



City of Clearwater Council Meeting Notice

Tuesday, July 12, 2016 at 6:30pm

129 E Ross Clearwater, KS 67026

www.clearwaterks.org

Please call the Clerk's office at 620-584-2311 or the Kansas Relay Service 800-8766-3777 at least 48 hours in advance if you require special accommodations to participate in this meeting. We make every effort to meet reasonable requests.

AGENDA

[Please note that the meeting agenda is subject to change during the meeting.]

1. Call meeting to order and welcome

Burt Ussery, Mayor

2. Invocation and flag salute

3. Roll Call

Courtney Meyer, City Clerk

Burt Ussery, Mayor

Laura Papish, Councilmember President

Austin Wood, Councilmember

Paul Clark, Councilmember

Ron Marsh, Councilmember

Chris Griffin, Councilmember

4. Action: Approve July 12, 2016 meeting agenda

5. Public Forum

Pursuant to Ordinance No. 917 and Section 2.08.010 adopted by the governing body and approved by the Mayor on November 24, 2009, members of the public are allowed to address the Mayor and City Council for a period of time limited to not more than five minutes.

6. Action: Approve Consent Agenda

a. Minutes 06/28/16 Council Meeting TAB A

b. Appoint Joanie Bidwell – EMT

7. Review: Personnel Manual Policy and Code Changes TAB B

8. Report: Park Usage Group Report

9. Action: Approve a Maintenance Agreement with Itron TAB C

10. Report: Six Month Financial Review TAB D

11. Action: Claims and Warrants

Courtney Meyer, City Clerk

12. City Administrator Report

Justin Givens, City Administrator

13. Council Reports

14. Executive Session:

15. Adjournment

NOTICE: SUBJECT TO REVISIONS

It is possible that sometime between 6:00 and 6:30 pm immediately prior to this meeting, during breaks, and directly after the meeting, a majority of the Governing Body may be present in the council chambers or lobby of City Hall. No one is excluded from these areas during those times.

Honorable Mayor and City Council

**From: Justin S. Givens,
City Administrator**

Re: Agenda Summary 07 12 2016

- Item 6:**
- a. Approval of Minutes as submitted 06/28/16
 - b. Appoint Joanie Bidwell as a Volunteer EMT – Ms. Bidwell is currently a certified EMT.

-----end of Consent Items

Item 7: HR Attorney Ryan Peck has reviewed the Personnel Manual and compared that against existing city code and had recommendations on consolidating items from the City Code and Personnel Manual, including repealing sections from the code that are incorporated in the personnel manual.

Item 8: The Park Usage Group Report will be presented at the meeting.

Item 9: Staff is presenting a Maintenance Proposal from Itron, the manufactures of the meter reading handhelds and software that allows for integration between the handhelds and our billing software. The Agreement if for two years with a cost of \$720 for the first year and \$2,221.20 for the second year. It is estimated that an hourly rate charge would have cost the city approximately \$1,300 for technical support since the launch of the new handhelds and software.

Item 10: Staff will present the Mid-Year Financial Report

Item 11: A full list of Claims and Warrants will be presented for review at the meeting on Tuesday.

Item 12: A full City Administrators report will be presented at the meeting on Tuesday.

City of Clearwater, Kansas
Sedgwick County
City Council Meeting - **MINUTES**
June 28, 2016
Clearwater City Hall – Council Chambers
129 E. Ross Avenue Clearwater, KS 67026

1. Call to Order

Mayor Burt Ussery called the meeting to order at 6:30 p.m.

2. Invocation and Flag Salute

Mayor Ussery gave the invocation which was followed by the pledge of allegiance and flag salute.

3. Roll Call

The City Clerk called the roll to confirm the presence of a quorum. The following members were present:

Mayor Burt Ussery, Councilmembers Ron Marsh, Chris Griffin, Laura Papish, Austin Wood and Paul Clark were present.

The following staff members were present:

Justin Givens, City Administrator; Courtney Meyer, City Clerk; Ernie Misak, Public Works Director; Donald Schauf, EMS Director; Bill Hisle, Police Chief.

Others present: Logan Mills, Certified Engineering Design.

4. Approval of the Agenda

Mayor Ussery called for a motion to approve the June 28th agenda as presented.

Motion: *Papish* moved, *Clark* seconded to accept the June 28, 2016 agenda as presented. Voted and passed unanimously.

5. Public Forum

None

6. Consent Agenda

Mayor Ussery called for a motion to approve the consent agenda.

