

Agenda _____
Board of Directors Study Session & Special Meeting

**HOLLAND BOARD OF PUBLIC WORKS
 625 HASTINGS AVENUE
 HOLLAND, MICHIGAN**


**September 14, 2009
 4:00 p.m.**

Call to order

| | | |
|-----|--------------------------------------|--|
| 1. | CONSENT AGENDA | All items marked (Consent) are considered routine and/or have previously been reviewed and will be enacted with one motion. There will be no separate discussion of these items unless a Board Member or an audience member so requests. When requested, the item will be removed from the consent agenda and considered in its normal sequence: <ol style="list-style-type: none"> 1. Announcement of above by the facilitator 2. Summary of the Consent 3. Request to remove or add items 4. Motion & Support to approve Consent Agenda items 5. Voice Vote |
| 1B. | MINUTES (Consent) | Open Minutes: Not Yet Available |
| 1C. | UTILITY SERVICES (Consent) | Truck Replacement – Digger Derrick <i>Recommendation: Approve the purchase of an Altec D3055A Hydraulic Digger Derrick with a 54.5 foot sheave height from Altec Industries for a net price of \$208,199.00.</i> |
| 1D. | FINANCE (Consent) | Service Agreement – Mailing Services <i>Recommendation: Approve the Presort Services, Inc. mailing services contract with estimated mailing costs of \$142,922, including postage, subject to City Attorney approval as to form.</i> |
| 1E. | BOARD (Consent) | Action on Consent Items |
| 2. | COMMUNICATIONS | The Board welcomes input from the audience at this time. Please state your name and address before addressing the Board. Please limit your communication to 5 minutes |
| 3. | FINANCE | Financial Statement – June 2009 / End of Fiscal Year Presented by Rehmann Robson |

Codes:

CC - Item also needs City Council action

| | | |
|----|---|---|
| 4. | OPERATIONS | <p>Professional Services Agreement - Engineering Services for Wastewater Treatment Plant (WWTP) Head works Improvements Presented by Dave Koster, Operations Director</p> <p><i>Recommendation: Approve a professional services agreement, pending City Attorney approval as to form, with Fishbeck Thompson Carr and Huber (FTC&H) of Grand Rapids, MI in the amount of \$397,000 for the engineering and construction contract administration activities in support of the head works improvement project at the Wastewater Treatment Plant (WWTP). And, approve a 10% contract contingency in the amount of \$39,700.</i></p> |
| 5. | <p>FINANCE </p> <p>Pulled from agenda</p> | <p>Purchase Agreement – Meter Data Management System Presented by Froda Volzen, Finance Director</p> <p><i>Recommendation: Approve and forward to City Council for approval, the contract with Itron for the purchase and implementation of the Itron Meter Data Management System, in the amount of \$643,700, plus a 5% contingency of \$32,000, and annual maintenance of \$28,000 with a budget transfer of \$100,000 from contingency. The contract is subject to approval as to form by City Attorney.</i></p> |
| 6. | CLOSED SESSION | <p>Pending Litigation: Durham v City of Holland / Holland Board of Public Works</p> |

“Reports and Attachments” available at www.hollandbpw.com OR by request

*Accommodations are available for persons with disabilities.
If you need any aid, please contact the Holland Board of Public Works
at 616/355-1575
in advance of this Board meeting*

AUDIENCE PARTICIPATION:

*Members of the audience may address the Board of Directors during public hearings and under “Communications from the Audience”.
Audience participation includes stating name and address and limiting speaking time to five minutes.*



HOLLAND BOARD OF PUBLIC WORKS
SUMMARY OF FINANCIAL PERFORMANCE

JUNE 2009

Holland Board of Public Works

STATEMENT OF NET ASSETS

June 30, 2009

| | June 2009 | June 2008 |
|---|--------------------|--------------------|
| ASSETS | | |
| Current assets | | |
| Cash and cash equivalents | 42,723,314 | 31,823,182 |
| Investments | 53,651,738 | 57,984,080 |
| Receivables | | |
| Accounts receivable | 6,545,184 | 6,917,977 |
| Unbilled revenue | 3,700,190 | 4,204,456 |
| Special assessments and other | 245,257 | 282,864 |
| Accrued interest | 304,147 | 918,862 |
| Inventories | 10,925,459 | 7,579,461 |
| Prepaid expense | 115,827 | 140,092 |
| Total current assets | 118,211,116 | 109,850,974 |
| Noncurrent assets | | |
| Restricted cash and cash equivalents | 5,875,093 | 8,139,829 |
| Restricted investments | 6,716,271 | 6,487,482 |
| Restricted accrued interest | 26,009 | 66,239 |
| Capital assets | | |
| Land | 6,835,763 | 6,802,690 |
| Work in progress | 3,859,977 | 1,895,530 |
| Plant and equipment | 328,201,548 | 325,298,984 |
| Accumulated depreciation | (204,830,874) | (194,465,013) |
| Total capital assets - net | 134,066,415 | 139,532,192 |
| Total noncurrent assets | 146,683,788 | 154,225,742 |
| TOTAL ASSETS | 264,894,904 | 264,076,717 |
| LIABILITIES | | |
| Current liabilities | | |
| Accounts payable | 6,662,502 | 9,435,901 |
| Accrued salaries and wages payable | 1,040,848 | 816,800 |
| Deposits | 190,842 | 155,036 |
| Accrued interest payable | 11,982 | 13,916 |
| Current maturities of bond payable | 542,769 | 546,000 |
| Total current liabilities | 8,448,943 | 10,967,652 |
| Current liabilities payable from restricted assets | | |
| Principal | 767,164 | 790,000 |
| Accrued interest payable | 356,900 | 368,750 |
| Total current liabilities payable from restricted assets | 1,124,064 | 1,158,750 |
| Long-term debt - net of current portion | 19,156,425 | 20,378,427 |
| TOTAL LIABILITIES | 28,729,433 | 32,504,829 |
| NET ASSETS | | |
| Investment in capital assets net of related debt | 113,600,056 | 117,817,765 |
| Reserved | | |
| Construction Fund | 135,430 | 3,839,878 |
| Park Township | 198,194 | 172,727 |
| Equipment replacement | 3,151,780 | 2,556,662 |
| Cooperative payments | 5,087,657 | 4,865,828 |
| Unreserved | 113,992,354 | 102,319,028 |
| TOTAL NET ASSETS | 236,165,471 | 231,571,887 |

Holland Board of Public Works
INCOME STATEMENT
For the Twelve Month(s) Ended June 30, 2009

| | CURRENT YTD | BUDGET | | | PRIOR YEAR | | |
|--|---------------------|---------------------|--------------------|-----------------|---------------------|-----------------------|------------------|
| | | BUDGET YTD | VARIANCE FROM | | LAST YEAR YTD | VARIANCE FROM | |
| | | | CURR YTD | % | | CURR YTD | % |
| REVENUES | | | | | | | |
| Electric | \$ 72,184,560 | \$ 81,264,516 | \$ (9,079,956) | (11.17%) | \$ 77,305,665 | \$ (5,121,105) | (6.62%) |
| Water | 5,373,245 | 6,181,425 | (808,179) | (13.07%) | 5,217,920 | 155,325 | 2.98% |
| Wastewater | 6,699,940 | 7,662,546 | (962,606) | (12.56%) | 6,675,525 | 24,416 | 0.37% |
| Fees and Other | 4,063,589 | 187,097 | 3,876,491 | 2071.91% | 2,791,810 | 1,271,779 | 45.55% |
| TOTAL | 88,321,334 | 95,295,584 | (6,974,250) | (7.32%) | 91,990,920 | (3,669,585) | (3.99%) |
| EXPENSES | | | | | | | |
| Electric | 67,827,036 | 74,666,644 | (6,839,608) | (9.16%) | 71,261,402 | (3,434,366) | (4.82%) |
| Water | 5,315,681 | 5,528,563 | (212,882) | (3.85%) | 4,904,092 | 411,589 | 8.39% |
| Wastewater | 7,946,071 | 8,477,312 | (531,241) | (6.27%) | 7,779,189 | 166,882 | 2.15% |
| TOTAL | 81,088,788 | 88,672,519 | (7,583,730) | (8.55%) | 83,944,683 | (2,855,895) | (3.40%) |
| OPERATING INCOME | 7,232,546 | 6,623,065 | 609,481 | 9.20% | 8,046,236 | (813,690) | (10.11%) |
| OTHER INCOME (EXPENSE) | | | | | | | |
| Investment Income | 2,126,305 | 2,700,120 | (573,815) | (21.25%) | 3,821,127 | (1,694,822) | (44.35%) |
| Interest Expense | (966,788) | (967,984) | (1,197) | (0.12%) | (856,793) | 109,995 | 12.84% |
| Contribution | (3,984,000) | (3,984,000) | 0 | 0.00% | (3,195,400) | 788,600 | 24.68% |
| Other | 35,902 | 0 | 35,902 | 0.00% | 254,153 | (218,251) | 0.00% |
| TOTAL | (2,788,580) | (2,251,864) | (536,716) | (19.25%) | 23,087 | (2,811,668) | (100.83%) |
| NET INCOME BEFORE FAIR MARKET VALUE ADJUSTMENTS | 4,443,966 | 4,371,201 | 72,764 | 1.66% | 8,069,324 | (3,625,358) | (44.93%) |
| Gain/(Loss) on fair market value adj. | 149,618 | 0 | 149,618 | 0.00% | 343,510 | (193,892) | (56.44%) |
| NET INCOME | \$ 4,593,584 | \$ 4,371,201 | \$ 222,382 | 5.09% | \$ 8,412,834 | \$ (3,819,250) | (45.40%) |

