

## **Welcome to tonight's City Council meeting!**

The elected officials of the City of Bonners Ferry are appreciative of an involved constituency. Testimony from the public is encouraged concerning issues when addressed under the Public Hearing portion of the agenda. Any individual who wishes may address the council on any issue, whether on the agenda or not, during the Public Comments period. Normal business will preclude public participation during the business portion of the meeting with the discretion left to the Mayor and Council.

### **Vision Statement**

Bonners Ferry, "The Friendliest City", strives to achieve balanced growth, builds on community strengths, respects natural resources, promotes excellence in Government, and values quality of life.

## **AGENDA CITY COUNCIL MEETING Bonners Ferry City Hall 7232 Main Street 267-3105 April 4, 2017 7:00 p.m.**

### **PLEDGE OF ALLEGIANCE**

### **PUBLIC COMMENTS**

Each speaker will be allowed a maximum of five minutes, unless repeat testimony is requested by the Mayor/Council

### **GUESTS**

### **REPORTS**

Police/Fire/City Administrator/Economic Development Coordinator/Urban Renewal District

### **CONSENT AGENDA**

1. Call to Order/Roll Call
2. Approval of Bills and Payroll
3. Treasurer's Report

### **OLD BUSINESS**

### **NEW BUSINESS**

4. City – Approve the Special Event Permit for Kootenai River Days
5. City – Authorize Mayor to Sign Community Transformational Grant agreement with Blue Cross of Idaho Foundation for Health, Inc. (attachment)
6. City – Appoint Incident Command Advisor
7. City – Approve Phone System Quote (attachment)
8. Electric/Water – Authorize Mayor to Sign Agreement with Itron for FCS Software (attachment)
9. Electric/Water – Authorization to have Justin Albrect from General Pacific Install FCS (attachment)
10. Electric/Water – Approve Request for Statements of Qualifications from Engineering Firms (attachment)
11. Planning and Zoning – First Reading of AM06-17 Title 11 Adopt Official Zoning Map Ordinance (attachment)
12. Planning and Zoning – First Reading of AM05-16 Non-Conforming Structures and Daycare Ordinance (attachment)
13. Street – Approve Purchase of Mower (attachment)

## **EXECUTIVE SESSION PURSUANT TO IDAHO CODE 74-206, SUBSECTION 1**

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual agent, or public school student;
- (c) To acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;
- (g) By the commission of pardons and parole, as provided by law;
- (h) By the custody review board of the Idaho department of juvenile corrections, as provided by law;
- (i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or
- (j) To consider labor contract matters authorized under section 67-2345A [74-206A] (1) (a) and (b), Idaho Code.

## **ADJOURNMENT**

## **INFORMATION**

**CONDITIONAL AWARD**  
**OF**  
**COMMUNITY TRANSFORMATIONAL GRANT**

**Blue Cross of Idaho Foundation for Health, Inc.** (the “Foundation”) is pleased to award \_\_\_\_\_ (the “Grantee”) with a Community Transformational Grant (the “Grant”). The Grant is awarded subject to the terms and conditions stated in this Grant and any exhibits or attachments thereto. Please read the terms and conditions of the Grant carefully before signing this document as the Grantee’s signature constitutes the Grantee’s agreement and acceptance in full of all terms and conditions contained herein.

**1. AMOUNT AND ADMINISTRATION OF AWARD**

Subject to the terms and conditions set out in the Grant, the Foundation is pleased to award Grantee with a conditional grant of up to Two Hundred Fifty Thousand Dollars (\$250,000), which shall include any interest or income arising therefrom (the “Maximum Grant Amount”).

The specific total of the Maximum Grant Amount to be disbursed to the Grantee will be determined pursuant to the Foundation’s review and approval of the Fund Disbursement Request Form(s) that shall be submitted to the Foundation by the Grantee. The Fund Disbursement Request Form requires the Grantee to describe and itemize the cost for the Grantee to complete each phase of the Grantee’s Community Transformation Grant Action Plan. Approved Fund Disbursement Request Form(s), together with the any supporting exhibits, and the Community Transformation Grant Action Plan, shall be attached as addendum(s) to the Grant. The Grantee shall also provide the Foundation with such other information pertaining to a phase of the Community Transformation Grant Action Plan as the Foundation may request. The Foundation may award the full amount of the Maximum Grant Amount, a portion of the amount requested, or none of the amount requested as the Foundation may solely determine.

The Foundation shall distribute approved disbursements to the Grantee over a period of three years, beginning January 1, 2017 and ending December 31, 2019.

**2. PURPOSE AND ADMINISTRATION**

The Grantee shall utilize grant funds exclusively for the purposes specified in its Community Transformation Grant Action Plan and subsequent approved Fund Disbursement Request Form(s). The purpose of all grant funding from the Foundation is to support the work of the community to increase youth access to healthy, affordable foods and physical activity opportunities.

The Grantee will serve as the point of contact for the Foundation and agrees to directly oversee the management and distribution of the grant budget. This includes serving as the fiscal agent (directing fund distribution) and/or administering the project(s) or program(s) being supported by the grant. The Grantee agrees that grant funds shall not be disbursed to any unrelated third party organizations, entities, or vendors without obtaining the prior written consent of the Foundation to do so through disclosure in and approval of a Fund Disbursement Request Form.

**3. USE OF GRANT FUNDS**

A. The Grantee shall utilize grant funds exclusively for the purposes set out in the Community Transformation Grant Action Plan and related approved Fund Disbursement Request Form(s).

B. No part of the grant shall be used for other than charitable, educational, scientific, or literary purposes as described in Section 170(c)(2)(B) of the Internal Revenue Code (“Code”).

C. No part of the grant shall be used for any political activities or lobbying, including, but not limited to, support of or opposition to candidates, ballot initiatives, voter registration drives, attempting to influence legislation, referenda, or similar activities.

D. No part of the grant shall be used for any personal attack on, or vilification of, any person (whether by name or business affiliation), company, or governmental agency, whether individually or collectively.

E. No part of the grant shall be used for a grant to another organization without the express, written approval of the Foundation.

F. Grantee shall not be disburse any grant funds to any unrelated third party organization, entity, or vendor without obtaining the prior written consent of the Foundation through an approved Fund Disbursement Request Form. If such consent is obtained, the Grantee shall enter into a written contract with such unrelated third party organization, entity, or vendor that sets out: (1) the services to be provided, (2) the total amount of compensation and, if applicable, the

methodology for reimbursement of expenses, (3) the term of the agreement and the timeline for providing such services, and (4) the completion date for the delivery of services. The contract should also require the third party organization, entity, or vendor to obtain and maintain an adequate policy of liability insurance throughout the time that it provides these services.

This section does not apply to vendors providing the Grantee with general services (e.g., utilities, office supplies, deliveries, caterers, etc.).

#### **4. BUDGET**

Expenditures of the grant funds must adhere to the specific line items in the Grantee's approved grant budget. Transfers among line items (increases and decreases) in excess of 5% of the total approved annual grant award are permitted only with the express written consent of the Foundation. All transfers among line items for staff salaries and benefits, equipment and indirect costs (increases and decreases) are permitted only with the express written consent of the Foundation. Grant expenditures must occur during the period under which support is approved unless a no-cost extension or carry forward is approved by the Foundation.

#### **5. ACCOUNTING AND AUDIT**

The Grantee shall identify the grant separately on its books of account. A systematic accounting record shall be kept by the Grantee of the receipt and disbursement of funds and expenditures incurred under the terms of the grant, and the substantiating documents such as bills, invoices, cancelled checks, and receipts, shall be retained in the Grantee's files for a period of not less than seven (7) years after expiration of the total grant period. The Grantee agrees promptly to furnish the Foundation with copies of such documents upon the Foundation's request.

The Grantee agrees to make its books and records pertaining to the grant available to the Foundation at reasonable times.

The Foundation, at its expense, may audit or have audited the books and records of the Grantee insofar as they relate to the disposition of the funds granted by the Foundation, and the Grantee shall provide all necessary assistance in connection therewith.

#### **6. INDEMNIFICATION**

In consideration for the issuance of grant funds, the Grantee agrees to indemnify, defend and hold the Foundation and its directors, officers, employees, agents, parent company and affiliates harmless from and against all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements,

judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs) which arise out of, relate to, or result from any act or omission of Grantee arising from projects funded through and related to the Grant.

## **7. REPORTS**

Narrative and financial reports shall be furnished by the Grantee to the Foundation at the end of each year during the three-year grant period, upon expiration, repayment or termination of the grant (pursuant to Section 12 below), or at such other time as the Foundation may reasonably request. Such reports shall be furnished to the Foundation within a reasonable period of time after the close of the Grantee's annual accounting period. The narrative report shall include a report on the progress made by the Grantee towards achieving the grant purposes and any problems or obstacles encountered in the effort to achieve the program purposes. The financial report shall show actual expenditures reported as of the date of the report against the approved line item budget. Such reports shall be retained in the Grantee's files for a period of not less than seven (7) years after expiration of the total grant period.

The Foundation may, at its expense, monitor and conduct an evaluation of operations under the grant, which may include visits by representatives of the Foundation to observe the Grantee's program procedures and operations and to discuss and offer recommendations for the program with the Grantee's personnel.

## **8. COPYRIGHT AND FOUNDATION USE OF DATA**

Except as may otherwise be provided in this Grant, all copyright interests in materials produced as a result of this grant are owned by the Grantee. The Grantee hereby grants to the Foundation a nonexclusive, irrevocable, perpetual, royalty-free license to reproduce, publish, copy, alter, or otherwise use and to license others to use any and all such materials, including any and all data collected in connection with the grant in any and all forms in which said data are fixed.

The Foundation reserves the right to receive a copy of all data sets developed by the Grantee related to the grant and obtain copies of relevant codebooks related to the grant. The Grantee also agrees to provide consultation in interpretation of the data sets that Foundation requests and analyzes.

## **9. PUBLIC REPORTING**

The Foundation may report this grant, if and to the extent made, in its Annual Reports. The Foundation does not usually issue press releases on individual grants (it does issue a press release on groups of grants and contracts being awarded);

however, should the Foundation elect to do so, it would discuss the press release with the Grantee in advance of dissemination. The Grantee may issue its own press announcement but must obtain prior written approval of the announcement from the Foundation before distribution. In addition, the Grantee will be asked to review and approve a program summary, which will be used by the Foundation to respond to inquiries regarding the Grantee's activities and for other public information purposes. The Foundation may release special reports on Grantee efforts during or following the grant award period. The Grantee's approval shall not be unreasonably withheld.

The Grantee shall send copies for review to the Foundation of all papers, manuscripts, and other informational materials (collectively, "Informational Materials") that it produces in connection with the project supported by the Foundation, before distributing any such Informational Materials to the public.

All Informational Materials produced by the Grantee shall prominently make reference to the fact that (a) the Foundation has provided financial support for the Grantee's project, in whole or in part, as the case may be; and (b) the Grantee's Informational Materials do not necessarily represent the views of the Foundation, Foundation staff, or its Board of Directors.

## **10. GRANTOR AND GRANTEE TAX STATUS**

The Grantor represents that it is currently organized as an Idaho nonprofit corporation and has been recognized by the Internal Revenue Service as exempt from federal income taxes under section 501(a) of the Internal Revenue Code as an entity described in Code Section 501(c)(3). The Foundation qualifies for the charitable contribution deduction under as an organization described in Code Section 170(b)(1)(A)(vi) and (viii) and has been determined to be a private foundation under Sections 509(a)(1) and (3).

The Grantee represents that it is currently either (i) a tax-exempt entity described in Code Section 501(c)(3) or (ii) an organization described in Code Section 170(c)(1) or Section 511(a)(2)(B) or a municipality. The Grantee further covenants and agrees that it shall immediately give written notice to the Foundation if the Grantee ceases to be exempt from federal income taxation as an organization described in Code Section 501(c)(3) or its status as a Code Section 170(c)(1) or Section 511(a)(2)(B) organization materially changes.

**11. CERTIFICATION REQUIRED WHEN GRANT MAY BE USED FOR RESEARCH INVOLVING HUMAN SUBJECTS**

If the grant is to be used in whole or in part for research involving human subjects, the Grantee hereby certifies that the Grantee, applying the ethical standards and the criteria for approval of grants set forth in Department of Health and Human Services policy for the protection of human research subjects (45 CFR part 46, as amended from time to time), has determined that the human subjects involved in this grant will not experience risk over and above that involved in the normal process of care and are likely to benefit from the proposed research program.

An applicant approved for a grant award from Foundation to support biomedical and behavioral research involving human subject must provide a copy of the applicant's Institutional Review Board approval. If not available, the applicant must document its request for Institutional Review Board approval and the expected date of approval or Institutional Review Board waiver if applicable.

**12. GRANT TERMINATION**

It is expressly agreed that any use by the Grantee of the grant proceeds for any purpose other than those specified in the Community Transformation Grant Action Plan and Project Proposal, the Grant and/or the Fund Disbursement Request Forms will immediately terminate the obligation of the Foundation to make further payments under the Grant.