Motion: *Papish* moved, *Clark* seconded to approve the consent agenda as presented. Voted and passed unanimously.

7. Adopt Ordinance 1012, Authorizing the Establishment of Court Costs and Fees within the Clearwater Municipal Court

Givens stated that based on previous discussions the City Attorney had drafted an Ordinance that would be the first part of the process in establishing the new court fees that were required to be included on tickets after July 1, 2016. The ordinance would establish that court costs could be amended in the future by a simple resolution versus adopting an ordinance each time a court fee is increased by the state.

Motion: *Papish* moved, *Clark* seconded to adopt ordinance 1012. Voted and passed unanimously.

8. Adopt Resolution 5-2016 Establishing Court Costs and Fees within the Clearwater Municipal Court

Givens stated that the resolution as presented was crafted by the City Attorney and the second part of the process to establish court fees and adopt fees that would reflect the \$3.00 increase that would go in effect on the publication date. This resolution would allow the city to change fees by amending or adopting future resolutions if court fees were to be increased by the State.

Motion: Marsh moved, **Clark** seconded to adopt resolution 5-2016. Voted and passed unanimously.

9. Approve a Change Order for the Ross and Tracy Intersection Work

Givens explained in 2015, the Governing Body approved bonds for street and drainage work on 4th Street as well as at the intersections of Ross and Lee and Ross and Tracy. As the plans developed a significant portion of the drainage improvements were removed from the 4th Street area as it was determined that the improvements would not have the desirable affect especially in relationship to the expense of the project.

During discussions and field meetings an opportunity was presented to use excess funds from the original cost of the project to extend the range of storm water drains especially in the northwest corner of Ross and Tracy that would allow to enclose open trench.

Following the direction of the Governing Body staff asked the project engineer to look into the costs associated with extending the storm water drain so as to close the open trench in the northwest corner of the intersection.

Based on the new design the project engineer has presented a change order to the Contractor and that change order has now been submitted to the Governing Body for approval. The plan would move a storm inlet west and fill in the existing trench that is in front of True to You Automotive.

The change order as presented shows a cost of \$25,433. The original bonded amount was for \$347,488. Because of the change in work, the total cost of the project was approximately \$80,000. If approved there would be approximately \$242,000 in the project account.

Logan Mills with Certified Engineering clarified that all four corners at Tracy and Ross were to be fixed within the original plans. The change order was to extend the drainage further West on Ross Ave past Tru 2 You Automotive.

Motion: Marsh moved, **Clark** seconded to approve the change order. Voted and passed unanimously.

10. Chisholm Ridge Lot Transfers – Lots 37 & 38

An application has been presented for Lots 37 and 38, Block 1 of the Chisholm Ridge Addition. These lots are for a previous applicant. The lots initially approved by the Governing Body did not work when the house was designed on them.

Motion: Clark moved, **Marsh** seconded to approve the lot transfer. Voted and passed unanimously.

11. Chisholm Ridge Lot Transfer Discussion

Givens stated that the developers have expressed a concern over the length of time to transfer the deeds between the developers and the city. In speaking with the developers it seems a bit onerous to wait up to three weeks before a deed can be secured.

Givens asked if the council would authorize the Mayor to sign the deeds as long as they abide by the

policies set in place by resolution.

Motion: *Marsh* moved, *Clark* seconded to authorize the mayor and in his absence the council president, to execute all appropriate documents for the sale of property in accordance with the Governing Body as stated in Resolution 4-2016. Voted and passed unanimously.

12. City Hall Renovations

In 2016 funds were programmed in for renovations. Updating the council chambers and installing visual automation.

For the visual automation four companies were contacted for quotes on installing 2 televisions on swivel mounts, staff needed to be able control what went on the televisions by a laptop located in center of room. From the laptop we would need to display PowerPoint and other Office items, videos, and pdf documents. Staff gave them the choice to quote hardwired if possible or wireless. Whichever they thought was more appropriate.

Only two companies chose to quote on a system. Both companies quoted a wireless system. Below is a comparison of who quoted and what was quoted.