Holland Board of Public Works

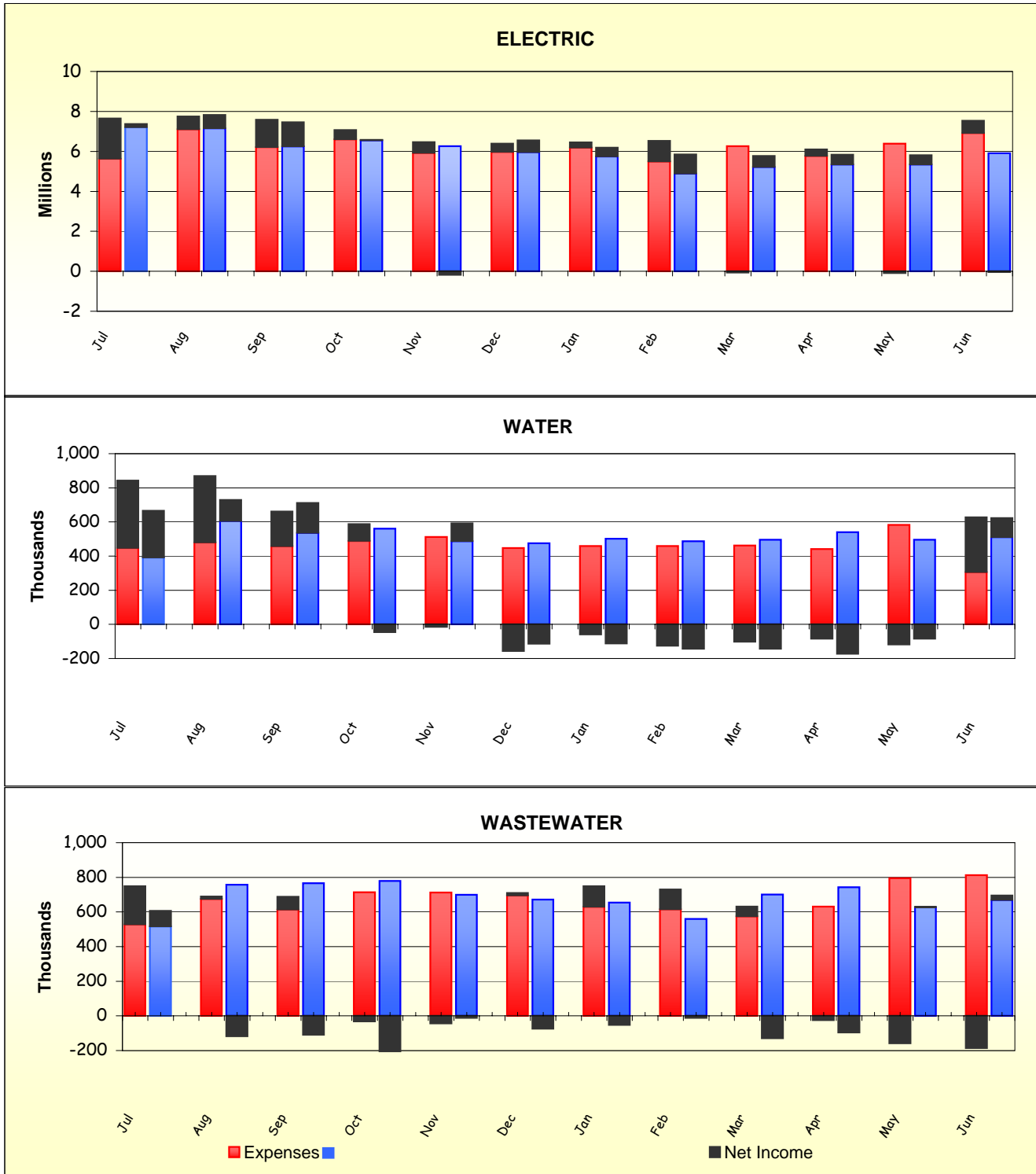
STATEMENT OF CASH FLOWS

For the Twelve Month(s) Ended June 30, 2009

| | June 2009 | June 2008 |
|--|--------------------|---------------------|
| Cash flows from operating activities | | |
| Receipts from customers and users | 89,177,857 | 92,389,701 |
| Payments to suppliers | (67,557,834) | (62,548,031) |
| Payments to employees | (8,013,957) | (7,511,017) |
| Net cash provided by (used in) operating activities | 13,606,066 | 22,330,653 |
| Cash flows from noncapital financing activities | | |
| Transfers from other funds | - | 83,186 |
| Transfers to other funds | (3,984,000) | (3,195,400) |
| Net cash provided by (used in) noncapital financing activities | (3,984,000) | (3,112,214) |
| Cash flows from capital and related financing activities | | |
| Principal and interest paid on long-term debt | (2,228,640) | (4,799,737) |
| Capital contributions - trunkage | 93,950 | 194,062 |
| Proceeds on refunded bonds | - | - |
| Purchase of property, plant and equipment | (5,886,400) | (7,431,395) |
| Net cash provided by (used in) capital and related financing activities | (8,021,090) | (12,037,070) |
| Cash flows from investing activities | | |
| Interest income | 2,930,868 | 3,794,883 |
| Net increase (decrease) in investment securities | 4,103,553 | (6,254,607) |
| Net cash provided by (used in) investing activities | 7,034,421 | (2,459,724) |
| Net increase (decrease) in cash and cash equivalents | 8,635,396 | 4,721,645 |
| Cash and cash equivalents, beginning of year | 39,963,012 | 35,241,367 |
| Cash and cash equivalents, end of period | 48,598,408 | 39,963,012 |
| Balance sheet classification of cash and cash equivalents | | |
| Cash and cash equivalents | 42,723,314 | 31,823,182 |
| Restricted assets, cash and cash equivalents | 5,875,093 | 8,139,829 |
| Total cash and cash equivalents | 48,598,408 | 39,963,012 |
| Reconciliation of operating income (loss) to net cash provided by operating activities: | | |
| Operating income (loss) | 7,136,096 | 7,847,880 |
| Adjustments to reconcile operating income to net cash provided by operating activities | | |
| Depreciation | 11,390,580 | 11,602,381 |
| Changes in operating assets and liabilities which provided (used) cash | | |
| Receivables | 914,666 | 599,179 |
| Inventories | (3,345,998) | 2,189,181 |
| Prepaid expenses | 24,266 | 64,654 |
| Accounts payable | (2,773,398) | (44,019) |
| Accrued salaries and wages payable | 114,488 | 77,733 |
| Deposits | 35,806 | (6,336) |
| Net other postemployment benefit obligation | 109,560 | - |
| Net cash provided by operating activities | 13,606,066 | 22,330,653 |