Furthermore, the Foundation, at its sole option, may terminate the Grant at any time by written notice if (i) the Grantee breaches any of the terms set forth in this Grant, (ii) the Grantee ceases to be exempt from federal income taxation as an organization described in Code Section 501(c)(3) or its status as a Code Section 170(c)(1) or 511(a)(2)(B) organization materially changes; (iii) in the Foundation's sole judgment, the Grantee becomes unable to carry out the purposes of the grant, or ceases to be an appropriate means of accomplishing the purpose of the grant; (iv) in the Foundation's sole judgment, the grant might (a) jeopardize the Foundations Code Section 501(c)(3) status or (b) result in an excise tax under Chapter 42 of the Code; or (v) the Grant is not used exclusively for the purposes described in the Community Transformation Grant Action Plan, the Grant and/or the Fund Disbursement Request Forms.

In the event of termination under this Section, the Foundation shall have the right to require that all grant amounts paid to the Grantee be repaid to it and that any outstanding grant amount payable be cancelled.



**13. LIMITATION AND CHANGES**

It is expressly understood that the Foundation by making this Grant has no obligation to provide other or additional support to the Grantee for purposes of this project or any other purposes. Any changes, additions, or deletions to the conditions of the Grant must be made in writing only and must be jointly approved and executed by the Foundation and the Grantee.

The foregoing terms are hereby accepted and agreed to effective as of the date that the Foundation signs the Grant.

\_\_\_\_\_  
**(“Grantee”)**

**Blue Cross of Idaho Foundation for Health,  
Inc. (“Foundation”)**

By: \_\_\_\_\_

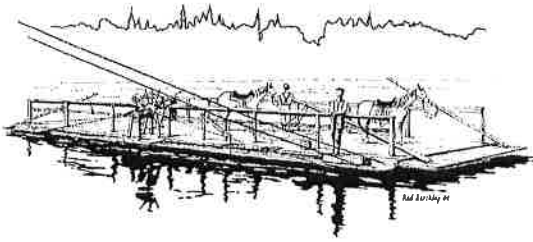
By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_



# MEMO

CITY OF BONNERS FERRY  
CITY ENGINEER/ADMIN

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Date: March 30, 2017  
To: City Council  
From: Mike Klaus, City Engineer/Admin  
Subject: **New Phone System**

I have received a quote from DataTel to provide a new phone system as attached. The City has needed a new phone system for some time and I believe that the quoted package should work well for the City's needs.

You will see that the quote for the phone system has two options for purchase; purchase or lease-to-own. I recommend purchasing instead of leasing, as it would save about \$5,670 over the 60 month period. If the City chooses, it can enter a maintenance agreement for \$1,493 annually.

The phone system proposed includes creating an internal phone network that should save us money each month on our Frontier phone bill. It appears from earlier estimates that the City may save enough within 3-5 years to pay for the initial cost of the phone system.

The initial cost of the system is quoted at \$17,970. Since we have some switch work and other items to install on our own to prepare for the new phone system, I am requesting that the Council approve the purchase of the new phone system for up to \$20,000.

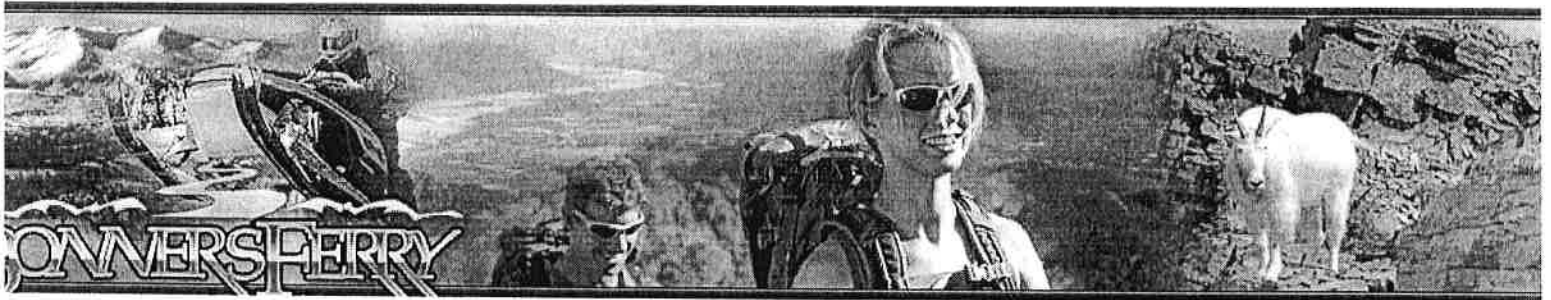
Please let me know if you have any questions.

Thank you,

Mike

*Idaho's leading telephone/network and data provider since 1963*

## Telephone Communication System Proposal



# City of Bonners Ferry

Mike Klaus

Dear Mike,

Mitel has been and continues to be one of the leading provider of communications systems in the world. The capabilities of this system are many, here are a few of the most desired features, built into the system at no additional cost:

- **Unlimited voicemail boxes**
- **Auto Attendant for after-hours notification, directions, etc.**
- **Dynamic Extension, pairing your desk phone with mobile device**
- **Single button recording and retrieving**
- **Conference calling**
- **Hands free speaker phone**
- **Paging**
- **Auto copy and forward voicemails to email inbox**

The Mitel MiVoice Office system is a world class communications system built with scalability and advanced technology to grow with the needs of your city for many years to come. With the support of DataTel as your communications partner, you will be poised for future growth and worry free functionality.

Thank you so much for the opportunity to earn your business.

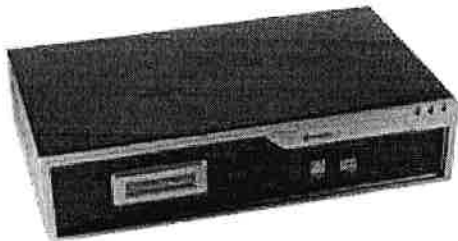
Respectfully,

Josh Sanders  
Account Manager  
(208) 401-2114

## Mitel MiVoice Office Phone System & Hardware

1	MiVoice Office IP Base Pack
1	Dual T1/E1 PRI Card
18	5320E IP Phone (backlit)
7	5340 IP Phone
9	MiVoice Office IP license Cat D
1	2GB SSD Compact Flash Drive
1	Software Assurance Package

*Free DataTel Direct™ Installation and Training*



MiVoice Office System



5320E IP Phone



5340 IP Phone

## **Total Solution**

<b>Total Price</b>	<b>\$17,970</b>
<b>Lease to Own-60 months</b>	<b>\$394</b>

*Tax not included*

### **References:**

#### **City of Emmett**

Mike Knittel-Director of Information Technology  
208-365-6050  
[mknittel@cityofemmett.org](mailto:mknittel@cityofemmett.org)

#### **City of Nampa**

Dennis Elledge –  
Director of Information Systems City of Nampa  
208 468-5480  
[davism@cityofnampa.us](mailto:davism@cityofnampa.us)

Mark Davis –  
Network & Security Engineer City of Nampa  
208 468-5481  
[elledged@cityofnampa.us](mailto:elledged@cityofnampa.us)

# Maintenance



At DataTel, we have over 30 years of experience in providing maintenance services to our customers. We have a proven track record of providing excellent service to our customers for over 30 years.

Here are a few of our features and benefits:

Virtually all of our maintenance agreements are specific to individual customers. To learn more about our services or to create an agreement specific to your needs, please call a DataTel representative.

#### PRIORITY SERVICE SCHEDULING

Our Maintenance customers receive priority scheduling over a "billable" customer with the same service needs (i.e. their system is down, there is a power outage, or any other work that needs to be scheduled).

#### \$10.00 TRAVEL DISCOUNT FOR ANY ADD, MOVE OR CHANGE

If you ADD any equipment, like new phones, headsets, or cards, to your current telephone system, or MOVE any equipment to a new location or within the same building, or CHANGE systems, you will receive a \$10.00 discount on the invoice.

#### 20% LABOR DISCOUNT FOR ANY ADD, MOVE OR CHANGE

If you ADD any equipment, like phones, headsets, or cards, to your current telephone system, MOVE any equipment to a new location or within the same building, or CHANGE your system, you receive a 20% discount on labor.

#### FREE UNLIMITED PROGRAMING CHANGES

Programming changes on your telephone system, such as changing names, setting up voice mail boxes, ring on the phone or the hold timer, to name a few, are FREE.

#### WE ACT AS A LIASON BETWEEN YOU AND YOUR LOCAL DIAL TONE PROVIDER

We can analyze line problems to determine if it is a local dial tone provider problem or an equipment problem. Call us first to determine where the problem lies and eliminate any unnecessary charges.

#### FREE TRAINING

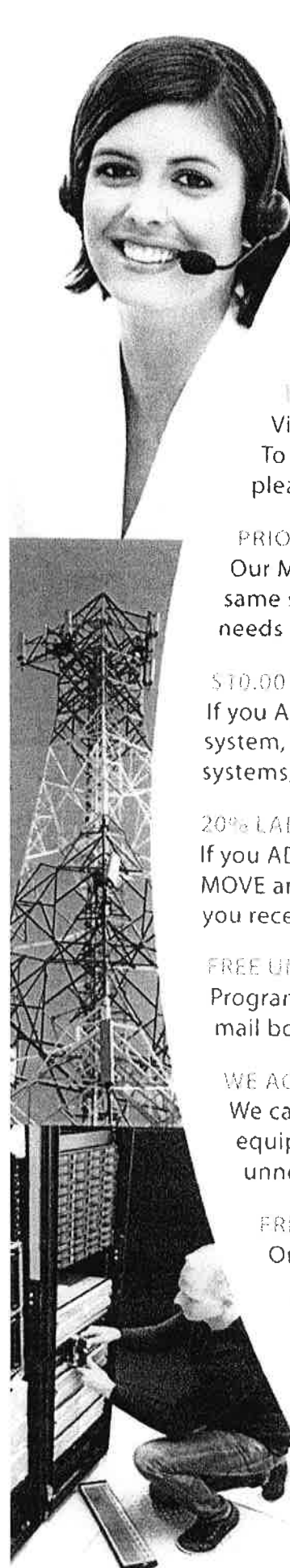
One (1) hour of telephone operation training per calendar year.

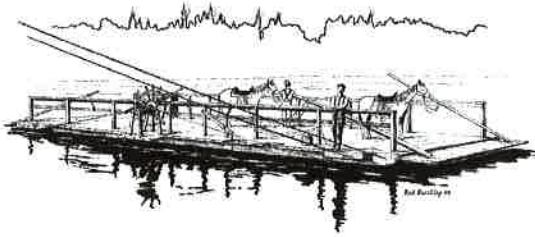
#### FREE DELIVERY

Equipment and accessories delivered free.

*For more information on how we can keep your business or organization communicating both externally and internally, please call our Meridian Office at 208-884-4000 or our Twin Falls Office at 208-734-4585.*

DataTel Keeping You Connected





# MEMO

CITY OF BONNERS FERRY  
CITY ENGINEER/ADMIN

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Date: March 30, 2017  
To: City Council  
From: Mike Klaus, City Engineer/Admin  
Subject: **Itron Contracts**

In 2008 the City entered into a maintenance agreement with Itron to provide support service for the meter reading software and hardware that the City uses. The current software that we use needs to be updated from the MVRS system to the new FCS system. There is no cost for the new software, but the installation of that software and training does come at a cost to the City. Our current maintenance cost for Itron's support is approximately \$2,800 per year.

My request is that the City council approve the Mayor to sign the new attached agreements with Itron, so that the City can move forward with the new software system.

Please let me know if you have any questions.

Thank you,

Mike



## MAINTENANCE AGREEMENT

This Maintenance Agreement (this "**Maintenance Agreement**") is entered into as of [month/day/year] (the "**Effective Date**") by and between Itron, Inc. ("**Itron**") and [ ] ("**Customer**"). Itron and Customer may each be referred to as a "**Party**" and together as the "**Parties**." The Parties agree as follows:

### 1. Technical Support

#### a. Support Services.

Itron will make available qualified technical representatives by telephone, email or other remote means during its then-current normal business hours to assist Customer Coordinators (defined below) with the operation of and answer questions related to the software (the "**Software**") and equipment (the "**Equipment**") identified on Attachment A (together, the "**Products**"), which are covered by the services described herein (the "**Maintenance Services**"). Such technical support shall include, but is not limited to, troubleshooting, problem diagnosis, release or system management, and recommendations for fully utilizing the Products. Itron's current Support Services contact and support hours are described in the "Itron Supports Services Contacts" document (the "**Contacts Document**"), which can be obtained by calling (877) 487-6602. Consistent with Section 1.c hereof, Customer will not use Support Services technical representatives in lieu of having qualified and trained support personnel of its own.

#### b. Field Support.

Upon mutual agreement of the Parties, Itron will dispatch support personnel to Customer's location to provide technical support. Such support will be billed at Itron's then-current hourly rates (with reasonable travel and living expenses invoiced at Itron's cost) unless the cause of the reported problem is found to be the fault of Itron.