	OPTION 1	OPTION 2
COMPANY	McClelland Sound, Inc.	Commercial Sound Company
WIRELESS SYSTEM	ClickShare	logear
TELEVISIONS	65" LG Commercial TV	60" Visio TV
WIRELESS AND INSTALLATION COST	\$4920	\$2954.60
TV COST	\$6200	\$2696
TOTAL COST	\$11,120	\$5650.60

In the council chambers, staff recommends removing the paneling and put up sheet rock in its place, constructing a wall to enclose the council chambers from staff meeting room and installing a solid wood door and moving electrical so outlets will be located behind the televisions. Also to enclose the cemetery office to help with energy costs

REMOVE PANELING, SHEETROCK, ELECTRICAL	\$4355
NEW WALL WITH DOOR	\$3446
INSTALL SLIDING DOOR IN CEMETERY OFFICE	\$500
RECONSTRUCTION TOTAL	\$8301

\$24,000 was budgeted for building renovations for the 2016 Budget.

- Option 1 Total \$19,391
- Option 2 Total \$13,952

Staff recommended Option 1 as the ClickShare wireless system is designed for meetings and includes commercial grade televisions as regular televisions would not be covered with any warranty.

After a brief discussion Mayor Ussery called for a motion.

Motion: *Clark* moved, *Marsh* seconded to move forward with Option 1 in the amount of \$11,120. Voted and passed 4-1 (Griffin).

13. KDOL Inspection Update

Givens presented the KDOL Inspection the City received and reported that all but one item was completed. All items need to be completed by July 19th.

14. 2016 Budget Amendment

Meyer explained expenditures will be exceeded for the Debt Service Fund and the City Capital Improvement Fund for 2016. This process does require a public hearing but no additional tax dollars will be required.

In 2015 the scheduled street project was delayed until 2016 budget year. Therefore, the funds that were to be appropriated in 2015 carried over to 2016 and will be expensed in the current budget year.

The Debt Service Fund was not budgeted for the correct amount. This amendment will rectify that issue.

Both the revenues and the expenditures change in 2016 has been captured in the 2017 proposed budget.

The public hearing and adoption of the 2016 amended budget must happen prior to the adoption of the 2017 Budget as the amended revenues and expenditures are programmed into the 2017 Budget.

FUND	CURRENT AUTHORIZED EXEDITURES	PROPOSED AMENDED EXPEDITURES
City Capital Improvement	\$116,000	\$150,000
Debt Service	\$438,799	\$460,285

Motion: *Griffin* moved, *Marsh* seconded set the budget hearing to amend the 2016 Budget for July 26th at 6:30pm. Voted and passed unanimously.

15. 2017 Budget

Givens stated that each year the City is required by state statue to adopt, publish, and conduct a public hearing for their budget on an annual basis. Staff and the City Council have prepared budgets for departments and worked thru a budget for 2017.

The proposed budget for 2017 includes a 2 mill increase over 2016. From a rate of 54 to 56 mills. The budget includes approximately \$71,000 in transfers to equipment reserve funds as well as approximately \$275,000 in Capital Improvements. The FY 2017 Budget provides for an overall budget expenditure authority of \$4,291,034. Each mill will equal approximately \$14,945 and is expected to generate approximately \$836,920 in property taxes in 2017.

The proposed increase would result in an increase on a \$100,000 house from \$621.00 to \$644.00. For a \$150,000 house the resulting increase would be from \$931.00 to approximately \$966.00 per year.

Motion: *Griffin* moved, *Marsh* seconded set the 2017 budget hearing for July 26th at 6:30pm. Voted and passed unanimously.

16. Claims and Warrants

Meyer presented the claims and warrants in the amount of \$23,296.17.

Motion: *Griffin* moved, *Clark* seconded to pay the claims and warrants in the amount of \$23,296.17. Voted and passed unanimously.

17. City Administrators Report

- Public Works
 - Completed the first meter reading with the new handhelds, staff is working thru a few minor issues but mostly it went well.
 - Filled several utility cuts with hot mix in various places in town last week
 - Will be working on alleys using millings and also trimming trees in certain locations
 - Continued repairs on the gun range.
 - Continued mowing throughout the city
 - Put Well #6 into use after high water demand yesterday – Wells 7 and 8 had been the primary wells as they have variable speed drives which help save on electricity and wear and tear on the pumps.
- Parks and Recreation
 - The regular season for baseball and softball ends this week with tournament play starting after the 4th of July.
 - Follow Up Phone Call with the Sunflower Health Organization will be Thursday at 10:00 am.
 - Experiencing issues with the lights at the concession stand that public work will be looking into
- Library
 - Summer Programs Continue; including Park Play, Storytime, Snap Circuit and they will have the Bug Lady in next Thursday, which is always a popular event.
- Community Center
 - Commodities hand out was today
 - Staff has submitted the Sedgwick Co Department on Aging Application for funding in 2017.
- Police
 - Working an assault that occurred after a 12 and under baseball game between a coach and parent from out of town.
- Administration
 - All City A/C Units have been serviced, cleaned and charged
 - Staff was informed that GWEDC has submitted our Business Park Property for two site request proposals. Our site as well as several others were included for a wind generation facility and another more general site request.
- July 4th Activities
 - City Hall Will Be Closed On July 4th
 - Fireworks can be shot July 1st and 2nd from 10:00 am to 10:00 pm
 - On July 3rd and July 4th from 10am to Midnight
 - The Aquatic Center will be hosting fun games starting at 2:00pm and will close at 5:00
 - The Fireworks display will start shortly after dusk