HOLLAND BOARD OF PUBLIC WORKS

Financial Results by Utility by Month



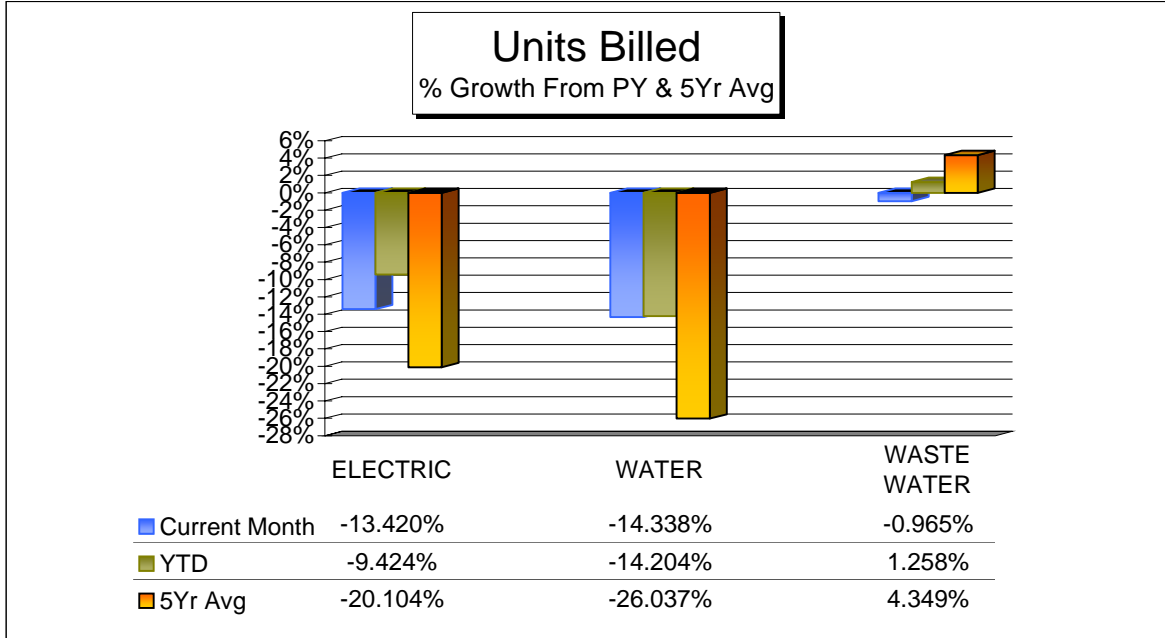
| | | |
|---|---|---------------|
| Revenues = Expenses + Net Income | | |
| FY2008 |  | FY2009 |
| |  | |

| Net Income by Utility | | |
|------------------------------|----------------|------------------|
| | <u>Curr Mo</u> | <u>YTD</u> |
| Electric | (53,529) | 5,322,871 |
| Water | 111,819 | (29,088) |
| Waste W. | 25,187 | (700,199) |
| Total | 83,477 | 4,593,584 |

HOLLAND BOARD OF PUBLIC WORKS

NON-FINANCIAL INFORMATION

JUNE, 2009



| | Current Month | Current YTD | Last YTD | YTD % Increase |
|---------------------------|---------------------|----------------------|---------------------|----------------|
| WAGES AND SALARIES | | | | |
| ELECTRIC | \$ 484,154 | \$ 4,277,624 | \$ 4,092,074 | 4.5% |
| WATER | 106,790 | 934,789 | 862,950 | 8.3% |
| WASTE WATER | 120,859 | 1,239,783 | 1,218,858 | 1.7% |
| ADMIN / FINANCE / GM | 453,387 | 4,059,584 | 3,548,435 | 14.4% |
| | ----- | ----- | ----- | |
| TOTAL | \$ 1,165,191 | \$ 10,511,779 | \$ 9,722,317 | 8.1% |

| | Current Year | Last Year |
|----------------------------|--------------|------------|
| NUMBER OF EMPLOYEES | | |
| ELECTRIC | 69 | 66 |
| WATER | 16 | 16 |
| WASTE WATER | 22 | 23 |
| ADMIN / FINANCE / GM | 67 | 65 |
| TEMPORARY | 10 | 21 |
| | ----- | ----- |
| TOTAL | 184 | 191 |

HOLLAND BOARD OF PUBLIC WORKS
Electric Transmission & Distribution Department
September 14, 2009

Replacement of Digger Derrick Truck

Introduction

This recommendation is for approval of the purchase of a hydraulic digger derrick truck to replace the existing digger derrick truck # 46.

Recommendation

Approve the purchase of an Altec D3055A Hydraulic Digger Derrick with a 54.5 foot sheave height from Altec Industries for a net price of \$208,199.00.

Discussion

The digger derrick is used to dig holes and set electric power poles. It is also used as a lifting mechanism for both pad mounted and pole mounted transformers and other heavy electrical devices.

The current derrick truck is nine years old and due for replacement. In addition, it has only a single axle and does not comply with weight restrictions that are seasonally placed on roads. The new derrick truck is specified to have dual axles. The bid from Altec is within the budget of \$250,000 for the truck replacement.

Following is the bid tabulation:

| Bidder Name | Location of business | Quote Amount | Meets Specifications | Previous contracts |
|--------------------|-----------------------------|---------------------|-----------------------------|---------------------------|
| Altec Industries | Indianapolis, IN | \$208,199 | Y | Y |
| Dueco Inc. | Waukesha, WI | \$227,695 | Y | Y |
| Pitman Utility | Grandview, MO | \$257,566 | N | N |

Report Prepared by Greg Fishnick, Line Crew Supervisor
Report Submitted by John Van Uffelen, Utility Services Director

HOLLAND BOARD OF PUBLIC WORKS
Finance Department
September 14, 2009

Mailing Services Contract

Introduction

A new service contract is required for the mailing services for the Holland Board of Public Works (HBPW) utility bills. The costs for mailing services and postage are included in the fiscal year ending June 30, 2010 budget.

Recommendation

Approve the Presort Services, Inc. mailing services contract subject to City Attorney approval.

Discussion

Requests for proposal for mailing services for the HBPW were sent to three companies with specifications to detail costs to be charged for folding, sorting and mailing as well as automated postage discounts to be applied to the mailings. The process is subject to technology advances; and the postal regulations can change often. The contract is for the current fiscal year and renewable annually up to five years.. Presort Services, Inc has provided excellent service to us in the past and has quoted the largest postage discount when compared to the other proposals.

Three bids were received. HBPW staff has reviewed and recommends that a service contract be issued to Presort Services, Inc.

| Bidder Name | Location of business | Quote Amount (Estimated Annual Amount for Services & Postage) | Meets Specifications | Previous contracts |
|------------------------|-----------------------------|---|-----------------------------|---------------------------|
| Presort Services, Inc. | Grand Rapids, MI | \$142,992 | Y | Y |
| Kent Communications | Grand Rapids, MI | \$148,320 | Y | N |
| Kwik Mailers | Holland, MI | \$183,840 | Y | Y |

Attachment:

Service Contract with Presort Services, Inc.

Report prepared by Amy M. Yost, Sr. Buyer
Submitted by Freda W. Velzen, CPA, Director of Finance

HOLLAND BOARD OF PUBLIC WORKS
Operations Department
September 14, 2009

Wastewater Treatment Plant (WWTP)
Headworks Improvements
Engineering Services

Introduction

This project is intended to provide new screening and grit removal at the Holland Area Wastewater Treatment Plant (WWTP). Work also includes improvements to the piping downstream of the primary clarifiers to relieve hydraulic constraints during high flow events.

Recommendation

Approve a professional services agreement, pending City Attorney approval as to form, with Fishbeck Thompson Carr and Huber (FTC&H) of Grand Rapids, MI in the amount of \$397,000 for the engineering and construction contract administration activities in support of the headworks improvement project at the WWTP.

Approve a 10% contract contingency in the amount of \$39,700.

Discussion

In October 2002, the engineering consultant Black & Veatch (B&V) was retained to provide an expansion and improvement study of the Holland Area WWTP. The project was initiated in response to increasing flows and loadings to the existing plant, anticipated growth in the service area and impending regulatory discharge limitation changes. The report prepared by B&V outlined several alternatives for increasing capacity of the WWTP. All of the identified alternatives require more stringent screening and grit removal than the existing WWTP currently provides in order to protect the downstream processes.

Since the completion of the facility plan, average day flows to the WWTP have stabilized and the strength of the waste has declined. As a result, expansion of the WWTP and expenditure of the associated high capital costs has been postponed until flows and/or strength begin to grow again.

Although the need for expansion has slowed, the need for improved screening and grit removal has remained strong. Flows from the Northern Service Area (NSA) currently

enter the WWTP without any screening or grit removal. The only pretreatment provided on the NSA influent is a macerator that grinds solids into smaller pieces prior to treatment. Additionally, the macerator and associated NSA influent chamber were only designed for a peak flow of 6 million gallons per day (mgd). The NSA pump stations now have capacity of approximately twice that flow, creating overflow concerns during high flow conditions. The new facility is intended to address each of these concerns.

Flows from the Southern Service Area (SSA) pass through a grit removal system but similarly are unscreened and only pass through macerators. Additionally, the existing SSA grit removal system is nearing the end of its useful life and will soon require substantial upgrades or replacement.

Improvements to the headworks facilities are necessary to address operation and maintenance issues at the WWTP. Grit and solids in the waste stream create difficulties by wearing down mechanical components and plugging pipes. This project is planned to construct new headworks facilities at the WWTP that would provide screening and grit removal for the entire waste stream (NSA and SSA).