#### c. Customer Coordinators and Service Requests.

Customer will identify no more than 2 supervisory level employees (each a "**Customer Coordinator**") for each Itron product line, as identified in the Contacts Document, to serve as administrative liaisons to Itron for all matters pertaining to the Maintenance Services for such product line. Customer Coordinators shall report problems with Software or Equipment (each such report, a "**Service Request**") as soon as practicable for entry into Itron's support tracking system. Before a Customer Coordinator interfaces with Itron, he or she will attend training sessions offered by Itron to ensure that he or she is (a) knowledgeable about the operation of the Products, and (b) qualified to perform problem determination and remedial functions with respect to the Products. Such training sessions will be at Itron's then-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.

### 2. Software Maintenance

#### a. Definitions.

"**Error**" means a failure of the Itron Software to substantially comply with the applicable published Itron specifications.

"**Fix**" means a correction of an Error, including a work-around, in order for the Itron Software to function in accordance with the applicable published Itron specifications.

"**Improvement**" means an update, modification, enhancement, extension, new version (regardless of name or number), new module, or other change to the Itron Software that is developed or otherwise provided by Itron.

"**Itron Software**" means Software identified on Attachment A as "Itron Software."

"**Software Release**" means a collection of Fixes or Improvements made available to Itron customers (either via physical media or download access).

#### b. Fixes.

Itron shall make commercially reasonable efforts to provide Fixes for Errors identified in a Service Request in accordance with the Response Time, Effort Level, and Escalation Path guidelines (together, the "**Service Levels**") outlined below for the applicable Severity Levels identified therein. Itron's obligations with respect to Service Levels are contingent upon Customer (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, and (iii) assigning its most qualified personnel to help Itron address the Error.

Severity Level	Response Times	Effort Level and Escalation Path
<p><b>Severity Level 1.</b> An Error, reported by *phone contact, for which there is no work-around, which causes the Product/Software or a critical business function / process of the Itron system to be unavailable.</p> <p>*Severity 1 errors must be reported by phone to initiate the Severity 1 response process. SRs initiated by email or web interface are logged as a Severity 3 until reviewed by Itron Technical Support Services and validated as a higher priority.</p>	<p>During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to Customer, which will validate receipt of the critical support call and begin the SR process.</p> <p>During regular business-hours Itron will begin the SR process during the initial call.</p> <p>Following the start of the SR process Itron will respond to Customer within 4 business hours with an initial response. Following the initial response to the SR, Itron will update Customer at three hour intervals each day for unresolved SRs, or as otherwise agreed by the Parties.</p> <p>Customer will respond to an Itron inquiry or request within three hours.</p>	<p>Itron will make diligent efforts on a 24x7 basis*, or as otherwise agreed by the Parties. A SR shall be escalated to Itron's TSS Management Team if a Fix is not provided within 1 business day of Itron's receipt of the Customers call and creation of the SR.</p> <p>*24X7 support for Severity Level 1 Errors is not currently available for Itron Meter Products, Energy Forecasting and Load Research Products, and Distribution Products.</p>
<p><b>Severity Level 2.</b> An Error other than a Severity Level 1 Error for which there is no work-around that results in a loss of access to the Software or that causes features of the Software to not work.</p> <p>*Severity 2 errors must be reported by phone to initiate the Severity 2 response process. SRs initiated by email or web interface are logged as a Severity 3 until reviewed by Itron Technical Support Services and validated as a higher priority.</p>	<p>Itron will respond to the Customer within 1 business day and will update the SR at least every other day. Customer will respond to an Itron inquiry or request within 1 business day.</p>	<p>Itron will make diligent efforts during normal business hours. SRs shall be escalated to Itron's TSS Management Team if a Fix is not provided within 3 business days of Itron's receipt of the Customers call and creation of the SR.</p>
<p><b>Severity Level 3.</b> 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 SR within 2 business days.</p>	<p>Itron will have technical representatives make diligent efforts during normal business hours.</p>
<p><b>Severity Level 4.</b> An Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error.</p>	<p>Itron will respond to the SR within 3 business days, or as otherwise agreed by the Parties.</p>	<p>Itron will have its support representatives devote commercially reasonable efforts during normal business hours.</p>
<p><b>Severity Level 5.</b> A SR for an enhancement or new functionality.</p>	<p>N/A</p>	<p>The SR will be evaluated for future product enhancement. If the enhancement or new functionality requires more immediate attention, Itron will engage the Professional Services Group to create a customized proposal at Itron's then-current services rates.</p>

c. *Improvements.*

Itron shall provide Improvements, if any, at its then-current price for such Improvements (or at no charge if such Improvements are made available to Itron customers generally at no charge).

d. *Software Releases.*

i. **Release Numbering Convention.** Fixes and/or Improvements are made available to customers through periodic Software Releases. For informational purposes, Itron's current practice (which may be changed at any time in Itron's discretion) is to provide Releases using the numbering convention "XX.YY.ZZ."

- The "XX" in Itron's numbering convention refers to a "**System Release**," which is a new version of the item of Itron Software. A System Release may include Fixes, Improvements or interfaces to new functional modules or platforms not previously supported by Itron.
- The "YY" in Itron's numbering convention refers to a "**Service Pack Release**," which is an update to a System Release. Service Pack Releases may include Fixes or Improvements and are provided to Itron customers generally on a periodic basis.

- The "ZZ" in Itron's numbering convention refers to a "**Hot Fix Release**," which is an unscheduled release provided to one or more customers as a short-term, temporary fix to a Severity Level 1 Error. While not utilized by all Itron Software product lines, Hot Fix Releases are not made available to Itron customers generally but may be included in the next scheduled Service Pack for general release.

ii. **Support for Releases of Itron Enterprise Edition and Openway Software.** This subsection applies only to Itron Enterprise Edition and OpenWay software products. Maintenance Services for Itron Enterprise Edition and OpenWay software products shall be limited to the most recent System Release and the prior System Release (and the most current Service Pack Release associated with such System Release). Customer will test and install Service Pack Releases associated with the System Release in use by Customer within 12 months of such Service Pack Releases being made available to Customer. Customer will upgrade to the latest System Release at least every twenty-four (24) to thirty-six (36) months. At Customer's request, Itron may provide Release installation services at its then-current hourly rates. Itron may elect to provide Maintenance Services for an unsupported Release of Itron Software at its then-current rates for customer support.

iii. **Support for Releases of all Other Itron Software.** This subsection applies to all Itron Software other than Itron Enterprise Edition and OpenWay Software products. Maintenance Services for all Itron Software other than Itron Enterprise Edition and OpenWay software products shall be limited to the most recent System Release and the two prior Service Pack Releases. Customer will test and install System Releases and Service Pack Releases within 12 months of such Releases being made available to Customer. At Customer's request, Itron may provide Release installation services at its then-current hourly rates. Itron may elect to provide Maintenance Services for an unsupported Release of Itron Software at its then-current rates for customer support.

e. *Mandatory Revision.*

In the event that Itron, in its sole reasonable discretion, determines that any Itron Software is, or may (as applicable) be: (i) subject to a material Error; (ii) the subject of a material security breach; or, (iii) be subject to a third party infringement claim or suit of any kind, Itron may issue a mandatory revision in correction of one or more of these issues (a "**Mandatory Revision**"). Itron disclaims all liability and obligations that arise due to, or are result of, Customer's failure to test and install a Mandatory Revision in a timely fashion.

f. *Interoperability.*

Itron makes no representation or warranty regarding the ability of the Itron Software to interoperate with third party hardware or software other than software or hardware identified as compatible with the Itron Software in Itron's published documentation for such Itron Software (the "**Documentation**").

g. *Documentation and Software Library.*

Itron will make an electronic copy of the Documentation available to Customer at no additional charge via physical media or download access. Itron will maintain a copy of its most recent supported version of the executable Itron Software to be made available to Customer as necessary in the event of corrupted or inoperative Itron Software.

h. *Restoring Software to Maintenance Services.*

If Customer declines Maintenance Services after the end of warranty or discontinues Maintenance Services for any Itron Software, and thereafter wishes to resume Maintenance Services for the most recent Release of such Itron Software, Customer shall, prior to receiving such Maintenance Services, notify Itron in writing of its request for Maintenance Services and pay Itron's then-current re-initiation fee.

i. *Exclusions.*

Itron shall have no obligation to Customer to the extent any Itron Software is adversely affected by: (i) use of the Itron Software in combination with other software, equipment or communications networks that are not referenced in the Documentation; (ii) any modification to the software or operating environment that is made other than through the fault of Itron, after the Effective Date; (iii) the use of a version of the Itron Software that is not supported by Itron; (iv) Customer's failure to implement a Fix provided by Itron; (v) the operation or maintenance of the Itron Software other than through the fault of Itron; (vi) viruses introduced through no fault of Itron; (vii) use of the Itron Software other than as permitted by Itron, including Software operated on Equipment that has been serviced or repaired by a third party that is not Itron certified; or (viii) Customer's failure to perform Customer responsibilities in accordance with this Agreement.

j. *Customer Responsibilities.*

i. *Remote Communications.*

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

ii. *System Configuration and Administration.*

Customer will ensure that its equipment, system peripherals, operating system, and data communications environment associated with the Software is configured, operated, and maintained in accordance with the Documentation and any applicable third party documentation. These administrative activities shall include but not be limited to: checking audit logs, clearing discovered exceptions, and performing daily, weekly, and monthly operational tasks and system responsibilities. Customer will consult with Itron prior to making changes that may affect the operation of the Software.

iii. *Network Administration.*

Customer will monitor and maintain, repair, replace and upgrade its local, and wide area network components (if any)—including network servers, network clients, network hubs, routers, modems, and other software components necessary for efficient and reliable network operations associated with the Software—to ensure continued conformance with the Documentation. In addition, Customer will administer related host names, Internet Protocol addresses, network interfaces, access, security, communications, and equipment and software version control.

iv. Database Administration.

Customer will administer the agreed upon database(s) associated with the Software, including hardware and software components, in accordance with the Documentation or any applicable third party documentation, which administration shall include, monitoring the database server, backing up electrical power sources, and configuring and administering of database schema, application interfaces, networking operating system, communications, and file transfer software. Customer will maintain database files (e.g., truncate, cleanup, and delete files consistent with industry standard practices) and perform regular data backup and data archiving.

v. Data Review.

If Itron determines that it is necessary to evaluate Customer data in order to reproduce error conditions not reproducible with Itron's standard test data sets, Customer will provide Itron with access to such data. Itron will manage such data in a secure manner while in use and delete the data from Itron systems upon completion of the investigation. Itron shall not be liable for any delay or failure to resolve the problem if access to such production data is denied to Itron.

### 3. Equipment Maintenance

a. *Preventive and Corrective Maintenance.*

Upon receipt of an item of Itron Equipment (defined below) for which Customer has subscribed to receive Maintenance Services ("**Covered Equipment**"), Itron shall (i) perform the preventive Maintenance Services that it determines is reasonably necessary to maintain such Equipment in Operational Condition (defined below), and (ii) diagnose and correct any failure in such Equipment as necessary to meet Operational Condition (excluding minor cosmetic deficiencies such as blemishes, dents or scratches). The term "**Itron Equipment**" refers to Equipment identified on Attachment A as "Itron Equipment." The term "**Operating Condition**" means capable of performance in accordance with Itron's published specifications.

b. *Maintenance Procedures.*

Customer shall initiate a request for Maintenance Services for an item of Itron Equipment by delivering the item to the applicable Itron address identified on the Itron Equipment Repair Table (the "**Repair Table**"), which can be obtained by calling (877) 487-6602, at Customer's expense and in accordance with the applicable return material authorization procedure. Upon receipt of an item of Itron Equipment with the required information, Itron shall assess the item to determine whether it is Covered Equipment and whether the maintenance requested is included within the Maintenance Services and not otherwise excluded from coverage as provided herein. If the item of Itron Equipment is Covered Equipment and the maintenance requested is included in the Maintenance Services, Itron shall provide the applicable Maintenance Services and shall make commercially reasonable efforts to return the item of Itron Equipment to Customer at Itron's expense within the applicable turnaround identified on the Repair Table. Itron Equipment that is not Covered Equipment or maintenance or support that is requested but not included in the Maintenance Services shall be addressed as described in Section 3.d hereof.

c. *Exclusions.*

The Equipment Maintenance Services described herein do not include repairs related to:

- i. damage due to external causes, including accident, abuse, misuse, inadequate maintenance, problems with electrical power, acts of God; usage not in accordance with product instructions or in a configuration not approved by Itron;
- ii. service (including installation or de-installation) not performed or authorized by Itron;
- iii. use of parts, configurations or repair depots not certified by Itron;
- iv. Customer's failure to perform Customer responsibilities in accordance with this Agreement, including caring for Products in accordance with user documentation; or
- v. Products for which Itron has discontinued Maintenance Services pursuant to Section 5 hereof.