18. Council Reports

Griffins asked if Recreation Department had a policy for inclement weather. Givens was to look into it.

Marsh had nothing to report

Clark had nothing to report

Papish stated residents have complained about a cat problem by the Christian Church. Givens was to look into city code to see what could be done about cats at large. Papish also asked about drainage work that had been previously discussed. Misak explained that there had been some discussions about extending the concrete swale to a point North of Wood behind the River Church and North to Janet culvert. Misak was to report back.

Misak also report there should be bids for mowing next meeting.

Wood had nothing to report

Ussery asked for an update on park usage. Givens stated he would have something next meeting. He also asked what the plans were for the backstop at Chisholm Ridge Sports Complex. Givens stated he will have something for next meeting.

19. Adjournment

With no further discussion Ussery called for a motion to adjourn.

MOTION: Marsh moved, **Clark** seconded to adjourn the meeting. Voted and passed unanimously
The meeting adjourned at 8:06 p.m.

CERTIFICATE

State of Kansas }
County of Sedgwick }
City of Clearwater }

I, Courtney Meyer, City Clerk of the City of Clearwater, Sedgwick County, Kansas, hereby certify that the foregoing is a true and correct copy of the approved minutes of the June 28, 2016 City Council meeting.

Given under my hand and official seal of the City of Clearwater, Kansas, this 12th day of July 2016.

Courtney Meyer, City Clerk

Clearwater EMS Application

Name <u>Joanie Marie Bidwell</u>		
Address <u>142 E Wood</u>		
City <u>Clearwater</u>	State <u>FL</u>	Zip Code <u>67026</u>

Certification Level					
EMR	<input checked="" type="radio"/> EMT	<input type="radio"/> AEMT	<input type="radio"/> Paramedic	<input type="radio"/> RN	<input type="radio"/> None
Additional Training					
<u>American Heart Association CPR</u>					

Attach Beneficiary Card to Application (Blue Card)

All Information will remain confidential and lock in a file cabinet.

**City of Clearwater
City Council Meeting
July 12, 2016**

TO: Mayor and City Council
SUBJECT: Personnel Manual and Municipal Code Reconciliation
INITIATED BY: City Administrator
PREPARED BY: City Administrator
AGENDA: New Business

Background: In 2016, the staff began the process of updating the City Personnel Manual. The Personnel Manual serves as a guide to City Employees for rules, regulations and expectations while employed by the city. Each employee receives a Personnel Manual upon employment with the City. Staff meet over several months to review and propose changes to the document. Those an updated manual was presented to the Governing Body for review and comment. All of those comments and any previous changes proposed were given to an HR Attorney to be reviewed for conformity to State and Federal Labor Regulations.

Analysis: While reviewing the new manual it was noted that several sections of the Municipal Code would need to be changed or repealed based on new sections in the Personnel Manual. The Personnel Manual, will be adopted by Resolution of the Governing Body and if those sections are not changed the Manual and City Code would be at odds with each other.

Ultimately, there are nine sections of code that have been identified as duplicate or unnecessary code sections and one section that is being recommended to be amended. Those sections are provided with commentary following this page.

Legal Considerations: Review and Comment as Necessary.

Recommendations/Actions: It is recommended the City Council:

- 1) Direct Staff as to an appropriate course of action to move towards the final adoption of the Personnel Manual.