In addition to the screening and grit removal improvements, work is proposed to relieve hydraulic constraints in the piping downstream of the WWTP's primary clarifiers. During periods of high flow this piping creates substantial head loss which can lead to overflows from the primary clarifiers. Improvements will include replacing and/or rerouting of the existing piping to relieve some of the existing constraints and allow for higher flows to pass through the system. These improvements, combined with elimination of the existing north headworks structure previously mentioned will address the most notable hydraulic bottlenecks in the treatment process.

A Request for Proposals (RFP) was sent to five area engineering firms that staff felt would prepare a qualified bid package. All firms were responsive by the June 30, 2009 due date.

| Bidder Name | Location of business | Quote Amount | Meets Specifications | Previous contracts |
|--------------------|-----------------------------|---------------------|-----------------------------|---------------------------|
| FTC&H | Grand Rapids | \$397,000 | Y | Y |
| Prein & Newhof | Grand Rapids | \$458,000 | Y | Y |
| Tetra Tech | Lansing | \$469,500 | Y | Y |
| Jones & Henry | Kalamazoo | \$540,500 | Y | N |
| Black & Veatch | Grand Rapids | \$824,072 | Y | Y |

Proposals were separated into four phases of engineering services that included conceptual design, final design, bidding, and construction. It should be noted that in order to provide a basis of comparison for the proposals, the Request for Proposal

(RFP) specified a probable location for the new headworks facilities. As a part of the conceptual design phase, the selected consultant will provide a design memorandum that confirms or recommends modification of the location based upon site constraints and integration into the WWTP's master plan for expansion. As such, if an alternate location is agreed upon during the conceptual design phase that substantially alters the scope of the headworks improvements, engineering costs for final design and construction phase services may be subject to change.

Upon review of the proposals received, FTC&H is recommended for the project based on the level of effort they are proposing to dedicate to this project as well as the overall cost of their proposal. The project will require a solid effort from the engineering consultant and Holland Board of Public works' staff feels that FTC&H can provide the necessary services at the best overall price.

Report prepared by Joel Davenport, PE, Planning Engineer
Submitted by David G. Koster, Operations Director

HOLLAND BOARD OF PUBLIC WORKS
Finance Department
September 14, 2009

Meter Data Management System Purchase

Introduction

The Holland Board of Public Works (HBPW) will be implementing several new rate options for customers, including time-of-use and other smart metering initiatives. Current billing software at the HBPW does not have the capability to calculate these types of rates. A Meter Data Management System (MDMS) is necessary in order to implement the new rate structure.

Recommendation

Approve and forward to City Council for approval, the contract with Itron for the purchase and implementation of the Itron Meter Data Management System, in the amount of \$643,700, plus a 5% contingency of \$32,000, and annual maintenance of \$28,000 with a budget transfer of \$100,000 from contingency. The contract is subject to approval as to form by City Attorney.

Discussion

The HBPW is planning to implement several new rates to comply with legislation that encourages energy conservation. Calculating these rates is beyond the scope and capability of the current Harris Corporation customer billing application. In order to apply the new rate structure, the HBPW needs to implement a MDMS that can be integrated with the Automated Meter Reading (AMR) application (i.e., Aclara) and the customer billing application.

HBPW staff has spent the past two years researching and evaluating MDMS software in preparation for a new rate structure. Nine (9) applications were reviewed, and only one vendor fulfills the following essential requirements:

- in-house the Microsoft SQL database is fully supported and is the standard established for applications
- performs advanced billing functions to support complex rate structures
- supports current AMR application

| Vendor | Microsoft SQL | Performs Advanced | Supports Aclara |
|---------------|----------------------|--------------------------|------------------------|
|---------------|----------------------|--------------------------|------------------------|

| | Database | Billing | AMR |
|--------------------------------------|-----------------|----------------|------------|
| ITRON Inc., Spokane, CA | Yes | Yes | Yes |
| Primestone Inc., Plano, TX | Yes | No | No |
| eMeter, Inc., Redwood City, CA | No | - | - |
| Lodestar, Peabody, MA | No | - | - |
| Nexus Energy | No | - | - |
| SAP, Newtown Sq, PA | No | - | - |
| DCSI, St Louis, MO | No | - | - |
| Cannon Technologies, Minneapolis, MN | No | - | - |
| SPL Worldgroup, San Francisco, CA | No | - | - |

Itron is a respected and proven industry leader in meter data applications. The proposal includes the following detail:

| | |
|--|------------------|
| Itron Enterprise Edition Meter Data Management Mass Market – up to 50,000 meters | \$ 45,000 |
| IEE MDM AMI Interval Data Billing Module | \$ 15,000 |
| MV-PBS 5.0 Base System - Complex Billing | \$ 80,000 |
| MVLT xi Single Copy License | \$ 4,000 |
| IEE Implementation Services | \$438,900 |
| MV-PBS Implementation Services | <u>\$ 60,800</u> |
| Total Software and Implementation | \$643,700 |
| Annual Maintenance MDMS, IEE, MV-PBS | \$ 28,000 |
| 5% Contingency | \$ 32,000 |

Attachment:

Contract with Itron for MDMS software

Report prepared by Ellen S. Taub, Technology Director
Submitted by Freda Velzen, CPA, Finance Director



SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (the "**Agreement**") is entered into as of the last date of execution on the signature page hereto (the "**Effective Date**") by and between Itron, Inc. ("**Itron**") and the Holland Board of Public Works ("**Customer**"). Itron and Customer may each be referred to as a "**Party**" and together as the "**Parties**."

The Parties agree as follows:

1. Software Terms

a. Definitions.

"**Delivery**," with respect to Software, means that Itron has either made the Software available to Customer via electronic means or has provided the Software to a carrier on physical media for delivery to Customer.

"**Documentation**" means all printed or electronic materials published or otherwise that are provided to Customer and that describe or relate to the functional, operational or performance capabilities of the Software.

"**Object Code**" means the binary, machine-readable version of the Software.

"**Production Environment**" means a single instance of the Software used in an environment other than a Test Environment.

"**Software**" means software identified on Attachment A that is owned by Itron and any modifications, corrections, improvements or enhancements thereto provided by Itron.

"**Source Code**" means human-readable computer programming code, associated procedural code and related documentation.

"**Specifications**" means the applicable published Itron functional specifications for an item of Software.

"**Test Environment**" means a single instance of the Software used solely for test purposes. Such installation can only be used to verify the correct installation, operation, and integration of the Software and/or components.

"**Third Party Software**" means software that is not owned by Itron but is identified on Attachment A as being provided by Itron.

"**Units**" means a unit of measurement identified on Attachment A that is intended to limit the Use of the Software (e.g., Meters, Seats, Concurrent Seats, Administrative Seats, External Meter Accounts, or Measured Points).

"**Use**" means the ability to run, execute, display and, subject to the restrictions described below, duplicate and distribute internally.

"**Warranty Period**," with respect to a particular item of Software, means the warranty term beginning on the warranty start date, as set forth on Attachment A. If no such period is identified on Attachment A, the Warranty Period shall be 90 days from the date of Delivery.

b. License Grant.

Subject to the terms of this Agreement and for the license fee set forth on Attachment A, Itron grants to Customer a nonexclusive, nontransferable, perpetual Object Code license to Use the Software and Documentation for its internal business purposes only in connection with the number of Units set forth in Attachment A.

c. Restrictions.

As a condition to the foregoing license grant, Customer shall not (i) violate any restriction set forth on Attachment A, (ii) modify or create any derivative work from the Software, (iii) include the Software in any other software, (iv) use the Software to provide processing services to third parties or on a service bureau basis, (v) reverse assemble, decompile, reverse engineer or otherwise attempt to derive Source Code (of the underlying ideas, algorithms, structure or organization) from Software, or (vi) use the Software to process business information concerning customers derived through merger, asset acquisition or other entity combination.

Except as expressly permitted in this Agreement, (i) the Software may not be installed on a computer that is not part of the Customer's computer network, (ii) Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes, and (iii) installation of the Software shall be limited to one Production Environment and one Test Environment. Customer may only make copies of Documentation as reasonably necessary for the use contemplated herein. The Software and Documentation shall be considered the confidential information of Itron and, as such, shall be subject to the confidentiality provisions of this Agreement.

d. Invoicing.

Itron will invoice Customer for the Software and any Third Party Software upon Delivery.

e. Limited Software Warranty

i. Warranty and Remedy.