d. *Estimation Fees*

Itron will provide Customer with a price quote for the estimated cost, including labor, materials and shipping, for any repairs that are requested but not included in the Maintenance Services (whether because the item of equipment is not covered by Maintenance Services or because the nature of the repair is not included in Maintenance Services). If Customer elects to have Itron proceed with the requested maintenance on any such item, Itron shall provide such services at its then-current rates. If Customer elects not to proceed with the requested repair, Itron will return the item of equipment at Customer's expense. Itron may charge Customer its then-current handling, inspection and shipping fees for any such returned equipment.

e. *Adding/Restoring Equipment to Maintenance Services.*

Following the Effective Date, additional Itron Equipment purchased by Customer, of a similar type and model already covered by Maintenance Services, shall automatically be deemed to be Covered Equipment following expiration of the warranty for such Equipment. If Customer declines Equipment coverage after the end of warranty, discontinues Maintenance Services for any Covered Equipment or has Equipment serviced or repaired by a third party that is not Itron certified, and thereafter wishes to add such equipment as Covered Equipment, Itron may, prior to such equipment being included as Covered Equipment, (i) inspect such equipment at its then-current rates to determine whether it is in Operating Condition and/or (ii) charge its then-current re-certification fee, in addition to the Equipment's first term maintenance fee.

f. *Customer Responsibilities.*

Itron shall make available, and Customer shall obtain, a copy of Itron's user documentation for items of Covered Equipment and Customer shall perform regular preventive maintenance for each such item in accordance with such documentation. Customer shall also keep accurate records of Equipment serial numbers and locations to assist Itron with the Maintenance Services.

g. *Loaner Equipment Program.*

Subject to the requirements below, Itron shall make commercially reasonable efforts to provide Customer with a Mobile Collector or Handheld unit, as applicable, for the Customer to use (each an item of "**Loaned Equipment**") while a Mobile Collector or Handheld

unit, as applicable, that is Covered Equipment is receiving Maintenance Services. Itron shall provide Loaned Equipment if all the following criteria are satisfied:

- i. Customer has maintained an inventory of spare Mobile Collectors or Handheld units equal to at least 10 percent of the number of Mobile Collectors or Handheld units deployed in Customer's service territory (with at least one Mobile Collector) and such inventory has been depleted;
- ii. Itron has provided preventive Maintenance Services for each of Customer's Mobile Collectors or Handheld Devices (as applicable) that are Covered Equipment in the 12-month period prior to Customer's request for Loaned Equipment; and
- iii. Itron is unable to return the Mobile Collector or Handheld Devices, as applicable, receiving Maintenance Services within the applicable turnaround time set forth on Attachment A.
- iv. Loaned Equipment will remain the property of Itron and shall be returned to Itron promptly upon receipt of the corresponding item of Itron Equipment. For Loaned Equipment that is not returned within 14 days from shipment of the corresponding item of Itron equipment, Itron may charge a late fee equal to 10 percent of the then-current list price for the item of Loaned Equipment for each 30 day period during which the item of Loaned Equipment remains unreturned. Itron shall pay the cost of delivering Loaned Equipment to Customer and Customer shall pay the cost of returning Loaned Equipment to Itron.

#### 4. Compensation and Payment

##### a. Definitions

**"Annual Adjustment"** means Itron's standard price increase.

**"Annual Fee"** means the annual fee set forth on Attachment A hereto for each category of Products identified thereon plus the Annual Adjustment, if any. The Annual Fee for Maintenance Services to be provided for any partial Maintenance Year (i.e., for Products with a Maintenance Commencement Date that falls after the beginning of the Maintenance Year) shall be prorated based on the applicable number of months Customer is to receive Maintenance Services during such Maintenance Year.

**"Maintenance Commencement Date"** means the date for commencement of the Maintenance Services for a Product identified on Attachment A hereto.

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

##### b. Compensation and Invoicing.

As compensation for the Maintenance Services, Customer shall, in advance, pay to Itron the Annual Fee for each Maintenance Year in which it receives Maintenance Services. Itron shall invoice Customer for Maintenance Services to be provided during the first Maintenance Year as soon as practicable following the Effective Date. For Maintenance Services provided during any subsequent Maintenance Year, including Maintenance Services for newly purchased Products, Itron shall provide Customer with a renewal notice at least 100 days prior to the commencement of each Maintenance Year. Customer may discontinue Maintenance Services for a Product by providing Itron with written notice of non-renewal for such Product no less than 90 days prior to the commencement of any subsequent Maintenance Year. Approximately 20 days prior to the commencement of any subsequent Maintenance Year, Itron shall provide Customer with an invoice for the Annual Fee payable by Customer for the forthcoming Maintenance Year. Itron may, in its discretion, invoice Customer for Maintenance Services for a Product that is added during the course of any Maintenance Year as soon as such Product has been added or at the beginning of the next Maintenance Year.

##### c. 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 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 Maintenance 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 Maintenance Services, 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. 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. Customer shall pay all amounts due under this Agreement in lawful money of the United States, unless otherwise provided in Attachment A.

#### 5. Term and Termination

##### a. Term.

The term of this Maintenance Agreement ("**Term**") shall commence upon the Effective Date and shall continue unless and until terminated in accordance with this Section.

##### b. Termination.

Either party may terminate this Maintenance Agreement effective as of the end of any Maintenance Year by giving the other Party written notice of termination at least 90 days prior to the end of such Maintenance Year. If either Party commits a material breach or default under this Maintenance Agreement or any agreement between the Parties related to this Maintenance 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 if the breach or default is not cured within 30 days after receipt of notice (or such later date as may be specified in the notice).

##### c. Effect of Termination.

Itron shall not be obligated to provide any Maintenance Services after the end of the Term. If either Party terminates the Maintenance Agreement for a reason other than a termination for breach or default or if Itron terminates Maintenance Services for one or more Products, Customer shall be entitled to a prorated refund of the Annual Fee.

d. *End of Support.*

Itron may discontinue Maintenance Services for any Equipment or Software, effective as of the end of the current Maintenance Year, by giving Customer written notice of such discontinuance no less than 90 days prior to the end of such Maintenance Year. At Customer's request, Itron may elect to provide custom support for products for which Maintenance Services have been discontinued at Itron's then-current rates.

e. *Survival*

Any Section of this Maintenance Agreement, which by its nature is intended to survive termination or expiration, shall survive the termination or expiration of this Maintenance Agreement.

**6. Miscellaneous**

a. *Disclaimer of Warranties.*

EXCEPT AS EXPRESSLY SET FORTH IN THIS MAINTENANCE AGREEMENT, ITRON DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE PRACTICE.

b. *No Consequential Damages.*

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WILL ITRON BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR ANY 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.

c. *Limitation of Liability.*

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR DAMAGES IN EXCESS OF FIFTY PERCENT (50%) OF THE FEES PAID BY CUSTOMER TO ITRON UNDER THIS MAINTENANCE AGREEMENT DURING THE MAINTENANCE YEAR IN WHICH THE CAUSE OF ACTION GIVING RISE TO THE LIABILITY AROSE. ITRON SHALL NOT BE LIABLE FOR ANY CLAIM MADE THE SUBJECT OF A LEGAL PROCEEDING MORE THAN 2 YEARS AFTER THE CAUSE OF ACTION ASSERTED IN SUCH CLAIM AROSE.

d. *Force Majeure.*

Except for monetary obligations hereunder, 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, terrorist threats or actions, third-party suppliers, labor disputes or governmental acts.

e. *Notices.*

Any notice required or permitted under this Maintenance 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 on the signature page hereto. 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. Notwithstanding the foregoing, notice of renewal or non-renewal of Maintenance Services shall be sent to the email or other address set forth on the signature page hereto.

f. *Assignment.*

Customer may not assign or transfer its interests, rights or obligations under this Maintenance 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 Maintenance Agreement by Customer shall be null and void.

g. *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.

h. *Governing Law.*

This Maintenance 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.**

i. *Confidentiality.*

With respect to any information supplied in connection with this Maintenance 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 Maintenance 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.

*j. Intellectual Property.*

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 in connection with the Maintenance Services 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 Maintenance Agreement.

*k. Entire Agreement.*

This Maintenance Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes any and all prior agreements between Itron and Customer related to the Maintenance Services 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 by:

**Customer**

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Billing Contact Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Renewal Notice Contact Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Purchase Order Number:** \_\_\_\_\_

**Itron, Inc.**

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address:

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



Attachment A

## INDIRECT SALES AGREEMENT

This Indirect Sales Agreement (the "**Agreement**") is entered into as of [month/day/year] (the "Effective Date") by and between Itron, Inc. ("**Itron**") and [ ] ("**Customer**"). Itron and Customer may each be referred to as a "**Party**" and together as the "**Parties**."

Customer shall execute this Agreement prior to its receipt of any Itron software, services or equipment by an authorized Itron distributor (each a "**Distributor**"). The terms of Customer's agreement with a Distributor shall govern Customer's purchase of Itron equipment or services from a Distributor (it being understood that Distributor will pass certain Itron warranties through to Customer). The terms of this Agreement shall govern (i) any software provided by Itron, regardless of whether the order for such software is placed with a Distributor or directly with Itron, and (ii) any order of equipment or services placed directly with Itron.

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 Distributor via electronic means or has provided the Software to a carrier on physical media for delivery to Distributor.

"**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.

"**Endpoint**" means (i) a physical device (e.g., a meter, encoder-transmitter-receiver or other measuring or monitoring device) that is the source of data used in the Software application or (ii) a virtual device created in the Software application to simulate the existence of a physical device. An example of a virtual device that is an Endpoint would include a single electricity meter that serves 10 apartment units. If the consumption data from that electricity meter was divided between the 10 units (e.g., on the basis of square footage) and used in the Software application as if that single electricity meter was actually 10 electricity meters, it would count as 10 Endpoints. Further, each account, whether active or inactive, in the application that is associated with a single physical device counts as a separate Endpoint.

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

"**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.

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

"**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.

#### b. *License Grant.*

Subject to the terms of this Agreement, 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 Endpoints 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, Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes. 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.*

Distributor will invoice Customer for the Software and Itron will invoice Distributor.

#### 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. Equipment Terms

### SUB-ITEMS a., b. AND c. BELOW APPLY ONLY TO EQUIPMENT PURCHASED BY CUSTOMER DIRECTLY FROM ITRON:

a. *Equipment Purchase.*

Customer agrees to purchase the equipment, if any, identified on Attachment A (the "**Equipment**") from Itron at the price(s) and in the quantities set forth thereon pursuant to the terms of this Agreement. Prices set forth on Attachment A are valid for one year from the date of this Agreement.

b. *Ordering*

During the term of this Agreement, Customer shall order quantities of Equipment by issuing a purchase order, change order or release (each an "**Order**") to Itron, in each case specifying the type and quantity of Equipment, the shipment destination and the requested delivery date. Unless otherwise agreed in a separate writing signed by an authorized representative of each Party, the requested delivery date in an Order must be no earlier than ninety days following Itron's receipt of such Order.

c. *Firmware*

The purchase of Equipment manufactured by Itron will include a perpetual, irrevocable license to use and execute any software embedded in the Equipment. The license to any software embedded in third party Equipment provided by Itron shall be between Customer and the manufacturer of such third party Equipment.

d. *Invoicing.*

Itron will invoice Customer for the Equipment upon shipment.

e. *Delivery, Title and Risk of Loss.*

Unless otherwise agreed by the Parties, 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.

f. *Limited Equipment Warranty*

i. *Warranty and Remedy.*

Except as otherwise set forth on 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 if purchased directly from Itron and 14 months if purchased through a Distributor. 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. Customer will pay the cost of returning non-conforming Equipment to the place of repair designated by Itron and Itron will pay the cost of delivering repaired or replacement Equipment to Customer.