Attachments: Code Review Commentary (4-pages)

PROPOSED CODE SECTIONS TO BE REPEALED

Code Section	Proposed Action to Be Taken
<p><i>2.40.040 – Compensation of employees.</i></p> <p>The city council shall consider compensations of employees, each January, and set salaries by adoption of a resolution.</p> <p>Note: The hourly wage for persons employed on a monthly basis is computed as follows: monthly wage times twelve divided by fifty-two equals the weekly wage divided by forty equals the hourly wage. Wage per hour times hours actually worked represents employer's proportioned share of monthly wage.</p>	<p><i>Section 2.40.040 should be amended to provide:</i></p> <p>All municipal employees will be compensated according to a pay plan approved by the city council, which will be reviewed at least annually in January of each year.</p> <p>Comments: I do not see the need for Section 2.40.040 on employee compensation and Section 2.40.043 on new employee compensation. In both cases, the Governing Body establishes employee compensation. The above language gives the Governing Body the flexibility to review employee pay annually or more frequently, as necessary.</p>
<p><i>2.40.041 – Health and accident insurance.</i></p> <p>The city will in addition to the compensation referred to in Section 2.40.040, pay the cost of health and accident insurance in a group policy maintained for the city employees and approved by the mayor and council for the following full-time employees: city administrator, city clerk, police chief, maintenance superintendent, maintenance assistants, patrolmen.</p>	<p><i>Section 2.40.041 should be repealed.</i></p> <p>Comments: Employee benefits are already addressed in the City’s Personnel Policies and Procedures. Plus, the Code limits eligibility for health insurance benefits to a specified list of full-time employee positions, whereas the following employees are eligible for insurance benefits pursuant to Article F, Section F-8 of the Personnel Policies (Section F-7 in the current Personnel Policies) makes “[a]ll permanent Full-time employees and permanent part-time employees meeting a threshold requirement of working at least 1,000 hours per year shall be eligible for the city’s group health insurance program.”</p>
<p><i>2.40.043 – Salary – New employees.</i></p> <p>The salary of a new employee normally will be below the previous rate of pay for the open position. In the case of difficulty in finding qualified personnel or in the hiring of an exceptionally qualified person, the starting salary may exceed the previous rate of pay with the approval of the governing body.</p>	<p><i>Section 2.40.043 should be repealed.</i></p> <p>Comments: See comments to proposed amendment to Section 2.40.040. If the Governing Body wishes to set a new employee’s starting pay at a rate that is less than the prior employee, it can do so.</p>

<p><i>Section 2.40.044 – Merit salary increase.</i></p> <p>A. Only an employee assigned permanent status, following completion of a probationary period, may be granted a raise.</p> <p>B. Pay increases shall not be routine or automatic and are subject to approval by the governing body.</p> <p>C. Annual cost of living pay increases may be given as approved by the governing body, but in no way is the governing body bound to provide such increases.</p> <p>D. The governing body at the recommendation of the city administrator may award a salary increase to an employee based on an annual performance evaluation submitted by the employee's immediate supervisor.</p> <p>E. Annual longevity pay may be given at the direction of the governing body.</p>	<p><i>Section 2.40.044 should be repealed.</i></p> <p>Comments: See comments to proposed amendment to Section 2.40.040 and repeal of Section 2.40.043. All pay increases are determined by the Governing Body, so Section 2.40.044 seems unnecessary.</p>
<p><i>Section 2.40.045 – Overtime work.</i></p> <p>A. Overtime work shall be paid at one and one-half times the employee's regular rate of pay for hours worked over forty hours per week. Overtime work shall be paid not later than the first pay day following the pay period in which it was earned.</p> <p>B. No person employed in an administrative, executive or professional position shall be eligible for overtime pay. At present these positions are:</p> <ol style="list-style-type: none"> 1. City administrator; 2. Chief of police; 3. Public works director; 4. Fire chief; 	<p><i>Section 2.40.045 should be repealed.</i></p> <p>Comments: Overtime pay is already covered in the Personnel Policies and Procedures, plus it is required by State and Federal law. It is therefore unnecessary to have a Code section on the issue.</p>