For the Warranty Period, Itron warrants to Customer that the Software will perform substantially in accordance with the Specifications. Itron does not warrant that the Software will operate uninterrupted or error-free. Itron's sole obligation and Customer's exclusive remedy in connection with the breach of a warranty provided under this Section shall be for Itron to repair or replace the non-conforming Software. If Itron, in its sole discretion, is unable to repair or replace non-conforming Software, Itron will refund to Customer the amount paid for such Software. Software 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. Customer's license to Software for which it has received a refund hereunder shall terminate upon its receipt of a refund.

ii. Exclusions.

The warranty provided in this Section shall not apply to the extent that non-compliance relates to or is the result of (i) use of the Software in combination with software, equipment or communications networks not provided by Itron, (ii) a change to the Software's operating environment not made or authorized by Itron, (iii) Customer's failure to install any correction or enhancement provided by Itron, (iv) viruses introduced through no fault of Itron, (v) any use of the Software not authorized by this Agreement. The warranty provided in this Section is valid only if Customer has complied with the terms of this Agreement (including paying the applicable Software license fees) and shall be void to the extent of any modification to the Software not authorized by Itron.

f. *Third Party Software and Documentation.*

Itron shall provide the Third Party Software, if any, identified on Attachment A and any related documentation. Any Third Party Software and related documentation provided by Itron in connection with this Agreement shall be subject to a separate license agreement between the Customer and the third party software provider and will be subject to separate third party warranties, if any. Customer agrees that it will be bound by and will abide by all such third party software licensing arrangements. Customer is solely responsible for acquiring any software that is required to use the Software or Third Party Software.

g. *Audit.*

Customer will maintain accurate and detailed records as necessary to verify compliance with this Agreement. Itron may audit these records to verify compliance at any time during Customer's regular business hours after giving notice 5 business days in advance of the audit. Except as described below, Itron will bear all costs and expenses associated with the exercise of its audit rights. Any errors in payments identified will be corrected by Customer by appropriate adjustment. In the event of an underpayment of more than 5 percent, Customer will reimburse Itron the amount of the underpayment, reasonable costs associated with the audit, and interest on the overdue amount at the maximum allowable interest rate from the date the obligation accrued.

h. *Obligations Upon Termination for Cause.*

Upon a termination by Itron for cause, Customer's license to any Software and right to receive maintenance and support for such Software shall immediately terminate and Customer shall (i) delete any Software from all of its computers, (ii) immediately deliver to Itron or destroy all copies of such Software and any related Documentation and (iii) certify in writing to Itron within 10 days of any such termination that, to the best of Customer's knowledge, Customer has complied with this Section.

i. *Other Provisions.*

Customer shall not, directly or indirectly, export or transmit the Software to any country to which such export or transmission is prohibited by any applicable regulation or statute. The Parties agree that Software provided under this Agreement shall be deemed to be "goods" within the meaning of Article 2 of the Uniform Commercial Code, except when such a practice would cause an unreasonable result. The Parties agree that the Uniform Computer Information Transaction Act (or a version thereof or substantially similar law) shall not govern this Agreement.

2. Professional Services Terms

a. *Definitions*

"**Change Order**" means a written confirmation of a change in the Professional Services, Deliverables or cost thereof that is executed by both Parties.

"**Deliverable**" means any software, reports, results, studies or other documentation identified as a "Deliverable" to be provided by Itron in a SOW.

"**Professional Services**" means the services to be provided by Itron pursuant to a SOW.

"**SOW**" means a written statement of work describing the activities, tasks and responsibilities of Itron and Customer that, at the time of execution, is attached hereto as Attachment B or that, subsequent to execution, references this Agreement and is executed by authorized representatives of the Parties.

b. *Purchase of Professional Services.*

During the term of this Agreement, Itron will make commercially reasonable efforts to provide to Customer the Professional Services and Deliverables, if any, described in the applicable SOW within the time periods set forth in such SOW. Changes to the Professional Services or Deliverables may only be made through a Change Order.

c. *Fees and Expenses.*

Customer agrees to pay for Professional Services in the manner set forth in the applicable SOW (e.g., on a time and materials basis or on a fixed-fee basis) and at the rates set forth on Attachment A or in the applicable SOW. Itron reserves the right to adjust rates for Professional Services performed on a time-and-materials basis no more than once each year. Customer shall also reimburse Itron for reasonable and documented travel, lodging and related expenses incurred in connection with the Professional Services.

d. *Invoicing.*

Professional Services will be performed either on a time-and-materials basis or a fixed-fee basis, as set forth on Attachment A or the applicable SOW, provided that Attachment A will supersede the SOW to the extent of any conflict. Professional Services performed on a time and materials basis will be invoiced at the end of the calendar month in which they are performed. Professional Services that are performed on a fixed fee basis will be invoiced as set forth on the applicable SOW or, if not set forth on a SOW, upon completion.

e. *Limited Professional Services Warranty.*

Itron warrants to Customer that it shall perform the Professional Services with reasonable care and in a diligent and competent manner. Itron's sole obligation and Customer's exclusive remedy in connection with a breach of the foregoing warranty shall be to correct or re-perform the non-conforming Professional Services. If Itron, in its sole discretion, is unable to correct or re-perform non-conforming Professional Services, its sole obligation will be to refund to Customer the amount paid for such Professional Services. Customer must report any deficiencies in the Professional Services to Itron in writing within 60 days of performance to receive the warranty remedies described herein.

f. *Access to Facilities and Personnel.*

Customer agrees to provide Itron with access to its facilities and personnel as reasonably required for Itron to provide the Professional Services and Deliverables. All employees and representatives of Itron that perform Professional Services on Customer's premises shall comply with reasonable guidelines pertaining to employee conduct, including Customer safety procedures and policies, provided to Itron by Customer.

g. *Insurance.*

During the term of this Agreement, Itron will maintain the following minimum levels of insurance (i) workers' compensation insurance for Itron employees equal to applicable statutory limits and an employer's liability policy in an amount not less than \$1,000,000.00; (ii) an occurrence form commercial general liability policy or policies in an amount not less than \$1,000,000 per occurrence and \$2,000,000.00 aggregate; (iii) an automobile liability policy or policies in an amount not less than \$1,000,000.00 combined single limit; and (iv) a professional liability policy or policies insuring against liability for errors and omissions covering professional activities contemplated under the Agreement in an amount not less than \$1,000,000.00. Upon written request, Itron will provide Certificates of Insurance evidencing the coverage described in this Section.

3. Payment Terms and Taxes.

For invoices not paid within 30 days of the invoice date, 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 undisputed 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 Attachment A, Customer shall pay all amounts owing under this Agreement in U.S. Dollars. The prices set forth on Attachment A 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, upon execution of this Agreement.

4. Changes.

Changes to the products or services ordered by Customer pursuant to this Agreement, including the purchase of additional quantities or entirely new products or services, may be made at Itron's then-current pricing by purchase order or Change Order (in a form acceptable to Itron), provided that any such purchase order must first be accepted by Itron. This Agreement shall govern the non-price terms and conditions of any Change Order or purchase order accepted by Itron subsequent to the execution of this Agreement.

5. Confidentiality.

With respect to any information supplied in connection with this Agreement 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 this Agreement 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 this Agreement 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 granted in this Agreement.

7. Indemnification

a. *General Indemnity.*

Itron will defend Customer from any claim for (i) death of or bodily injury to a Customer employee or third party that is caused by Itron's gross negligence or intentional torts, or (ii) physical damage to tangible personal property owned by Customer or a third party that is caused by Itron's gross negligence or intentional torts and will pay costs and damages awarded against Customer (or settled) in any such action that are specifically attributable to Itron's gross negligence or intentional torts.

b. *Infringement Indemnity.*

Itron will, at its own expense, defend any claim or action brought against Customer by an unaffiliated third party to the extent that the action is based upon a claim that any product manufactured, software licensed or service provided by Itron hereunder directly infringes any U.S. patent (issued as of the Effective Date) or any copyright or trademark and Itron will pay those costs and damages awarded

against Customer (or settled) in any such action that are specifically attributable to such claim. The foregoing indemnity does not apply to products not manufactured by Itron or software licensed by third parties.

c. Conditions to Infringement Indemnity.

Itron's infringement indemnity obligations under this Section are conditioned on Customer's agreement that if the applicable product or service becomes, or in Itron's opinion is likely to become, the subject of such a claim, Customer will permit Itron, at Itron's option and expense, either to procure the right for Customer to continue using the affected product or service or to replace or modify the same so that it becomes non-infringing. Such replacements or modifications will be functionally equivalent to the replaced product or service. If the foregoing alternatives are not available on terms that are reasonable in Itron's judgment, Itron shall have the right to require Customer to cease using the affected product or service in which case Itron will refund to Customer the depreciated value of the affected product or service.

d. Exclusions.