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. Cloud Service Terms**

a. *Access to Cloud Service.*

Subject to the terms of this Agreement, Itron grants to Customer, for its internal business purposes only, the non-transferrable, non-exclusive right to access and use the service identified on Attachment A (the "**Cloud Service**") in accordance with the terms of service attached hereto as Attachment B (the "**Terms of Service**").

b. *Use Restrictions.*

Customer is responsible for maintaining the confidentiality of all information required to access the Cloud Service and for the activities of its employees or representatives that access the Cloud Service. Customer will not (i) access or use the Cloud Service other than in accordance with the Cloud Service documentation; (ii) reverse engineer the software underlying the Cloud Service; (iii) engage in any activity that interferes with or disrupts the Cloud Service or any servers or networks connected to the Cloud Service; (iv) allow a third party to access the Cloud Service or operate the Cloud Service for the benefit of a third party, including as a service bureau; (v) modify or create derivative works based on the Cloud Service; or (vi) use the Cloud Service in a manner that violates any law or regulation or the rights of any third party.

c. *Cloud Service Term.*

Itron will make the Cloud Service available to Customer for an initial one-year period beginning on the Effective Date. Thereafter, Itron shall provide the Cloud Service for successive one-year periods unless the Cloud Service is terminated in writing by either Party at least 90 days prior to the end of the then-current one-year period.

d. *Invoicing.*

Itron shall invoice Customer for the initial annual Cloud Service fee identified on Attachment A immediately following the Effective Date. Thereafter, Itron shall invoice Customer for each successive one-year period prior to the commencement of such period. Itron may elect to increase the annual fee for any successive annual period by providing Customer with written notice of such increase at least 90 days prior to the commencement of such period.

e. *Customer Data.*

Customer retains all right, title and interest in and to any electronic data or information contained in any database, table or similar file or document provided by Customer for use in connection with any Cloud Service (the "**Customer Data**"). Customer grants to Itron a license to use the Customer Data to the extent necessary for Itron to provide the Cloud Service, or as required by law. Customer is solely responsible for the Customer Data, including providing the Customer Data required for proper operation of the Cloud Service, and will not provide, post or transmit any Customer Data or any other information or material that: (i) infringes or violates the rights of any third party or any law or regulation or (ii) contains any virus or programming routine that has the effect of damaging, surreptitiously intercepting or expropriating any system, data or personal information. Itron may take any remedial action it deems advisable to address any violation of this Section but Itron is under no obligation to review Customer Data for accuracy or potential liability. Customer agrees to indemnify Itron for any loss or damage suffered by Itron in connection with Customer's breach of its obligations under this Section.

f. *Service Levels.*

Itron agrees to make commercially reasonable efforts to: (i) maintain Appropriate Security Measures (defined below); (ii) provide regular backups for the Customer Data as further described in the Terms of Service; and (iii) make the Cloud Service generally available 24 hours a day and 7 days a week except for (y) planned downtime in accordance with the Terms of Service and (z) downtime caused by circumstances beyond Itron's reasonable control, including telecommunications or network failures or delays, computer failures that could not reasonably have been prevented by Itron or acts of vandalism (e.g., network intrusions and denial of service attacks). Itron's sole obligation, and Customer's exclusive remedy, in connection with a breach of any obligation of Itron with respect to the performance or availability of the Cloud Service shall be for Itron, at its option, to correct the failure or to refund to Customer the amount paid for the Cloud Service for the period in which it was affected. Customer's subscription to the Cloud Service shall terminate upon its receipt of any such refund. "**Appropriate Security Measures**" means customary technical, physical and procedural controls to protect Customer Data against destruction, loss, alteration, or unauthorized disclosure to third parties. Customer acknowledges that, notwithstanding Appropriate Security Measures, use of or connection to the Cloud Service presents the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Cloud Service and Customer Data. Accordingly, Itron does not guarantee the privacy, security or authenticity of any information stored in connection with or transmitted to or from any Cloud Service.

*g. Federal Communications Commission ("FCC") Licensed Facilities.*

Customer acknowledges and agrees that Itron maintains the exclusive right to operate and control any Federal Communications Commission ("FCC") licensed facilities involved in the provision of services, including the transmitter and other components that produce RF energy (e.g. Itron Cell Control Units, Endpoints, etc.). Itron will make all decisions regarding any FCC licenses used to implement the Cloud Services provided for by this Agreement, including the preparation and filing of applications with the FCC.

**4. Payment Terms and Taxes.**

The following terms shall apply to any equipment, services or software purchased by Customer directly from Itron. 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 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.

**5. 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.

**6. 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. The parties acknowledge and agree that any software provided by Itron in connection with this Agreement shall be considered the confidential information of Itron.

**7. 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.

**8. Indemnification**

*a. General Indemnity.*

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

*b. Infringement Indemnity.*

Itron will defend at its own expense any 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 in any such action that are specifically attributable to such claim or those costs and damages agreed to by Itron in a monetary settlement of such action. 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 or settlement of the claim and provide Itron with reasonable assistance in connection with such defense or settlement. 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.

**9. 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.

**10. WAIVER OF CONSEQUENTIAL DAMAGES.**

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

**11. CAP ON LIABILITY.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR A BREACH BY CUSTOMER OF (I) ANY INTELLECTUAL PROPERTY RIGHT OF ITRON OR (II) ANY LICENSE GRANTED BY ITRON HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR DAMAGES IN EXCESS OF FIFTY PERCENT (50%) OF THE FEES PAID BY CUSTOMER TO ITRON UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE OF ANY CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE. ITRON'S PRICING REFLECTS THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

**12. 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, the Distributor/Customer agreement or the Distributor/Itron 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.

**13. 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. 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.

*e. 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.

*f. 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 (a "**Force Majeure Event**"). Notwithstanding the foregoing, no obligation to make any payment required under this Agreement is excused as a result of a Force Majeure Event.

*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:

*h. Miscellaneous.*

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: \_\_\_\_\_

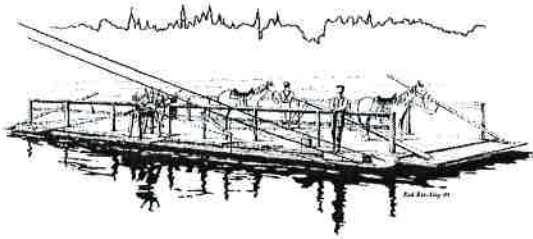
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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





# MEMO

CITY OF BONNERS FERRY  
CITY ENGINEER/ADMIN

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Date: March 31, 2017  
To: City Council  
From: Mike Klaus, City Engineer/Admin  
Subject: **Engineering Services - Request for Statements of Qualifications**

The City has work coming up this year that will require outside engineering services. We will need to select a firm to complete our Part 12 inspection of the dam that is required by the Federal Energy Regulatory Commission, and we will need to select a firm to complete the City's transportation plan. Both of these projects require that we select firms based on Statements of Qualifications (SOQ's) according to Idaho Statute 67-2320.

I am requesting that the Council allow me to solicit for SOQ's as outlined in the attachment.

Please let me know if you have any questions.

Thank you,

Mike

# NOTICE OF REQUEST FOR QUALIFICATIONS FOR PREAPPROVED CONSULTANT SERVICES

The City of Bonners Ferry herein solicits Statements of Qualifications (SOQ's) for the purpose of establishing a preapproved list for professional design and engineering related services pursuant to Idaho Code § 67-2320(2)(h). This solicitation seeks to determine the qualifications of professional firms with expertise in any or all of the following service categories:

- 1) Wastewater Treatment Specific to Lagoons, Collection, and Lift Stations;
- 2) Water Treatment, Distribution, and Booster Station Design;
- 3) Traffic Engineering and Transportation Master Planning;
- 4) Structural Engineering;
- 5) Electrical Engineering, Power Generation, Transmission, and Substations
- 6) Federal Energy Regulatory Commission, Part 12D Dam Inspection\*

\*Consultants that submit an SOQ for this category must have a FERC-approved inspector on staff.

The term for which the preapproved list will be utilized for requested services is through **December 31, 2017**. A selection committee will evaluate, rank and determine the consultant roster list within each of the service categories for both multi-disciplinary and sole service providers. The criteria for ranking will be based 20% on format and following directions, 40% on team expertise, and 40% on team project experience. The recommended list will be presented to Council for approval. As projects occur, the City may select directly from the approved list, request proposals, and/or conduct formal interviews depending on the contemplated project.

## **Content of the SOQ shall be as follows:**

1. Introduction, Organization of Firm, Location of Staff Resources, Summary of Service Categories Included In SOQ (**2 pages max**). One of these two pages can be a cover letter if desired. Inclusion of sub-consultants is not allowed; qualifications shall be based solely on the applicant.
2. Service Category Qualification Sheets (**1 page max per service category**). See top of page for descriptions of service categories. Applicant shall include the firm's project experience (5 projects minimum) listing names and brief descriptions of projects. Each service category sheet shall also list the names and qualifications of staff who would be assigned to key positions in the execution of the work (this may be an org chart or listing). An Idaho Professional Engineer shall be identified for each engineer assumed to be in responsible charge of assigned projects. **Individual Service Category sheets exceeding 1 page will be rejected and not considered for that category.**
3. At least 3 client references for each service category (**1 page max for all combined references**), including name, position, address and phone number for 1) current or ongoing

projects in areas of service similar to those identified above, 2) projects completed within the last three years (if current or ongoing projects are not available).

**Formatting of the SOQ shall be as follows:**

SOQ's may contain up to 9 letter size (8.5 X 11 Inches) pages (not including cover and back) depending on content, as limited by Items 1, 2, and 3 of this document. SOQ's shall be stapled in the upper left hand corner. Type style shall not be smaller than 12 point. SOQ's exceeding 9 pages will be rejected.

The City Clerk, City of Bonners Ferry, PO Box 149, Bonners Ferry, Idaho 83805, must receive five (5) stapled copies, and (1) electronic (in PDF format copy of the Statement of Qualifications by **3:00 p.m.**, local time, on **April 28, 2017**. Any questions regarding the Statement of Qualifications may be directed to Mike Klaus, P.E., City Engineer/Administrator at (208) 267-0357, [mklaus@bonnersferry.id.gov](mailto:mklaus@bonnersferry.id.gov)

Qualification of a consultant does not guarantee work will be commissioned. If your firm provided an SOQ for the request in 2016, the City will use your submitted SOQ for the work categories at that time, and your firm *does not* need to submit another SOQ to be considered for selection. Note: one category has been eliminated and one added since the 2016 request for SOQ's. The category that was eliminated was the structural engineering as it relates to hydropower facilities. The City will now consider all structural firms for any of the City's structural work. The category that was added this year is an FERC Part 12 inspector. Firms interested in submitting for this category should contact the City as soon as possible, as you will likely need additional information from the City Engineer before submittal.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BONNERS FERRY, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO ADOPTING AN OFFICIAL ZONING MAP; PROVIDING SEVERABILITY; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

**WHEREAS**, the City has caused lands within its jurisdiction to be zoned into districts under current Title 11, and sets forth the requirement that the lands be illustrated on an official zoning map (Title 11, Chapter 2, §2); and,

**WHEREAS**, the Planning and Zoning Commission held a duly noticed public hearing in accordance with the Local Land Use Planning Act, Title 67, Chapter 65, Idaho Code and recommended approval of such ordinance and map on XXXX, XX, 2017 to the City Council.

**NOW THEREFORE**, Be it ordained by the Mayor and the Council of the City of Bonners Ferry, Idaho, as follows:

**Section 1:** That Bonners Ferry City hereby adopts the Official Zoning Map as referenced herein and upon adoption does authorize the Mayor and Clerk to sign such map upon official publication in the local paper.

**Section 2: PROVISIONS SEVERABLE:** The provisions of this Ordinance are hereby declared to be severable and if any provision of this Ordinance or application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Ordinance.

**Section 4: EFFECTIVE DATE:** This ordinance shall be effective upon its passage and publication in the manner provided by law.

APPROVED by the Mayor and City Council of the City of Bonners Ferry this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF BONNERS FERRY, IDAHO

BY: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk, City of Bonners Ferry

DRAFT

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BONNERS FERRY, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR REVISIONS TO BONNERS FERRY CITY CODE TITLE ELEVEN, CHAPTER ONE, CHAPTER THREE, CHAPTER NINE, CHAPTER TWELVE, APPENDIX A DEFINITIONS AND APPENDIX B TABLE OF USES. PROVIDING FOR AMENDMENTS TO CHAPTER 1, SECTION 3 APPENDIX A PROVIDE FOR A DEFINITION OF A ZONING PERMIT; PROVIDING FOR MODIFICATIONS TO CHAPTER THREE TO ADDRESS STANDARDS FOR NON-CONFORMING STRUCTURES AND NON-CONFORMING STRUCTURES AND USES IN COMBINATION; PROVIDING FOR MODIFICATIONS TO CHAPTER NINE WHICH MOVES LANGUAGE RELATED TO USES TO CHAPTER TWELVE AND ADOPTING NEW NUMBERING FOR REMAINING LANGUAGE; PROVIDING FOR A NEW CHAPTER TWELVE 'STANDARDS OF SPECIFIC USES' TO ADDRESS NEW STANDARDS FOR IN-HOME FAMILY DAY CARES; PROVIDING FOR MODIFICATIONS TO APPENDIX B 'TABLE OF USES' TO AMEND THE RESIDENTIAL AND COMMERCIAL USE TABLES BY PROVIDING ALLOWANCES OF IN-HOME FAMILY DAYCARES; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Idaho Local Land Use Planning Act, Title 67, Chapter 65, and the Idaho Municipal Corporations title 50, Chapter 3 and 9 provide authority for the City of Bonners Ferry to adopt ordinances establishing land use standards, procedures and uses; and

WHEREAS, the Planning and Zoning Commission conducted a duly noticed public hearing on January 19, 2017 on the proposed ordinance in accordance with the Local Land Use Planning Act, Title 67, Chapter 65 on January 19, 2017 of AM05-16 to the City Council; and,

WHEREAS, the City Council desires to establish a chapter devoted chapters to design standards for specific uses; and

WHEREAS, the City Council wishes to set forth standards for In-Home Family Daycares within the city; and

WHEREAS, the City Council recognizes non-conforming structures were limited within the existing text for the allowed continuations, and

WHEREAS, the Mayor and City Council have determined that the proposed amendments to Title Eleven, Bonners Ferry City Code are in accord with the adopted comprehensive plan;

NOW THEREFORE, be it ordained by the Mayor and the Council of the City of Bonners Ferry, Idaho, as follows:

**Section 1:** That Bonners Ferry City Code Title 11, is hereby amended to read as follows:

New Text is shown with an underline.

