does not cover any third party equipment provided by Itron. Any warranty for such equipment will be between Customer and the third party manufacturer.

3. Software Terms

Any software referenced on a Sale Document will be licensed or hosted pursuant to a separate, written agreement.

4. Payment Terms and Taxes

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

5. Confidentiality

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

6. IP Ownership

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

7. Warranty Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ITRON DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT AND (III) WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

8. WAIVER OF DAMAGES

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

9. CAP ON LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT FOR A BREACH BY CUSTOMER OF (I) ANY INTELLECTUAL PROPERTY RIGHT OF ITRON OR (II) ANY LICENSE GRANTED BY ITRON HEREUNDER, THE AGGREGATE LIABILITY OF EACH PARTY AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT—WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE—SHALL NOT EXCEED THE TOTAL AMOUNT PAID AND PAYABLE HEREUNDER. ITRON SHALL NOT BE LIABLE FOR

ANY CLAIM MADE THE SUBJECT OF A LEGAL PROCEEDING MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION ASSERTED IN SUCH CLAIM AROSE. ITRON'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

10. Governing Law; Venue; Jury Trial

These Terms and performance under any Sale Document will be governed by and construed in accordance with the laws of the State of Washington without reference to Washington conflicts of law principles or the United Nations Convention on Contracts for the Sale of Goods. Exclusive venue for any claim arising out of or relating to a Sale Document shall be in Spokane County, Washington. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT.

11. Assignment

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

12. Force Majeure

Neither Party will be responsible for any failure or delay in performing any obligation hereunder if such failure or delay is due to a cause beyond the Party's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts. Notwithstanding the foregoing, Itron shall have no obligation to deliver Equipment to the extent that Customer is unable to pay as a result of a force majeure event.

13. Itron Canada

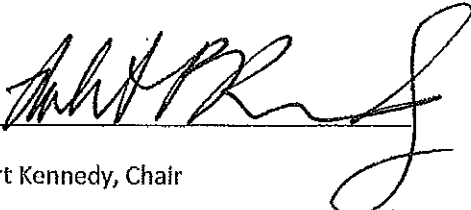
Notwithstanding anything to the contrary in these Terms, if a Sale Document is issued in the name of Itron Canada, Inc., then (i) these Terms and the performance under such Sale Document will be governed by and construed in accordance with the laws of the Province of Ontario, Canada and (ii) amounts owing under such Sale Document shall be paid in Canadian Dollars.

Attachments:

- A. Warranty Terms
- B. Itron Pricing Summary, BMR #4110-13 Ver4 Nov dated November 16, 2013
- C. Letter of sole source

APPROVED this 4th day of December, 2013.

BOARD OF PUBLIC WORKS

By: 

Robert Kennedy, Chair

By: 

Kumar Menon, Member

By: 

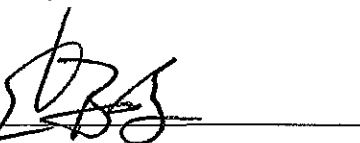
Mike Avila, Member

Attest: 

Victoria Edwards, Clerk

12/4/13

Itron Incorporated

By: 

Name and Title: ERIC PRADY, SR. FINANCE MGR.

Date: 12/2/13

Attachment A

Warranty Terms

Attachment A

Warranty Terms

Product	Warranty Terms
Mobile Collector	3 years from shipment
100W, 60W and 80W-I series water endpoints (including battery)	Full warranty consistent with the warranty terms in the Agreement for the first 10 years from shipment. For warranty claims in years 11 through 15, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 50 percent of its then-current list price for the replacement product. For warranty claims in years 16 through 20, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 25 percent of its then-current list price for the replacement product. The warranty on Itron water endpoints shall be void if the endpoint is used in connection with a third party reading system that is not approved by Itron.

Attachment B

Itron Pricing Summary, BMR #4110-13 Ver4 Nov dated
November 16, 2013



Electric / Gas / Water
Information collection, analysis and application

2111 N. Moller Rd.
Liberty Lake, WA 99019
fax: 866-787-8910
www.itron.com

Pricing Summary for

City of Ft. Wayne, IN

BMR# 4110-13 Ver4 Nov
November 16, 2013

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Hardware						
1	ERW-1300-302	100W+ ERT, Encoder with Integral Connector and Antenna Connector		\$135.00		(1-2)
		100W+ ERT Discount		(\$70.50)		
			250	\$64.50	\$16,125.00	
2	CFG-1300-004	100W Through Lid Mount Kit		\$3.00		
		Through Lid Mount Kit Discount		(\$0.50)		
			250	\$2.50	\$625.00	
3	CFG-0151-010	Standard 5' Cable with In-Line Connector with .167" Protective Cover	250	\$10.00	\$2,500.00	
4	ERW-1300-313	100W-R+ ERT, Encoder Remote with 10 Inch Cable		\$135.00		(1-2)
		100W-R+ ERT Discount		(\$70.50)		
			5,750	\$64.50	\$370,875.00	
5	CFG-0771-021	100W-R Mounting Kit for Remote Installations	5,750	\$2.50	\$14,375.00	
6	MC3-CF	Mobile Collection 3 (No Laptop) - 3 Year Warranty RF Unit	2	\$30,600.00	\$61,200.00	(3-4)
	25K-100K ERT's					
	SWK-0245-000	MC Software version 3.5.2	2			
		(Laptop Independent Intall, warranty tied to RF Unit)				
	DCU-5310-011	MC3 RF Unit (3 year warranty)	2			
	DCU-5302-402	MC3, CF-3X Ship Kit (Permanent Wiring, Pedestal Mounted w/o pedestal)	2			
		MC Trade-in Discount	2	(\$8,000.00)	(\$16,000.00)	(1,5)
7	FC3-0004-001	FC300, SRead Radio, Bluetooth	17	\$4,590.00	\$78,030.00	(6)
		FC300 Handheld Discount	5	(\$4,590.00)	(\$22,950.00)	(1,7)
8	FC3004MLTDOCK	FC300 5-bay multi-dock, Includes power supply and power cable	3	\$1,698.00	\$5,094.00	
9	FC3059CABLE	FC300 Charge/Comm Interface Cable, USB client for ActiveSync with power connector	1	\$42.00	\$42.00	(8)
10	FC3002DSKCRDL	FC300 single dock, includes power supply and power cable	2	\$423.00	\$846.00	
Hardware Total					\$510,762.00	
Annual Maintenance						
11	Maintenance	FC300, SRead Radio, Bluetooth	17	\$435.00	\$7,395.00	
12	Maintenance	FC300 5-bay multi-dock, Includes power supply and power cable	3	\$192.00	\$576.00	
13	Maintenance	FC300 single dock, includes power supply and power cable	2	\$37.80	\$75.60	
Annual Maintenance Total					\$8,046.60	