Itron shall have no obligation under this Agreement to the extent any claim of infringement or misappropriation results from: (i) use of a product or service, other than as permitted under this Agreement or as intended by Itron, if the infringement would not have occurred but for such use; (ii) use of any product or service in combination with any other product, equipment, software or data, if the infringement would not have occurred but for such combination; (iii) any use of any release of a software or any firmware other than the most current release made available to Customer, (iv) any claim based on Customer's use of a product after Itron has informed Customer of modifications or changes to the product required to avoid such claims and offered to implement those modification or changes, if such claim would have been avoided or mitigated by the implementation of Itron's suggestions, (v) any modification to a product made by a person other than Itron or an authorized representative of Itron, or (vi) compliance by Itron with specifications or instructions supplied by Customer. Itron shall not be liable hereunder for enhanced or punitive damages that could have been avoided or reduced by actions within the control of Customer.

e. Right to Defend.

As a condition to Itron's indemnity obligations under this Agreement, Customer will provide Itron with prompt written notice of the claim, permit Itron to control the defense, settlement, adjustment or compromise of the claim and provide Itron with reasonable assistance in connection with such defense. Customer may employ counsel at its own expense to assist it with respect to any such claim.

f. Indemnity Disclaimer

THIS SECTION CONSTITUTES ITRON'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CUSTOMER.

8. 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.

9. WAIVER OF CONSEQUENTIAL DAMAGES.

IN NO EVENT WILL ITRON BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR INCIDENTAL, 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.

10. CAP ON LIABILITY.

THE AGGREGATE LIABILITY OF ITRON 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 BY CUSTOMER UNDER THIS AGREEMENT. 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.

11. Term and Termination

a. Term of Agreement.

Unless terminated earlier as provided herein, the term of this Agreement shall be from the Effective Date through December 31st of the year in which any products or services to be provided hereunder have been provided. The term of this Agreement shall thereafter automatically renew for successive one year periods unless either Party provides the other with written notice of its intent not to renew at least 90 days prior to such termination; provided, however, that Customer shall be obligated to purchase and Itron shall be obligated to provide any product or service that is the subject of an unfulfilled order accepted by Itron prior to the time of any such termination. Notwithstanding the foregoing, the term of any license provided by Itron hereunder shall be as set forth in the provision granting such license.

b. Termination for Cause.

Either Party may terminate this Agreement by providing the other Party with written notice if the other Party (i) becomes insolvent, executes a general assignment for the benefit of creditors or becomes subject to bankruptcy or receivership proceedings; (ii) breaches its obligations related to the other Party's confidential information; or (iii) commits a material breach of this Agreement that remains

uncured for 30 days following delivery of written notice of such breach (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Agreement that are in breach or default and the action required to cure the breach or default).

c. Survival.

Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration and continue in full force and effect for the period so contemplated including, but not limited to, provisions relating to warranties and warranty disclaimers, intellectual property ownership, payment terms, confidentiality, waiver of consequential damages, and cap on liability.

12. Miscellaneous

a. Entire Agreement.

This Agreement and any attachments hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements pertaining to such subject matter. All prior agreements, representations, warranties, statements, negotiations, understandings, and undertakings are superseded hereby and Customer represents and acknowledges that it has not relied on any representation or warranty other than those explicitly set forth in this Agreement in connection with its execution of this Agreement. Neither Party shall be bound by terms and conditions imprinted on or embedded in purchase orders, order acknowledgments, statements of work not attached hereto or other communications between the Parties subsequent to the execution of this Agreement.

b. Amendments and Waivers.

Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by a writing signed by an authorized representative of each Party and declared to be an amendment hereto. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

c. Governing Law; Jury Trial.

This Agreement and performance hereunder 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. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT.

d. No Solicitation.

For eighteen months following the termination of this Agreement, Customer will not encourage or solicit any employee or consultant to leave the employ of Itron, provided that the foregoing shall not be construed to prohibit mass media advertising not specifically directed towards employees or consultants of Itron.

e. Assignment.

Customer may not assign or transfer its interests, rights or obligations under this Agreement 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.

f. Publicity.

Unless otherwise provided in a separate confidentiality agreement between the Parties, each Party may issue a press release following the execution of this Agreement, subject to the other Party's written approval, which shall not be unreasonably withheld. Each Party hereby consents to the other Party's use of its name, URL and logo on its website and in its customer and partner lists for corporate and financial presentations.

g. Notices.

Any notice required or permitted under this Agreement or required by law must be in writing and must be delivered in person, by facsimile, by certified mail (return receipt requested), or by a nationally recognized overnight service with all freight charges prepaid, to the address set forth below. Notices will be deemed to have been given at the time of actual delivery, if in person, or upon receipt (as evidenced by facsimile confirmation, return receipt or overnight delivery verification). Either Party may change its address for notices by written notice to the other Party in accordance with this Section.

Itron: Attn: General Counsel
Itron, Inc.
2111 North Molter Road
Liberty Lake, WA 99019

Customer: Holland Board of Public Works
625 Hastings Avenue
Holland, MI 49423

h. Miscellaneous.

Neither Party will be responsible for any failure or delay in performing any obligation hereunder, other than Customer's obligation to pay, 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. Headings used in this Agreement are intended for convenience or reference only and will not control or affect the meaning or construction of any provision of this Agreement. If any

provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby and such provision shall be interpreted so as to best accomplish the intent of the Parties within the limits of applicable law. Any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement shall not apply to the terms and conditions of this Agreement. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. If available, maintenance and support for products will be provided pursuant to a separate maintenance agreement. Itron shall perform all work to be performed in connection with this Agreement as an independent contractor and not as the agent or employee of Customer. All persons furnished by Itron shall be for all purposes solely Itron's employees or agents and shall not be deemed to be employees of Customer for any purpose whatsoever. This Agreement is entered into only for the benefit of Customer and Itron. No other person or entity shall have the right to make any claim or assert any right hereunder, and no other person or entity shall be deemed a beneficiary of this Agreement.

[Signature Page Follows]

Agreed to and accepted:

Itron, Inc.

Customer

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Tax Exempt: Yes / No (if yes, attach copy of Tax Exemption Certificate)

Sample Attachment A

1. Definitions

Refer to the Itron proposal submitted August 24, 2009

2. Licensed Software

The proposal includes the following detail:

| | |
|--|------------------|
| Itron Enterprise Edition Meter Data Management Mass Market – up to 50,000 meters | \$ 45,000 |
| IEE MDM AMI Interval Data Billing Module | \$ 15,000 |
| MV-PBS 5.0 Base System - Complex Billing | \$ 80,000 |
| MVLT xi Single Copy License | \$ 4,000 |
| IEE Implementation Services | \$438,900 |
| MV-PBS Implementation Services | <u>\$ 60,800</u> |
| Total Software and Implementation | \$643,700 |
| Annual Maintenance MDMS, IEE, MV-PBS | \$ 28,000 |
| 5% Contingency | \$ 32,000 |

3. Additional Restrictions

TBD

Attachment B

Statement of Work

Refer to the Itron Proposal to Holland Board of Public Works submitted August 24, 2009



MAINTENANCE AGREEMENT

This Maintenance Agreement (this "**Maintenance Agreement**") is entered into as of the last date of execution on the signature page hereto by and between Itron, Inc. ("**Itron**") and **Holland Board of Public Works** ("**Customer**"). Itron and Customer may each be referred to as a "**Party**" and together as the "**Parties**."

The Parties agree as follows:

1. **DEFINITIONS.** The following terms shall have the following specified meanings when used in this Maintenance Agreement:

"**Annual Adjustment**" means, at Itron's option, an increase in the Annual Fee after the first Maintenance Year of no more than the greater of (i) five percent (5%) of the Annual Fee or (ii) the increase in the Employee Cost Index (ECI) for "professional and related" released by the Bureau of Labor Statistics over the most recently measured 12 month period.

"**Annual Fee**" means the annual fee for the Maintenance Services as set forth in Section 4.2.

"**Critical Maintenance Release**" means a New Release issued by Itron on an infrequent or irregular basis to correct an Error.

"**Documentation**" has the meaning set forth in the Main Agreement and includes any documentation provided in connection with a New Release.

"**Effort Level**" means, with respect to a particular Severity Level, the degree of effort to be made by Itron in connection with a Support Request, as set forth on Attachment B.

"**Error**" means any failure of the Itron Software to substantially comply with the applicable Specifications.

"**Escalation Path**" means, with respect to a particular Severity Level, the period of time within which a particular Support Request will be escalated and the personnel to whom such Support Request will be escalated, as set forth on Attachment B.

"**Itron Software**" has the meaning set forth in the Main Agreement.

"**Main Agreement**" means the [_____], dated as of [_____], between Itron and Customer.