Text that is removed is shown with a ~~striketrough~~.

Text with no change is shown, as is.

#### **TABLE OF CONTENTS FOR TITLE 11 CHANGES**

1. Part A, Amendment to Title 11, Chapter 1 Definitions
2. Part B, Amendments to Title 11, Chapter 3 Non Conforming Structures and Uses
3. Part C, Amendments to Title 11, Chapter 9, Supplementary Regulations
4. Part D, Amendments to Title 11, Chapter 12 (NEW Chapter), Design Standards for Specific uses;
5. Part E, Amendment to Title 11, Appendix B, Commercial Use table

#### **Part A:**

**Bonners Ferry City Code Title 11, Chapter 1, Section 3, Appendix A “Definitions,” is hereby amended to strike in its entirety the definition of “Home Occupation,” and to amend the definition of “Home-based Business,” to read as follows:**

CHILDCARE FACILITY: Any facility where children regularly receive care and supervision, usually unaccompanied by the children's parents, guardians or custodians, and regardless of whether the facility does or does not provide any instruction. This use excludes the case of: a) the operator's children or legal wards or children related by blood or marriage, b) occasional personal guests, and c) children aged twelve (12) and over. Any home, place, or facility providing overnight custodial services for lodging or boarding for the occupants therein shall not be considered a "childcare facility".

There are three (3) types of childcare facilities:

- A. In-Home Family daycares: A childcare facility for six (6) or fewer children.
- B. Group daycare facility: A childcare facility for seven (7) to twelve (12) children.
- C. Daycare center: A childcare facility for thirteen (13) or more children

ZONING PERMIT: A permit that requires approval by the Administrator, including but not limited to, building permits, Administrative Reviews and Site Plans, as applicable.

**Part B: Bonners Ferry City Code, Title 11, Chapter 3 Nonconforming Uses and Structures is hereby amended as follows:**

**11-3-3: NONCONFORMING STRUCTURES:**

Where a lawful structure exists at the effective date of adoption or amendment of this title that could not be built under the terms of this title by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

A. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity. Any structure or portion thereof may be altered to decrease its nonconformity.

B. A nonconforming structure or nonconforming portion of a structure destroyed by any means may be reconstructed so long as the reconstruction does not increase its nonconformity and reconstruction occurs within 1-year of its destruction.

C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district or zone in which it is located after it is moved.

D. No nonconforming portion of a structure may be enlarged or altered in any way which increases its bulk (such as lot area, open space, yards, lot coverage, height, impervious surface ratios and floor area ratios).

**11-3-4: NONCONFORMING STRUCTURES AND USES IN COMBINATION:**

If a lawful use of a structure or of structures and premises in combination exists at the effective date of adoption or amendment hereof that would not be allowed in the district under the terms of this title, the lawful use may be continued subject to the following conditions:

A. No existing structure devoted to a use not permitted in the district in which it is located shall be enlarged, extended, constructed, reconstructed or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located, nor shall the intensity of such use be increased or extended, except that the city council, by a special permit in the case of an affirmative showing of undue hardship, may grant an extension or enlargement of a nonconforming use not exceeding twenty five percent (25%) of the ground area of the building.

B. Any nonconforming use may be extended throughout any parts of a building that were obviously arranged or designed for such use at the time of adoption or amendment hereof, but no such use shall be extended to occupy any land outside such building.

C. When a nonconforming use of a structure or a structure and premises in combination is discontinued or abandoned for a period of one year the structure or structure and premises in combination shall conform to the regulations specified by this title for the district in which such structure and land is located. See section 11-3-6 of this chapter for the procedure to continue the use of a nonconforming structure or combination of structure and premises.

D. Any nonconforming building or structure damaged more than sixty percent (60%) of its then fair market value, exclusive of the foundations, at the time of damage by fire, flood, explosion, war, riot or act of God, shall not be restored or reconstructed and used as before such happening, but if less than sixty percent (60%) is damaged above the foundation, it may be restored,



reconstructed or used as before, provided, that it may be done within six (6) months of such happening and be built of like or similar or better materials. This time may be extended upon application of the owner to the city for extenuating circumstances. (Ord. 504, 1-8-2008)

**Part C: Bonners Ferry City Code, Title 11, Chapter 9 Supplemental Regulations is hereby amended as follows:**

**11-9-1: REGULATIONS:**

The regulations hereinafter set forth in this chapter qualify or supplement, as the case may be, the district use and area regulations appearing elsewhere in this act:

- A. Each part of a required yard shall be open to the sky, unobstructed by other buildings or structures.
- B. All single-family dwellings converted to multiple-family dwellings must conform to the following latest edition of the building code.
- C. No existing single-family dwelling may be so converted if it contains less than one thousand (1,000) square feet of livable floor area per individual household. (Ord. 504, 1-8-2008)

**11-9-2: STRUCTURES PERMITTED ABOVE HEIGHT LIMITATIONS:**

The building height limitations of this act shall be modified as follows:

- A. Chimneys, cooling towers, elevator bulkheads, fire towers, monuments, bell towers, penthouses, stacks, stage towers or scenery lofts, tanks, water towers, ornamental towers and spires, radio or television towers or necessary mechanical appurtenances may be erected to a height above that allowed in the district in which they are located, if approved by the council.
- B. Public, semipublic or public service buildings, hospitals, sanitariums, schools or churches when permitted in a district may be erected to a height exceeding the height allowed in the district where they are located if approved by the council. (Ord. 504, 1-8-2008)

**11-9-3: BULK STORAGE OF FLAMMABLE LIQUIDS AND GASES OR CORROSIVE MATERIALS, ABOVEGROUND AND FOR RESALE:**

- A. Will be located at least three hundred feet (300') from a residence, motel, or hotel, except for an owner's residence.
- B. Will be erected with the written approval of the fire authority having jurisdiction.
- C. Will have suitable loading and unloading spaces and off street parking facilities meeting the approval of the fire authority. (Ord. 504, 1-8-2008)

**11-9-4: HOME OCCUPATIONS:**

- A. Only members of the family residing on the premises shall be engaged in such occupation.
- B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and not more than twenty percent (20%) of the floor area of the dwelling unit shall be used in the conducting of the home occupation.

~~C. There shall be no change in the outside appearance of the building or premises showing visible evidence of the conduct of such home occupation.~~

~~D. No significant traffic shall be generated by such home occupation. "Significant traffic" shall be defined as more than twenty (20) vehicle trips per day.~~

~~E. No equipment or process shall be used in such home occupation, which creates noise, vibration, glare, fumes, odors or electrical interference. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises. (Ord. 504, 1-8-2008)~~

**11-9-5: WRECKING YARD, IMPOUND YARD AND JUNKYARD:**

~~A. A sight obscuring enclosure meeting the terms of this title shall be constructed parallel to and ten feet (10') back of the right of way line of any public street or highway for any auto wrecking yard and salvage yard.~~

~~B. Materials used and details of construction must be approved by the administrator. The decision of the administrator shall be guided by the need to preserve and protect the scenic and aesthetic values of the surrounding area, and to protect property value.~~

~~C. Will not store automobiles or junk in a manner that exceeds the height of fence.~~

~~D. Will have such landscaping that is appropriate with the surrounding area. (Ord. 504, 1-8-2008)~~

**11-9-3: MANUFACTURED/MOBILE HOME SITING STANDARDS:**

In all areas within the corporate limits wherein this code permits the location, occupation and use of single-family dwellings, manufactured and mobile homes meeting or exceeding the following specifications will be a permitted and authorized use subject to the following restrictions on the placement of said homes:

A. Manufactured homes shall be multi-sectional enclosing a space of not less than one thousand (1,000) square feet and when assembled on site, they shall not be less than twenty feet (20') both in length and width. They shall also either have been certified as having been constructed in accordance with the standards for certification of manufactured/mobile homes by the U.S. department of housing and urban development and manufactured/mobile home construction and safety standards, or if manufactured prior to June 15, 1976, have received a certificate of compliance from the administrator of the division of building safety of the state of Idaho that the structure meets the rehabilitation requirements of Idaho Code title 44, chapter 25.

B. Manufactured housing shall be installed in accordance with Idaho Code title 44, chapter 22, "Manufactured Housing Setup Code".

C. The manufactured home shall have a pitched attached roof with a slope of not less than three feet (3') in height for each twelve feet (12') in width.

D. The manufactured home shall have exterior siding and roofing material commonly used on residential dwellings and which is comparable to the predominant material used on the buildings in

the area. The city officer charged with the approval of building will determine compliance with this provision.

E. The provisions of this chapter shall not permit manufactured homes or the lot upon which they are sited to follow any development standard, architectural requirements, and/or minimum size requirements, which are lower or less than that which is or would be applicable to a conventional single-family residential dwelling constructed on the same lot.

F. This chapter shall not apply to the regulation of manufactured/mobile homes situated or to be situated in manufactured/mobile home parks which the city has approved as a manufactured/mobile home park nor shall this apply to lands falling within an area defined as a historic district under Idaho Code 67-4607 nor shall this chapter be applied to modify or abrogate any recorded restrictive covenant applicable to any land within the jurisdiction of the city. (Ord. 504, 1-8-2008)

#### **11-9-4: REMOVAL OF TRAFFIC HAZARDS:**

It shall be the responsibility of the owner of real property to remove from his property any hedge, shrubbery, fence, wall or other sight obstructions of any nature, except public traffic or highway signs, buildings and trees, where these sight obstructions constitute a potential traffic hazard. Sight obstructions shall be the "sight triangle" as defined in Idaho Code.

When the city engineer or his designee determines upon the basis of an engineering and traffic investigation that such a traffic hazard exists, the city engineer or his designee shall notify the owner and order that the hazard be removed within fifteen (15) days. (Ord. 504, 1-8-2008)

#### **Part D:**

**Bonnors Ferry City Code Title 11, Chapter 12, is hereby added as follows:**

### **CHAPTER 12: DESIGN STANDARDS FOR SPECIFIC USES**

#### **11-12-1: PURPOSE**

The purpose of this chapter is to establish basic development standards consistent with the goals and policies of the comprehensive plan and to set specific conditions for various uses or areas within the City. The regulations set forth are adopted to serve, protect and promote the public health, safety and welfare and to preserve and enhance the aesthetic qualities of the city, while allowing for the orderly and efficient development of property in accordance with all state and federal regulations. All design standards require the Use is first provided for and allowed under Title 11, Appendix B, Table of uses.

#### **11-12- 2: BULK STORAGE OF FLAMMABLE LIQUIDS AND GASES OR CORROSIVE MATERIALS, ABOVEGROUND AND FOR RESALE:**

- A. Will be located at least three hundred feet (300') from a residence, motel, or hotel, except for an owner's residence.
- B. Will be erected with the written approval of the fire authority having jurisdiction.
- C. Will have suitable loading and unloading spaces and off street parking facilities meeting the approval of the fire authority. (Ord. 504, 1-8-2008)

D. A City business license is required prior to the use commencing on the property.

### **11-12-3: HOME OCCUPATIONS:**

A. Only members of the family residing on the premises shall be engaged in such occupation.

B. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and not more than twenty percent (20%) of the floor area of the dwelling unit shall be used in the conducting of the home occupation.

C. There shall be no change in the outside appearance of the building or premises showing visible evidence of the conduct of such home occupation.

D. No significant traffic shall be generated by such home occupation. "Significant traffic" shall be defined as more than twenty (20) vehicle trips per day.

E. No equipment or process shall be used in such home occupation, which creates noise, vibration, glare, fumes, odors or electrical interference. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises. (Ord. 504, 1-8-2008)

### **11-12-4 IN-HOME FAMILY DAYCARE**

A. Shall not exceed 6 children as defined within Appendix A of this Title;

B. Applications for In-Home Family Daycare listed as "P" (permitted uses) within Appendix B of this Title shall be processed by the Administrator, who shall review the application for compliance with this Title and may apply conditions of approval to assure the In-Home Family Daycare does not adversely affect the neighborhood. The administrator shall provide the applicant with a written decision. The final decision may be appealed pursuant to this title.

An application for the permitted ("P") home-based business shall be submitted to the city, which shall, at a minimum, include the following:

1. A City application form filled out and signed by both the applicant and the landowner;
2. A plan of the site, drawn to scale, showing location of all existing and proposed buildings, parking and loading areas, traffic access and circulation, undisturbed areas, open spaces, landscaping, refuse and service areas, utilities, signs, yard and any fencing or other features peculiar to the operations of the use at the site.
3. A parking plan that addresses adequate off-street parking that is designed consistent with Chapter 13 of this title.
4. A fee, as set forth by resolution.

- C. Prior to commencement of the use the city shall receive an inspection report from the applicant indicating the City Fire Department, has reviewed the site against the applicable International Fire Code and state fire marshal standards for daycares. Written proof of the satisfactory completion of this condition shall be provided by the applicant to the city.