Electric / Gas / Water
Information collection, analysis and application

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Liberty Lake, WA 99019
fax: 866-787-6910
www.itron.com

Pricing Summary for

City of Ft. Wayne, IN

BMR# 4110-13 Ver4 Nov
November 15, 2013

Notes and Assumptions

- (1) The 100W+ ERT and reading equipment discounts listed above are extended to the City for the receipt of a blanket purchase order that can be split by the City into smaller releases. Invoices are only issued as products are shipped.
- (2) Full warranty is consistent with the warranty terms in the Agreement for the first 10 years from date of shipment.
For warranty claims in years 11 through 15, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 50 percent of its then-current list price for the replacement product.
For warranty claims in years 16 through 20, Itron's sole obligation will be to provide Customer with a discount on replacement product equal to 25 percent of its then-current list price for the replacement product.
- (3) Mobile Collection 3.0 RF units and MC Software includes a 3 year warranty.
- (4) Annual Maintenance for the RF unit and MC Software is available after the warranty period, starting at \$2520/yr. and \$996/yr., respectively, based on Itron's current pricing.
- (5) Itron will provide the City of Fort Wayne a trade-in discount of \$8000.00 for their older MC units towards the purchase of a new Mobile Collection 3 unit. All trade-in equipment must be received by Itron within 90 days to receive trade-in credit.
- (6) FC300 Handheld unit and single desk dock require a power supply and AC power cord. The same power supply can be used for both. The multi-dock desk dock comes with a power supply but requires an AC power cord.
- (7) Itron is offering the City of Ft. Wayne five free FC300's with the purchase of 12.
- (8) Itron recommends at least one USB cable be purchased if only ordering a FC300 Multi-dock for IT staff to support data recovery or troubleshooting issues that may occur over the life of the system.
- (9) Taxes and freight are not included. Prices are in US dollars. Prices are valid until December 31, 2014.

Attachment C

Letter of sole source



November 22, 2013

Board of Public Works
Citizens Square Building
200 East Berry Street, Suite 240
Fort Wayne, Indiana

Thank you for your interest in Itron's ChoiceConnect™ products and services. We believe our 900 MHz ChoiceConnect platform of solutions offers the City of Fort Wayne, Indiana the most flexible, field-proven, AMR technology available today and in the future.

Itron, Inc. is the sole source provider for the ChoiceConnect platform of products including those listed below proposed for the City of Fort Wayne:

- 100W+ ERT® module
- Mobile Collection System (MC3)
- Field Collector 300 with SRead™ radio (FC300 SRead)

Itron manufactures the 100W+ ERT® module in our Waseca, Minnesota manufacturing facility. The ChoiceConnect MC3 drive-by solution is designed and built in Liberty Lake WA and Honeywell manufactures the FC300 handheld to Itron specifications.

Thank you for your continued interest in our solutions. If you have additional questions please don't hesitate to contact either myself or Itron account executive Gary Ziegler, cell: 414-308-0005 or email: Gary.Ziegler@Itron.com.

Best Regards,

Chris Bernardi
Sr. Product Manager
Itron ChoiceConnect Solutions
509-891-3671
Chris.Bernardi@Itron.com

Memo

Date: December 4, 2013
To: Common Council Members
From: John Clark, City Utilities, Deputy Director of Operations
Re: **Purchase Agreement for water meter radios and radio reading equipment**

Council Districts ALL

City Utilities is requesting approval of the purchase of Itron water meter radios and radio reading equipment for 2014. The Utility has been using Itron radios since 2003 when they began the conversion of manual meter read to automated meter reading.

Implication of not being approved:

- The remaining 5,000 meters in the northern part of the city which was formerly served by Aqua Indiana will continue to be manually read by temporary walking meter readers.
- Meters that need to be replaced will not have radios and will have to be read manually.

If Prior Approval is being Requested, Justify: n/a

The purchase agreement is a sole source because the water meter radios require proprietary reading equipment and software. In 2003 the Utility began the two year conversion of its water meters to automated meter reading (AMR). Itron was selected as the AMR vendor through a RFQ and pilot project in 2002. The meter radios are proprietary and the City has installed approximately 73,500 Itron radios (There are approximately 79,000 metered accounts).

City Utilities recommends, and the Board of Public Works has approved, the purchase of Itron radios and radio reading equipment for \$510,762.00. The purchase will include 6,000 radios of which approximately 5,000 will be installed in the northern part of the City that was formally serviced by Aqua Indiana. The 5,000 northern meters currently do not have radio reads and must be read by two temporary meter readers who walk from house to house each month.

Council Introduction Date: December 10, 2013

CC: BOW
Kurt Roberts
Diane Brown
File