

BILL NO. S-16-02-17

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PURCHASE
AGREEMENT FOR WATER METER RADIOS
between ITRON INCORPORATED GROUP, INC.,
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 by and between ITRON INCORPORATED GROUP, INC.
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 water meter radios for 2016:
involving a total cost of not to exceed FOUR HUNDRED NINETY-NINE
THOUSAND, EIGHT HUNDRED AND 00/100 DOLLARS - (\$499,800.00). 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

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

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 approve City of Fort Wayne Water Maintenance to purchase radios from Itron as needed. Itron shall supply water meter radios to the City of Fort Wayne Water Maintenance as they request. The purchase order shall not exceed \$499,800.00, and will be issued to Itron upon approval of the \$499,800.00 expenditure by the BOARD. The Purchase Order will reference this agreement and the date approved by the BOARD. Itron shall hold the pricing as quoted in the Itron Terms of Sale and Itron Pricing Summary BMR# 9588-16 Ver2 Jan dated January 19, 2016. Itron shall agree to hold the prices as quoted through December 31, 2016

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 contractors, 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 FOR 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

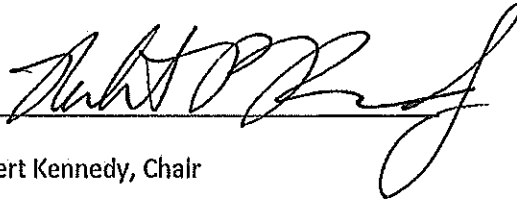
Notwithstanding anything to the contrary in these Terms, if a Sale Document is issued in the name of Itron Canada, Inc., then (i) these Terms and the performance under such Sale Document will be governed by and construed in accordance with the laws of the Province of Ontario, Canada and (ii) amounts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

Attachments:

- A. Warranty Terms
- B. Itron Pricing Summary, BMR #9588-16 Ver2 Jan dated January 19, 2016
- C. Letter of sole source

APPROVED this 17 day of February, 2016.

BOARD OF PUBLIC WORKS

By: 

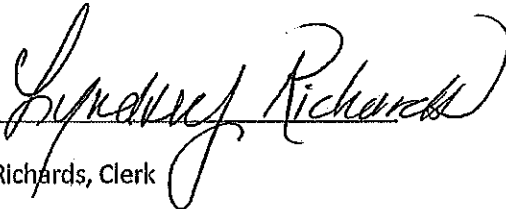
Robert Kennedy, Chair

By: Absent

Kumar Menon, Member

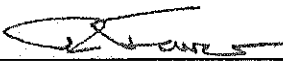
By: Mike Avila

Mike Avila, Member

Attest: 

Lyndsey Richards, Clerk

Itron Incorporated

By: 

Name and Title: Robert H. A. Farrow

Vice President Treasury and Strategic Planning

Date: February 2nd 2016

Attachment A

Warranty Terms

Attachment A

Warranty Terms

Product	Warranty Terms
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

Ittron Pricing Summary, BMR #9588-16 Ver2 Jan dated
January 19, 2016



Electric / Gas / Water
Information collection, analysis and application

2111 N. Molter Rd.
Liberty Lake, WA 99019
fax: 888-767-6910
www.iron.com

Pricing Summary for
City of Fort Wayne, IN

January 19, 2016
BMR# 8588-16 Ver2 Jan

Item	Part Number	Description	Qty	Unit Price	Extended Price	Notes
Hardware						
1	ERW-1300-402	100W+, Encoder with Integral Connector & Antenna Connector	400	\$64.50	\$25,800.00	(1)
2	CFG-1300-004	100W Through Lid Mount Kit	400	\$2.50	\$1,000.00	
3	CFG-0151-010	Standard 5' cable with In-Line connector with .167" diameter protective cover	400	\$10.00	\$4,000.00	
4	ERW-1300-313	100W-R+ ERT, Encoder Remote with 10 Inch Cable	7,000	\$64.50	\$451,500.00	(1)
5	CFG-0771-021	100W-R Mounting Kit for Remote Installations	7,000	\$2.50	\$17,500.00	
Hardware Total					\$499,800.00	

Notes and Assumptions

- (1) 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, Iron'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, Iron'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.
- (2) Freight and taxes are not included. Prices are in US dollars. Prices are valid until December 31, 2016.

Attachment C

Letter of sole source



January 22, 2016

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

Itron manufactures the 100W+ Series 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@ltron.com.

Best Regards,

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

Corporate Office

2111 N. Molter Road
Liberty Lake, WA 99019
800-635-5461

www.ltron.com

CITY OF FORT WAYNE, INDIANA

Itron, Inc.

(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. **FINANCIAL INTERESTS;**
2. **POTENTIAL CONFLICTS OF INTEREST;**
3. **CURRENT AND PENDING CONTRACTS OR
PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor. Please see Itron's Form 10-K and Itron's 2014 Proxy Statement available at www.itron.com.

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☐

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☐

Name: _____

Name: _____

Address: _____

Address: _____

- b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship ☐ stock ☐

partnership interest ☐ units (LLC) ☐

other (explain) _____

- c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):
ownership interest:

Name: _____ %

Name: _____ %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a, check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No _____

- b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years:
Yes _____ No _____

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years:
Yes _____ No _____

- c. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years:
Yes _____ No _____

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes X No _____

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

Services Agreement dated March 5, 2003

Purchase Agreement dated December 4, 2013

Purchase Agreement dated October 8, 2014

Purchase Agreement dated 2015

b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes X No

If "Yes", Identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Purchase Agreement date: TBD

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes _____ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

Name / Position / Payment Terms:

Name / Position / Payment Terms:

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.). To the best of Itron's knowledge, no.

Company / Name / Payment Terms: _____

Company / Name / Payment Terms: _____

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that Vendor is a publicly held corporation whose shares are traded on the NASDAQ stock market. All financial and other disclosures related to Vendor are set forth in its public documents filed with the U.S. Securities and Exchange Commission (SEC) as required by federal securities law. Those disclosures can be found on the SEC website or on Vendor's website at www.ltron.com, select "About Itron" followed by "Investor Relations".

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

Ittron, Inc. 2111 N. Molter Road, Liberty Lake, WA 99019
(Name of Vendor) Address
(509) 924-9900 Telephone
Contract.request@itron.com E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) _____ Title _____
Signature  Date February 2nd 2016

Robert H. A. Farrow
Vice President Treasury and Strategic Planning

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

Memo

Date: February 18, 2016
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 Sensus water meter radios for 2016. The Utility has been using Itron radios since 2003 when they began the conversion of manual meter read to automated meter reading. The City uses Sense water meter radios in the former Aqua Indiana Utility area in the 6th district. (Aqua had deployed 75% of their system with Senses water radios). Itron and Sensus radios are not compatible with each other and must be read with their specific brand of meter reading equipment.

Implication of not being approved:

- Water meters and old radios that need to be replaced 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 79,000 Itron radios (There are approximately 100,000 metered accounts).

Sensus water meter radio are proprietary as well and there are approximately 13,000 in the former Aqua Indiana arear in the 6th district.

City Utilities recommends, and the Board of Public Works has approved, the purchase of Itron radios and Sensus radios for \$629,700.00. The purchase will include 8,750 radios, if needed. (The actual number of radios purchased depends on the number of new accounts and old radios that fail.)

Council Introduction Date: February 23, 2016

CC: BOW
Kurt Roberts
Diane Brown
File