**11-12-5: WRECKING YARD, IMPOUND YARD AND JUNKYARD:**

- A. A sight obscuring enclosure meeting the terms of this title shall be constructed parallel to and ten feet (10') back of the right of way line of any public street or highway for any auto wrecking yard and salvage yard.
- B. Materials used and details of construction must be approved by the administrator. The decision of the administrator shall be guided by the need to preserve and protect the scenic and aesthetic values of the surrounding area, and to protect property value.
- C. Will not store automobiles or junk in a manner that exceeds the height of fence.
- D. Will have such landscaping that is appropriate with the surrounding area. (Ord. 504, 1-8-2008)

**Part E:**

**Bonnars Ferry City Code Title 11, Appendix B, “Table of Uses” is hereby amended to strike the Home Occupation Use and Home Based Business and add Tier 1 and Tier 2 Home-based business to the use table; to strike childcare family daycares and provide for Childcare, In-home family daycares and to provide standards applicable to Title 11, Chapter 12 in the opening paragraph as follows:**

**TABLE OF USES**

OFFICIAL SCHEDULE OF DISTRICT REGULATIONS

(P= Permitted uses; S= Special Uses; [Blank] = Not Allowed, \*= Zoning Permit required)

Any use as proposed in the table below shall also be required to follow any supplementary and standards regulations as provided for within this title and specifically where provided for at chapter 9 or Chapter 12 of this title.

Those uses not specifically provided for are therefore prohibited, unless in conformance with this title.

<u>Commercial Use Table</u>	<u>Zoning Districts</u>						
	<b>AA</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>I</b>	<b>M</b>	<b>D</b>
Childcare family daycare (6 or fewer)	S	S	S	P	-	S	S
Childcare, In-Home Family Daycare, (6 or fewer)	P*	P*	P*	P*	P*	P*	P*

**Section 3: SAVING CLAUSE.** All ordinances repealed by this ordinance, shall be remain in force to authorize the enforcement, arrest, prosecution, conviction or punishment of a person who violates said ordinances prior to the effective date of this Ordinance.

**Section 4: PROVISIONS SEVERABLE:** The provisions of this Ordinance are hereby declared to be severable and if any provision of this Ordinance or application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Ordinance.

**Section 5: EFFECTIVE DATE:** This ordinance shall be effective upon its passage and publication in the manner provided by law.

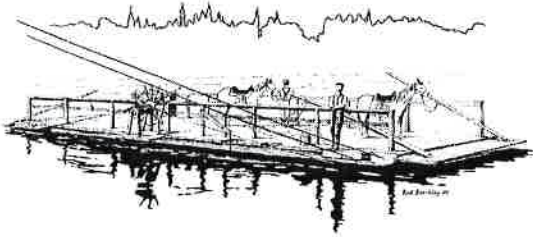
APPROVED by the Mayor and City Council of the City of Bonners Ferry this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF BONNERS FERRY, IDAHO

BY: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk, City of Bonners Ferry



# MEMO

CITY OF BONNERS FERRY  
CITY ENGINEER/ADMIN

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Date: March 31, 2017  
To: City Council  
From: Mike Klaus, City Engineer/Admin  
Subject: **Small Tractor Purchase**

The City has a small four-wheel drive John Deere tractor/mower that is used for many purposes. That tractor was used often this winter to remove snow from sidewalks. It is used as the main mower for the City as well as for picking up leaves, pine needles, and fertilizing.

The old mower has some transmission problems and we currently have \$5,000 in the budget to fix it. John Youngwirth was recently offered \$5,000 by an equipment supplier. A new mower has been quoted at \$16,300. Considering the trade-in value and the transmission issue, we would only need to provide another \$6,300 to purchase the new tractor, as attached. John indicated that the tractor could be purchased over a couple of years also, which may ease the effect on the general fund budget.

I am recommending that the Council approve the purchase of the new tractor.

Please let me know if you have any questions.

Thank you,

Mike



Purchase Order for  
John Deere Equipment (U.S. Only)

PO# 04672522  
PO Revision# Original

<b>PURCHASER'S NAME - First Signer</b> (First, Middle Initial, Last) CITY OF BONNERS FERRY			DATE OF ORDER Mar 28, 2017	COMPANY UNIT 07	DEALER ACCOUNT NO. 070979
(SECOND LINE OF OWNER NAME)			DEALER ORDER NO.		
STREET OR RR PO BOX 149			SOC.SEC.	IRS NO.	EIN.NO.
TOWN BONNERS FERRY	STATE ID	ZIP CODE 83805	TRANSACTION TYPE Cash Sale		PURCHASER SALES TAX EXEMPT YES
COUNTY Boundary	PURCHASER ACCT.	PHONE NO. 208-267-3105	SELLER'S NAME & ADDRESS Pape Machinery, Inc. 1201 Fontaine Drive Ponderay, ID 83852 208-265-7282		
E-MAIL ADDRESS			I (We), the undersigned, hereby order from Dealer the Equipment described below, to be delivered as shown below. This order is subject to Dealer's ability to obtain such Equipment from the manufacturer and Dealer shall be under no liability if delivery of the Equipment is delayed or prevented due to labor disturbances, transportation difficulties, or for any reason beyond Dealer's control. The price shown below is subject to Dealer's receipt of the Equipment prior to any change in price by the manufacturer. It is also subject to any new or increased taxes imposed upon the sale of the Equipment after the date of this order.		
<b>PURCHASER'S NAME - Second Signer</b>					
STREET OR RR					
TOWN	STATE	ZIP CODE			
Use County BOUNDARY	Use State/Province ID				

± **NOTICE:** Equipment may be equipped with telematics hardware and software ("Telematics") that transmit data to John Deere. Purchaser may deactivate Telematics by contacting the JDLink Global Support group at 1-800-251-9928 or via email at [jdlinksupport@johndeere.com](mailto:jdlinksupport@johndeere.com).

QTY	NEW	DEMO	RENTAL	USED	Equipment & Value Added Service (Give Model, Size & Description)	Hours of Use	PRODUCT IDENTIFICATION NUMBER	DELIVERED CASH PRICE (Or Total Lease Payments)
1	x				JOHN DEERE (Signature Series) X738 LAWN-TRACTOR Stock # PO/COMAR: 07127686		1M0X738ACHM050320	\$ 9,731 92
1	x				BM23989 Drawbar, 1.25 in. (38mm)			\$ 33 89
1	x				BM20877 Rear receiver hitch kit			\$ 39 55
1	x				BM24379 Air-Ride Suspension Seat			\$ 747 64
1	x				AM130907 Mower deck leveling gauge			\$ 6 12
1	x				BM24363 9-Weight Front Weight Bracket			\$ 169 49
1	x				JOHN DEERE 60D MOWER Stock # PO/COMAR: 950843	0	1M01060DCDM037286	\$ 2,112 94
1	x				JD/ 60 in. FRONT BLADE (Quick Hitch)			\$ 1,486 32
1	x				BM20714 Click-N-Go Bracket (X400/X500 HDGTs, X700s)			\$ 116 63
1	x				AM119321 Heavy Duty Skid Shoe (1)			\$ 68 84
1	x				TY15956 Tire chains (pair) for 23x10.50-12 tires			\$ 81 08
1	x				14-bu   3-BAG HOPPER ASSEMBLY			\$ 888 44
1	x				POWER FLO HIGH PERFORMANCE KIT			\$ 590 77
1	x				POWER FLO-CHUTE (14 bu)			\$ 146 34

I (We) offer to sell, transfer, and convey the following item(s) at or prior to the time of delivery of the above Equipment, as a "trade-in" to be applied against the cash price. Such item(s) shall be free and clear of all security agreements, liens, and encumbrances at the time of transfer to you. The following is a description and the price to be allowed for each item.

TOTAL CASH PRICE \$ 16,219 97

QTY	DESCRIPTION OF TRADE-IN	Hours of Use	PRODUCT IDENTIFICATION NUMBER	AMOUNT
			TOTAL TRADE-IN ALLOWANCE	\$ 0 00
	PURCHASER TYPE 5 City/Town/Village	MARKET USE 17 General Utility	1. TOTAL CASH PRICE	\$ 16,219 97
			2. TOTAL TRADE-IN ALLOWANCE	\$ 0 00

COMMENTS:		PRODUCT IDENTIFICATION NUMBER	AMOUNT
		3. TOTAL TRADE-IN PAY-OFF	\$ 0 00
		4. BALANCE	\$ 16,219 97
		8. EST. SERVICE AGREEMENT TAXES	\$ 0 00
		9. SUB-TOTAL	\$ 16,219 97
		10. CASH WITH ORDER	\$ 0 00
		11. RENTAL APPLIED	\$ 0 00
		12. CASH DISCOUNT	\$ 0 00
		13. BALANCE DUE	\$ 16,219 97

**IMPORTANT WARRANTY NOTICE:** The John Deere warranty applicable to new John Deere Equipment is printed and included with this document. There is no warranty on used equipment. The new equipment warranty is part of this contract. Please read it carefully. **YOUR RIGHTS AND REMEDIES PERTAINING TO THIS PURCHASE ARE LIMITED AS SET FORTH IN THE WARRANTY AND THIS CONTRACT. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS ARE NOT MADE AND ARE EXCLUDED UNLESS SPECIFICALLY PROVIDED IN THE JOHN DEERE WARRANTY.**

**NOTICE:** Use of John Deere Services, if applicable, and all rights and obligations of John Deere and the Customer (as identified in the applicable agreement), are governed by the terms and conditions outlined in the applicable Services and Software agreements available at [www.JohnDeere.com/Agreements](http://www.JohnDeere.com/Agreements). If these terms and conditions are not agreeable do not use the Services.

**DISCLOSURE OF REGULATION APPLICABILITY:** When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board. In-Use Off-Road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants.

**ACKNOWLEDGEMENTS - I (We) promise to pay the Balance Due (line 13 ) shown above in cash, or to execute a Time Sale Agreement (Retail Installment Contract), or a Loan Agreement, for the purchase price of the Equipment, plus additional charges shown thereon or execute a Lease Agreement, on or before delivery of the Equipment ordered herein. Despite physical delivery of the Equipment, title shall remain in the seller until one of the foregoing is accomplished.**



**WARRANTY FOR NEW JOHN DEERE AGRICULTURAL EQUIPMENT AND  
LIMITED WARRANTY FOR NEW TURF & UTILITY EQUIPMENT (US & CANADA ONLY)**

**A. GENERAL PROVISIONS** – With respect to purchasers in the United States, "John Deere" means Deere & Company, 1 John Deere Place, Moline, IL 61265, and with respect to purchasers in Canada, "John Deere" means John Deere Canada ULC, 295 Hunter Road, P. O. Box 1000, Grimsby, Ontario L3M 4H5. The warranties described below are provided by John Deere to the original purchasers of new Agricultural, Turf and Utility Equipment ("Equipment") purchased from John Deere or authorized John Deere dealers (the "Selling Dealer"). These warranties apply only to Equipment intended for sale in Canada and the US. Under these warranties, John Deere will repair or replace, at its option, any part covered under these warranties which is found to be defective in material or workmanship during the applicable warranty term. Warranty service must be performed by a dealer or service center located in Canada or the US, and authorized by John Deere to sell and/or service the type of Equipment involved (the "Authorized Dealer"). The Authorized Dealer will use only new or remanufactured parts or components furnished or approved by John Deere. Warranty service will be performed without charge to the purchaser for parts and/or labor. However, the purchaser will be responsible for any service call and/or transportation of Equipment to and from the Authorized Dealer's place of business (except where prohibited by law), for any premium charged for overtime labor requested by the purchaser and for any service and/or maintenance not directly related to any defect covered under these warranties. These warranties are transferable, provided an authorized John Deere dealer is notified of the ownership change, and John Deere approves the warranty transfer.

**B. WHAT IS WARRANTED** – Subject to paragraph C, all parts of any new Equipment are warranted for the number of months or operating hours specified below. Each warranty term begins on the date of delivery of the Equipment to the original purchaser, (except for certain agricultural tillage, planting, cultivating, harvesting, and application Equipment which may have a delayed warranty start date, but only if established by John Deere and noted by Selling Dealer on the Purchase Order). **Included In 5E Series Tractor and Compact Utility Tractor Powertrain Warranty - Engine:** cylinder block, cylinder head, valve covers, oil pan, emissions control components, timing gear covers, flywheel housing, and all parts contained therein. **Powertrain:** transmission, transmission case, differential and axle housings, clutch housings, MFWD front axle assembly, and all parts contained therein (does not include external drivelines, dry clutch parts, or steering cylinders). **SWEEPS, SHOVELS, PLOWSHARES, AND DISK BLADES:** A replacement part will be furnished without charge if breakage occurs and the amount of wear is less than the wear limits established by John Deere.