"**Maintenance Services**" means the services to be performed by Itron under this Maintenance Agreement for the Itron Software licensed in the Main Agreement and as set forth on Attachment A.

"**Maintenance Year**" means any period of one (1) year during the Term beginning with the Effective Date or any anniversary thereof.

"**New Release**" means any modification, correction, enhancement, improvement, update, upgrade or other new release of the Itron Software.

"**Other Release**" means a New Release issued by Itron other than a Critical Maintenance Release or a Scheduled Maintenance Release, including New Releases that provide new functionality, that make the Itron Software compatible with equipment or software not described in the Documentation, or that are issued solely to Customer pursuant to a separate statement of work.

"**Response Time**" means, with respect to a particular Severity Level, the period of time within which Itron's personnel will contact Customer after Customer has made a Support Request, as set forth on Attachment B.

"**Scheduled Maintenance Release**" means a New Release issued by Itron on a routine basis to maintain software functionality and provide available fixes for reported, verified, and corrected Errors that is made generally available by Itron without charge under its standard support agreements.

"**Service Levels**" has the meaning set forth in Section 2.3.

"**Severity Level**" means the particular Severity Level (e.g., Severity Level 1 or Severity Level 2) assigned to an Error by Itron in connection with a Support Request, as set forth on Attachment B.

"**Customer Coordinators**" has the meaning set forth in Section 3.3.

"**Specifications**" has the meaning set forth in the Main Agreement.

"**Support Request**" means a request for Itron Software technical support submitted by Customer to the appropriate Itron representative pursuant to this Maintenance Agreement.

"**Term**" means the period of time described in Section 5.

2. SOFTWARE MAINTENANCE SERVICES.

2.1 *Technical Support.*

(a) Remote Support. Itron will make available qualified technical representatives by telephone, email or other remote means during its then-current normal business hours assist Customer with the operation of and answer questions related to the Itron Software. Such technical support shall include Itron Software troubleshooting, management of exchanged data for investigation, report generation, interpretation of error messages, problem diagnosis, and recommendations for fully utilizing software capabilities. Support after normal business hours will be made available on a 24X7X365 basis (Christmas and Thanksgiving days excepted) for Severity Level 1 Errors only. Itron's current email address for remote support is "support@itron.com". Itron's current telephone number for remote support is (877) 487-6602. Itron shall provide Customer with at least three days advance notice prior to any change in the foregoing email address or phone numbers.

(b) Field Support. If Error resolution by remote means is unsuccessful, upon mutual agreement between Itron and Customer, Itron will dispatch field engineering personnel to Customer's location. Any services provided by Itron pursuant to this Section 2.1(b) will be invoiced to Customer at Itron's hourly rates specified the Main Agreement. Travel and living expenses will be invoiced to Customer at Itron's cost.

2.2. ***New Releases.*** Itron shall issue to Customer any and all Scheduled Maintenance Releases. Itron (a) shall make commercially reasonable efforts, consistent with the requirements of Attachment B hereto, to issue to Customer a Critical Maintenance Release in response to an Error that results in a Severity Level 1 problem, and (b) may issue to Customer a Critical Maintenance Release in response to an Error that does not result in a Severity Level 1 problem. Itron, in its sole discretion, may make Other Releases available to Customer.

2.3 ***Service Levels.*** Itron shall make commercially reasonable efforts to comply with the Response Time, Effort Level, and Escalation Path parameters (together, the "***Service Levels***") outlined in Attachment B hereto for the applicable Severity Levels identified in Attachment B hereto with respect to all Itron Software. Itron's obligation to perform in accordance with the Service Levels are contingent upon Customer assigning its most qualified personnel or contractors (including certified database administrators, network administrators, hardware application support specialists, radio frequency and field engineers, and member(s) of its project team) to assist Itron in its Maintenance Services efforts. If Customer does not so assist Itron, Itron will escalate the Support Request to Customer's project manager.

2.4 ***Documentation and Software Library.*** Itron will make an electronic copy of the Documentation available to Customer at no additional charge. Itron will maintain a copy of its most recent version of the Itron Software to be made available to Customer as necessary in the event of corrupted or inoperative Itron Software.

2.5 ***Exclusions.*** Itron shall not be obligated to provide Maintenance Services to the extent the Itron Software is adversely affected by: (i) the use of Itron Software in combination with other software, equipment or communications networks that are not referenced in the Documentation; (ii) any modification to the System, including the operating environment of the Itron Software, after the Effective Date that is made by a party other than Itron; (iii) the use of a release of the Itron Software other than one of the two most recent releases; (iv) Customer's failure to implement a Software fix provided by Itron; (v) the operation or maintenance of the Itron Software by a party other than Itron; (vi) viruses introduced through no fault of Itron; or (vii) the use of Itron Software other than as contemplated in the Main Agreement.

2.6 ***Supplemental Services.*** Itron may, upon Customer's request and as permitted by each Party's schedule, provide the following supplemental services at Itron's then-current rates: (i) software restoration services if the Itron Software's configuration is corrupted through no fault of Itron; (ii) software training; (iii) maintenance for Other Release; (iv) on-site consulting services support; (v) assistance with software upgrades; and (vi) data analysis and statistical modeling in support of Customer's deployment of the Itron Software.

3. CUSTOMER RESPONSIBILITIES

3.1 ***Support Requests.*** Customer will cooperate to enable and facilitate Itron's provision of the Maintenance Services in accordance with this Maintenance Agreement. Customer will promptly submit Support Requests upon the discovery of an Error and will provide such information and data as Itron may reasonable request in order to reproduce and correct any such Error.

3.2 ***Maintenance Releases.*** As a condition to Itron's obligation to provide the Maintenance Services, the version of Itron Software installed by Customer shall be no older than the second most recent Scheduled Maintenance Release of such item of Itron Software. Further, Customer shall install Itron tested Critical Maintenance Releases within a reasonable time after receipt of such New Releases.

3.3 **Customer Coordinators.** Customer will identify two (2) supervisory level employees (each a "**Customer Coordinator**") to serve as administrative liaisons with Itron for all maintenance issues, including calls to Itron for Maintenance Services.

3.4 **Training.** Customer Coordinators will attend formal training sessions offered by Itron to ensure that each Customer Coordinator is (a) knowledgeable about the operation of the Itron Software, and (b) qualified to perform problem determination and remedial functions with respect to the Itron Software. Such training sessions will be at Itron's current rates. Customer will be solely responsible for all travel and other expenses incurred in connection with such training sessions. If Itron notifies Customer that additional training is necessary, Customer will promptly ensure that all applicable employees and/or Customer Coordinators receive such training.

3.5 **System Configuration.** Customer will ensure that its equipment, operating system, and data communications environment associated with the Itron Software is configured, operated, and maintained in accordance with the Documentation. Customer will consult with Itron prior to making changes that may affect the operation of the Itron Software.

3.6 **Network Administration.** Customer will monitor and as reasonably necessary maintain, repair, replace and upgrade its local, and wide area network components, including network servers, network clients, network hubs, routers, modems, and Itron-identified software components necessary for efficient and reliable network operations associated with the Itron Software to ensure continued conformance with the Documentation. In addition, Customer will administer related host names, Internet Protocol (IP) addresses, network interfaces, access, security, communications, and equipment and software version control.

3.7 **Database Administration.** Customer will administer the agreed upon database(s) (including equipment and software components) associated with the Itron Software in accordance with the Documentation, which administration shall include, monitoring the database server, backing up electrical power sources, and configuration and administration of database schema, application interfaces, networking operating system, communications, and file transfer software. Customer will delete and truncate database files, perform regular data backup and data archive.

3.8 **Remote Communications.** Customer will purchase, install, operate, and maintain remote communications software and equipment in a manner that will allow for remote access to the Itron Software. Customer will make such remote access available to Itron representatives, as necessary, for remote diagnosis and troubleshooting of the Itron Software.

3.9 **Data Review.** From time-to-time, situations may occur where it will be necessary for Itron to evaluate Customer data in order to reproduce error conditions not reproducible with Itron's standard test data sets. Customer will allow Itron access to such data subject to the terms of the Main Agreement. Itron shall not be liable for any delay or failure to resolve the problem if access to such production data is denied to Itron.

4. COMPENSATION AND PAYMENT

4.1 **Compensation and Invoicing.** As compensation for the Maintenance Services for Itron Software, Customer shall pay to Itron an annual fee equal to **\$28,000** plus the Annual Adjustment, if any (together, the "**Annual Fee**"). At least one hundred and twenty (120) days prior to the commencement of each Maintenance Year, Itron shall provide Customer with a renewal notice. Approximately twenty (20) days prior to the commencement of each Maintenance Year, Itron shall provide Customer with an invoice for the Annual Fee payable by Customer for such Maintenance Year.