AGRICULTURAL EQUIPMENT	WARRANTY TERM
Tractors	24 Months or 2000 Hours, Whichever Comes First
Tractors used in Earthmoving Applications exceeding 150 hours per year (except those specific models and configurations approved by John Deere as having a two year warranty in scraper applications)	90 Days
5E Series Tractors	24 Months or 2000 Hours, Whichever Comes First
a) Powertrain on 5E Series Tractors (components as per B above)	60 Months or 2000 Hours, Whichever Comes First
Scrapers	6 Months for MY14 and earlier 12 Months for D Series and MY15 and later
Frontier™ Equipment	12 months
Sugar Cane Harvesters and Loaders	12 months or 1500 hours, Whichever Comes First
All other Equipment (includes Ag Management Solutions (AMS) products)	12 Months
Premium Balers	24 Months or 12,000 bales, Whichever Comes First; First 12 Months, No Bale Limitation
Large Square Balers	12 Months, No Bale Limitation
a) Powertrain on Large Square Balers	24 Months or 20,000 bales, Whichever Comes First
Hagie Manufacturing Company LLC Sprayers	24 Months or 1000 Hours, Whichever Comes First
Engines in Self-Propelled Equipment except Tractors*	24 Months or 2000 Hours, Whichever Comes First
*Engine Items Covered in months 13 through 24 – Engine block, cylinder head, rocker arm cover, timing gear cover, crankcase pan and all parts enclosed within these units. Also included are the fuel injection pump, turbocharger, water pump, torsion damper, manifolds, and engine oil cooler. All other engine related items are not covered in months 13 through 24.	
TURF & UTILITY EQUIPMENT	WARRANTY TERM
1) Z200 Series and Z425 EZtrak™ Mowers, Z300 Series and Z525E ZTrak™ Mowers, and D100 Series Tractors**	24 Months or 120 Hours, Whichever Comes First
2) S200 Series Tractors**	36 Months or 200 Hours, Whichever Comes First
3) X300 Series Tractors; Z400 Series EZtrak™ Mowers and Z500M Series ZTrak™ Mowers (Except Z425 and Z525E)**	48 Months or 300 Hours, Whichever Comes First
4) X500 Series Tractors; Z600 Series EZtrak™ Mowers and Z500R Series ZTrak™ Mowers**	48 Months or 500 Hours, Whichever Comes First
5) X700 Series Tractors**	48 Months or 700 Hours, Whichever Comes First
6) JS Series Residential Walk-Behind Mowers	24 Months in Private Residential – Personal Use or 90 Days in Any Other Application
7) Wide Area Mowers, Front Mower Traction Units and Mower Decks, QuikTrak™ Mowers, Commercial Walk Behind Mowers	24 Months
8) Z900B, Z900E, and Z900M Series ZTrak™ Mowers	36 Months or 1200 Hours, Whichever Comes First; First 24 Months, No Hour Limitation
9) Z997, Z900A Series and Z900R Series ZTrak™ Mowers	36 Months or 1500 Hours, Whichever Comes First; First 24 Months, No Hour Limitation
10) Compact Utility Tractors	24 months or 2000 hours, Whichever Comes First
a) Powertrain on Compact Utility Tractors (components as per B above)	72 months or 2000 hours, Whichever Comes First
11) GATOR™ Utility Vehicles (except CX)	12 Months or 1000 Hours, Whichever Comes First
12) Implements/Attachments sold separately or used on Equipment listed in 7 through 11	12 Months
13) CX GATOR™**, All other Turf & Utility Equipment	24 Months in Private Residential - Personal Use or 12 Months in Any Other Application

\*\*Implements/Attachments purchased on the same Purchase Order as the Equipment listed will be covered by the Equipment's warranty terms. Implements/Attachments purchased separately will be covered by the warranty term on line 12.

**C. (I) ITEMS COVERED SEPARATELY** – (1) Tires, rubber tracks and batteries; (2) John Deere Hand Held-Portable products; (3) John Deere Walk Behind Snowthrowers; (4) When applicable, a separate emissions warranty statement will be provided by Selling Dealer.

**(II) WHAT IS NOT WARRANTED** – Pursuant to the terms of these warranties, JOHN DEERE IS NOT RESPONSIBLE FOR THE FOLLOWING: (1) Used Equipment; (2) Any Equipment that has been altered or modified in ways not approved by John Deere, including, but not limited to, setting injection pump fuel delivery above John Deere specifications, modifying combine grain tanks, and modifying self-propelled sprayers with unapproved wheels, tracks, tanks or booms; (3) Depreciation or damage caused by normal wear, lack of reasonable and proper maintenance, failure to follow operating instructions/recommendations; misuse, lack of proper protection during storage, vandalism, the elements or collision or accident; (4) Normal maintenance parts and/or service, including but not limited to, oil, filters, coolants and conditioners, cutting parts, belts, brake and clutch linings; (5) Any Utility Vehicle used for racing or other competitive purpose; (6) Chains on Premium Balers.

**D. SECURING WARRANTY SERVICE** – To secure warranty service the purchaser must, (1) Report the Equipment defect to an Authorized Dealer and request warranty service within the applicable warranty term; (2) Present evidence of the warranty start date with valid proof of purchase; and (3) Make the Equipment available to an Authorized Dealer within a reasonable time.

**E. NO IMPLIED WARRANTY, REPRESENTATION OR CONDITION** – To the extent permitted by law, neither John Deere nor any company affiliated with it makes any warranties, representations, conditions or promises express or implied as to the quality, performance or freedom from defect of the Equipment covered by these warranties other than those set forth above, AND NO STATUTORY OR IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS ARE MADE. TO THE EXTENT LEGALLY REQUIRED, ANY IMPLIED WARRANTIES OR CONDITIONS SHALL BE LIMITED IN DURATION TO THE APPLICABLE PERIOD OF WARRANTY SET FORTH ON THIS PAGE. THE PURCHASER'S ONLY REMEDIES IN CONNECTION WITH THE BREACH OR PERFORMANCE OF ANY WARRANTY ON JOHN DEERE EQUIPMENT ARE THOSE SET FORTH ON THIS PAGE. IN NO EVENT WILL THE DEALER, JOHN DEERE OR ANY COMPANY AFFILIATED WITH JOHN DEERE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. (Note: Some jurisdictions do not allow limitations on how long an implied warranty lasts or the exclusion or limitation of incidental or consequential damages so the above limitations and exclusions may not apply to you.) In the event the above warranty fails to correct purchaser's performance problems caused by defects in workmanship and/or materials, purchaser's exclusive remedy shall be limited to payment by John Deere of actual damages in an amount not to exceed the amount paid for the Equipment. This warranty gives you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction.

**F. NO DEALER WARRANTY** THE DEALER HAS NO AUTHORITY TO MAKE ANY WARRANTY, REPRESENTATION, CONDITION OR PROMISE ON BEHALF OF JOHN DEERE, OR TO MODIFY THE TERMS OR LIMITATIONS OF THIS WARRANTY IN ANY WAY.

**G.** If further information is desired, contact Selling Dealer or John Deere at 1-866-993-3373 (Agricultural) or 1-800-537-8233 (Turf & Utility Equipment).



Purchase Order for  
John Deere Equipment (U.S. Only)

PO# 04672522  
PO Revision# Original

Quote ID: 15000554

Purchaser Name: CITY OF BONNERS FERRY

Purchaser's  
Signature \_\_\_\_\_

Accepted  
By \_\_\_\_\_

Purchaser's  
Signature \_\_\_\_\_

Date  
Accepted \_\_\_\_\_

Salesperson

MOSER, DOUG

Delivery Acknowledgement

Delivered On:

Warranty Begins:

Signature \_\_\_\_\_

Date \_\_\_\_\_



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D5TAS94061 (14-06)



**JOHN DEERE**

Nothing runs like a Deere.

**X738 (4WD)**

John Deere Torque\*  
 25.5 hp\* (19 kW)  
 45.5 cu in. (745 cc)  
 Liquid  
 V-Twin

5.2 U.S. gal. (19.7 L)  
 Gasoline

Electronic  
 20 amp, regulated  
 EFI

Hydrostatic, Full-time 4-wheel drive  
 8.5 mph (13.7 km/h)  
 6 mph (9.7 km/h)

Internal wet disc

Power, 2-wheel steer

25 in. (635 mm)

28 in. (711 mm) w/ 60-in. HC mower

21 in. (533 mm) 2-piece adjustable back angle

Heavy-Duty All Purpose  
 18x8.50-10  
 Heavy-Duty All Purpose  
 26x12-12

Power

Hydraulic clutch

51.2 in. (1300 mm)  
 75 in. (1905 mm)

62 in. (1575 mm) w/ 60-in. mower

55.7 in. (1415 mm)

1,178 lb (534 kg) w/ 54-in. mower

48 in. (1219 mm) 3 blades  
 54 in. HC (1372 mm) 3 blades  
 60 in. HC (1524 mm) 3 blades

4 years / 700 hours

**X739 (4WD, 4WS)**

John Deere Torque\*  
 25.5 hp\* (19 kW)  
 45.5 cu in. (745 cc)  
 Liquid  
 V-Twin

5.2 U.S. gal. (19.7 L)  
 Gasoline

Electronic  
 20 amp, regulated  
 EFI

Hydrostatic, Full-time 4-wheel drive  
 8.5 mph (13.7 km/h)  
 6 mph (9.7 km/h)

Internal wet disc

Power, 4-wheel steer

21 in. (533 mm)

6 in. (152 mm) w/ 60-in. HC mower

21 in. (533 mm) 2-piece adjustable back angle

Heavy-Duty All Purpose  
 18x8.50-10  
 Heavy-Duty All Purpose  
 26x12-12

Power

Hydraulic clutch

51.2 in. (1300 mm)  
 75 in. (1905 mm)

57.5 in. (1461 mm) w/ 54-in. mower

55.7 in. (1415 mm)

1,265 lb (574 kg) w/ 54-in. mower

48 in. (1219 mm) 3 blades  
 54 in. HC (1372 mm) 3 blades  
 60 in. HC (1524 mm) 3 blades

4 years / 700 hours

**X750**

3-cylinder  
 24 hp\* (18 kW)  
 60.6 cu in. (993 cc)  
 Liquid  
 3

5.2 U.S. gal. (19.7 L)  
 Diesel

N/A  
 40 amp, regulated  
 Indirect Injection

Hydrostatic, 2-wheel drive  
 8.5 mph (13.7 km/h)  
 6 mph (9.7 km/h)

Internal wet disc

Power, 2-wheel steer

25 in. (635 mm)

28 in. (711 mm) w/ 60-in. HC mower

21 in. (533 mm) 2-piece adjustable back angle

Turf  
 18x8.50-8  
 Turf  
 26x12-12

Power

Hydraulic clutch

51.2 in. (1300 mm)  
 75 in. (1905 mm)

62 in. (1575 mm) w/ 60-in. mower

54.5 in. (1384 mm)

1,168 lb (530 kg) w/ 54-in. mower

48 in. (1219 mm) 3 blades  
 54 in. HC (1372 mm) 3 blades  
 60 in. HC (1524 mm) 3 blades

4 years / 700 hours

**X754 (4WS)**

3-cylinder  
 24 hp\* (18 kW)  
 60.6 cu in. (993 cc)  
 Liquid  
 3

5.2 U.S. gal. (19.7 L)  
 Diesel

N/A  
 40 amp, regulated  
 Indirect Injection

Hydrostatic, 2-wheel drive  
 8.5 mph (13.7 km/h)  
 6 mph (9.7 km/h)

Internal wet disc

Power, 4-wheel steer

21 in. (533 mm)

6 in. (152 mm) w/ 60-in. HC mower

21 in. (533 mm) 2-piece adjustable back angle

Turf  
 18x7.00-8  
 Turf  
 26x10.50-12

Power

Hydraulic clutch

51.2 in. (1300 mm)  
 75 in. (1905 mm)

57.5 in. (1461 mm) w/ 54-in. mower

54.5 in. (1384 mm)

1,215 lb (551 kg) w/ 54-in. mower

48 in. (1219 mm) 3 blades  
 54 in. HC (1372 mm) 3 blades  
 60 in. HC (1524 mm) 3 blades

4 years / 700 hours

**X758 (4WD)**

3-cylinder  
 24 hp\* (18 kW)  
 60.6 cu in. (993 cc)  
 Liquid  
 3

5.2 U.S. gal. (19.7 L)  
 Diesel

N/A  
 40 amp, regulated  
 Indirect Injection

Hydrostatic, Full-time 4-wheel drive  
 8.5 mph (13.7 km/h)  
 6 mph (9.7 km/h)

Internal wet disc

Power, 2-wheel steer

25 in. (635 mm)

28 in. (711 mm) w/ 60-in. HC mower

21 in. (533 mm) 2-piece adjustable back angle

Heavy-Duty All Purpose  
 18x8.50-10  
 Heavy-Duty All Purpose  
 26x12-12

Power

Hydraulic clutch

51.2 in. (1300 mm)  
 75 in. (1905 mm)

62 in. (1575 mm) w/ 60-in. mower

55.7 in. (1415 mm)

1,258 lb (571 kg) w/ 54-in. mower

48 in. (1219 mm) 3 blades  
 54 in. HC (1372 mm) 3 blades  
 60 in. HC (1524 mm) 3 blades

4 years / 700 hours