4.5 **Payment.** Invoices will be due and payable 30 days following the date of invoice. For invoices not paid within 30 days of the invoice date, in addition to other remedies to which Itron may be entitled, Itron may charge Customer a late fee of 1.5 percent per month applied against undisputed overdue amounts. Customer shall also be responsible for collection costs associated with late payment, if any, including reasonable attorneys' fees. Fees paid pursuant to this Agreement, including the Annual Fee, 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 the Equipment, excluding taxes on Itron's income generally. 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. All amounts payable under this Maintenance Agreement are denominated in United States dollars, and Customer shall pay all such amounts in lawful money of the United States.

4.6 **Reimbursement.** Customer shall pay Itron at Itron's then-current rates (and shall reimburse Itron for expenses incurred) for field support, supplemental services and work performed in connection with a Support Request that is determined to be unrelated to an Error.

5. TERM AND TERMINATION

5.1 **Term.** The term of this Maintenance Agreement ("**Term**") shall commence upon the Commencement Date and shall continue unless and until terminated in accordance with Section 5.2, 5.3 or 5.4.

5.2 **Termination by Customer.** Customer may terminate this Agreement effective as of the end of any Maintenance Year by giving Itron written notice of termination at least thirty (30) days prior to the end of such Maintenance Year.

5.3 **Termination by Itron.** Itron may terminate this Agreement effective as of the end of any Maintenance Year by giving Customer written notice of termination at least ninety (90) days prior to the end of such Maintenance Year, provided that no such termination shall be effective prior to the end of the third Maintenance Year.

5.4 **Termination for Material Breach.** If either Party commits a material breach of or default under this Maintenance Agreement or the Main Agreement, then the other Party may give such Party written notice of the breach or default (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Maintenance Agreement that are in breach or default and the action required to cure the breach or default) and, at the notifying Party's election, this Maintenance Agreement shall terminate pursuant to this Section 6.4 if the breach or default is not cured within thirty (30) days after receipt of notice (or such later date as may be specified in the notice).

5.5 **Effect of Termination.** Itron shall not be obligated to provide any Maintenance Services after the end of the Term. If Customer terminates the Maintenance Agreement pursuant to Section 5.4, Itron shall refund to Customer that portion of the Annual Fee paid by Customer for the balance of the then-current Maintenance Year (i.e., the number of days from the effective date of such termination to the end of the applicable Maintenance Year divided by 365). Sections 4, 5 and 6 shall survive the termination or expiration of this Maintenance Agreement.

6. MISCELLANEOUS

6.1 **Disclaimer of Warranties.** THIS IS A SERVICES AGREEMENT. CONTRACTOR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, UNDER THIS MAINTENANCE AGREEMENT OR WITH REGARD TO THE MAINTENANCE SERVICES OR ANY NEW RELEASE (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE).

6.2 **No Consequential Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE; AND NOTWITHSTANDING ANY NEGLIGENCE, STRICT LIABILITY OF PRODUCT LIABILITY OF CONTRACTOR) UNDER THIS MAINTENANCE AGREEMENT OR WITH REGARD TO THE MAINTENANCE SERVICES OR ANY NEW RELEASE FOR ANY INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS OR USE.

6.3 **Limitation of Liability.** NEITHER PARTY'S LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE AND NOTWITHSTANDING ANY NEGLIGENCE, STRICT LIABILITY OF PRODUCT LIABILITY OF CONTRACTOR) WITH REGARD TO ANY MAINTENANCE SERVICES, NEW RELEASES OR OTHER ITEMS FURNISHED UNDER THIS MAINTENANCE AGREEMENT SHALL EXCEED THE COMPENSATION PAID BY CUSTOMER TO CONTRACTOR PURSUANT TO SECTION 5.

6.4 **Excused Performance.** Itron shall not be liable for, or be considered to be in breach of or default under, this Maintenance Agreement on account of any delay or failure to perform as required by this Maintenance Agreement as a result of any cause or condition beyond Itron reasonable control.

6.5 **Notices.** Any notice or other communication under this Maintenance Agreement given by either Party to the other Party shall be deemed to be properly given if given in writing and delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address specified in the Main Agreement. Either Party may from time to time change its address for notices by giving the other Party notice of the change in accordance with the terms of the Main Agreement.

6.6 **Assignment.** Customer may not assign or transfer its interests, rights or obligations under this Agreement 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.

6.7 **Nonwaiver.** Any failure by either Party to insist upon or enforce performance by the other Party of any of the provisions of this Maintenance Agreement or to exercise any rights or remedies under this Maintenance Agreement or otherwise by law shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon

any such provision, right or remedy in that or any other instance; rather the provision, right or remedy shall be and remain in full force and effect.

6.8 **Governing Law.** This Agreement and performance hereunder 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. The Parties agree to the exclusive jurisdiction of and venue in federal or state courts located in Spokane County, Washington. Customer waives any right it may have to transfer or change the venue of any litigation brought in such courts.

6.9 **Confidentiality.** With respect to any information supplied in connection with this Agreement 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 perform its obligations under this Agreement 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.

6.10 **Ownership of Intellectual Property.** New Releases and Documentation provided pursuant to this Maintenance Agreement shall be considered as Itron-Owned Deliverables (as defined in the Main Agreement) unless the Parties agree otherwise in a writing signed by an authorized representative of each Party.

6.11 **Entire Agreement.** This Maintenance Agreement constitutes the entire agreement as of the date of the Maintenance Agreement, and supersedes any and all prior agreements, between Itron and Customer related to the Maintenance Services, the New Releases and other items furnished under this Maintenance Agreement. No amendment, modification or waiver of any of the provisions of this Maintenance Agreement shall be valid unless set forth in a written instrument signed by the Party to be bound thereby.

[Signature Page Follows]

Agreed to and accepted:

ltron, Inc.

[Customer]

Signature: _____

Signature: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Sample
ATTACHMENT A

| | |
|--|------------------|
| Itron Enterprise Edition Meter Data Management Mass Market – up to 50,000 meters | \$ 9,000 |
| IEE MDM AMI Interval Data Billing Module | \$ 3,000 |
| MV-PBS 5.0 Base System - Complex Billing | <u>\$ 16,000</u> |
| | \$ 28,000 |

ATTACHMENT B

| Severity Level | Response Times | Effort Level and Escalation Path |
|--|---|---|
| <p>Severity Level 1. An Error for which there is no work-around that causes the Software to be unavailable.</p> | <p>Itron will respond to the Support Request within 4 business hours of receipt and will update Customer at three hour intervals each day for unresolved Support Requests. Customer will respond to an Itron inquiry or request within three hours.</p> | <p>Itron will have analysts make diligent efforts on a 24x7 basis. A Support Request shall be escalated to Itron's Call Center Manager if a Fix is not provided within 1 business day of Itron's receipt of a Support Request.</p> |
| <p>Severity Level 2. An Error other than a Severity Level 1 Error for which there is no work-around that results in a severe loss of access to the Software or that causes essential features of the Software to not work.</p> | <p>Itron will respond to the Support Request within 1 business day and will update Customer at least every other day. Customer will respond to an Itron inquiry or request within 1 business day.</p> | <p>Itron will have analysts make diligent efforts during normal business hours. Support Requests shall be escalated to Itron's Call Center manager if a Fix is not provided within 3 business days of Itron's receipt of a Support Request.</p> |
| <p>Severity Level 3. An Error other than a Severity Level 1 or Severity Level 2 Error that has a material impact on the functionality of the Software (e.g., a feature is not working as documented but a work-around is available and significant business functions are not materially impaired).</p> | <p>Itron will respond to the Support Request within 2 business days.</p> | <p>Itron will have its analysts make diligent efforts during normal business hours.</p> |
| <p>Severity Level 4. An Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error.</p> | <p>Itron will respond to the Support Request within 3 business days.</p> | <p>Itron will have its standard technical analysts devote commercially reasonable efforts during normal business hours.</p> |
| <p>Severity Level 5. A Support Request for an enhancement or new functionality.</p> | <p>N/A</p> | <p>Itron will pass the Support Request to its internal Product Management for review. If the enhancement or new functionality requires more immediate attention, Itron Consulting Services can be engaged to create a customized proposal at Itron's then-current services rates.</p> |

**HOLLAND BOARD OF PUBLIC WORKS
Business Services
September 14, 2009**

Closed Session

Recommendation

Enter into closed session pursuant to the provisions of Section 8 (c) of Michigan's Open Meetings Act.

Discussion

Michigan's Open Meetings Act provides in Section 8 (c) that a public body may enter into closed session by a two-thirds roll call vote for discussion of pending litigation.