<p>5. Recreation director; 6. EMS director.</p>	
<p><i>Section 2.50.010 – [Sick Leave] Granted – Rate specified.</i></p> <p>All full-time employees of the city that have been employed more than three consecutive months shall be allowed sick leave at the rate of one day for each month of regular full-time service.</p>	<p><i>Section 2.50.010 should be repealed.</i></p> <p>Comments: Sick leave is already addressed in the Personnel Policies and Procedures in Article E, Section E-4. The only difference between the Code and the Personnel Policies is that the Code limits sick leave to full-time employees who have been employed for at least 3 months. The Personnel Policies provide for sick leave to all full-time employees and part-time employees who work at least 20 hours per week; there is no tenure requirement.</p>
<p><i>Section 2.50.020 – Regular full-time service – Defined.</i></p> <p>"Regular full-time service" [for purposes of sick leave eligibility] means full-time employment with the city on a regular monthly basis; provided that no person working less than one hundred hours in any month shall be deemed to be a full-time regular employee.</p>	<p><i>Section 2.50.020 should be repealed.</i></p> <p>Comments: See comments to Section 2.50.010 above.</p>
<p><i>Section 2.50.030 – Compensation – Accumulation of sick leave days.</i></p> <p>Full-time regular employees who are sick or ill and are unable to perform their duties because of said sickness or illness shall be paid their usual salary provided they have unused sick leave accumulated during their employment and provided further that in no event shall an employee be allowed to be given credit for accumulation of sick leave of more than sixty days.</p>	<p><i>Section 2.50.030 should be repealed.</i></p> <p>Comments: See comments to Section 2.50.010 above. The Personnel Policies are consistent with Section 2.50.030.</p>
<p><i>Section 2.50.040 – Doctor’s statement.</i></p> <p>If required by the mayor or the supervisor of the full-time employee, any employee requesting payment for days absent</p>	<p><i>Section 2.50.040 should be repealed.</i></p> <p>Comments: The Personnel Policies address doctor’s notes in Article E, Section E-4(d). The only difference is that Section E-4(d) provides that</p>

<p>because of sickness for which he is eligible under the terms of this chapter, shall provide a statement from a medical doctor substantiating such illness or sickness.</p>	<p>a department head or the City Administrator may require a doctor's note for absences of at least 3 consecutive days, which is reasonable.</p>
<p><i>Section 2.50.050 – Employee's termination – No payment for unused sick leave.</i></p> <p>In the event that a regular, full-time employee terminates his or her employment, the employee shall not be paid for accumulated unused sick leave.</p>	<p><i>Section 2.50.050 should be repealed.</i></p> <p>Comments: The Code currently does not permit payment of accrued sick leave to any terminated employees. However, the Governing Body has indicated its desire to pay partial sick leave to certain retiring employees. Article E, Sections E-4(h) and (i) provide that ½ of accrued sick leave will be paid to eligible employees upon retirement from the City. To be eligible, an employee's age and years of service with the City must add up to 75. Section 2.50.050 of the Code must be repealed in order to make the proposed change to the sick leave policy.</p>

**City of Clearwater
City Council Meeting
July 12, 2016**

TO: Mayor and City Council
SUBJECT: Itron Maintenance Agreement
INITIATED BY: City Administrator
PREPARED BY: City Administrator
AGENDA: New Business

Background: Earlier in 2016, the City Utility Department launched the use of three new Itron Meter Reading Units. The units minimize the number of manual reads that must be entered both by the reader and then again manually by office staff. The three readers also came with proprietary software from Itron, that communicates with the City's Utility Billing Software.

Analysis: The maintenance agreement allows for unlimited troubleshooting and communication between Itron and City Staff. To date staff has incurred approximately 7 hours of service time from Itron since the initial set up. By forgoing the agreement, we could use an hourly maintenance and tech fee of \$195.00 per hour from Itron. At the rate charged, the City would have accumulated approximately \$1,300 in fees.

Staff would suggest that while it becomes more familiar with the software and hardware that the two-year maintenance agreement be used and then reevaluated at the end of the term to determine at that time if an hourly charge would suffice for technical support or if an extension to the agreement would be warranted.

Financial: The initial \$720.00 for the first year of the agreement would be charged to line item 501.720.014 (contract labor) from the water utility funds for 2016. To date approximately \$3,200 has been used and \$400 would remain after the agreement. Subsequent charges would also be accounted for in the same lines in the 2017 budget.

Legal Considerations: Review and Comment as Necessary.

Recommendations/Actions: It is recommended the City Council:

- 1) Approve the Contract with Itron;
- 2) Not Approve the Contract with Itron, resulting in hourly service fees;
- 3) Table the Matter for Further Study;
- 4) Take No Action.

Attachments: Itron Maintenance Agreement (9-pages)



Knowledge to Shape Your Future

Maintenance Proposal Pricing
Date of Quote: 4/27/2016

Attachment A

Hardware Qty	Component Name	Warranty Expiration Date	Agreement Dates		Price	Annual Fee/Unit	Number of Months	Annual Increase Applied	
			Start	End				5/1/16-4/30/17	5/1/17-4/30/18
1	FC3SR - FC300, SRead Radio	4/30/2017	5/1/2017		\$ 435.00	\$ -	12	\$ 435.00	\$ 435.00
2	FC3SRWLAN - FC300, SRead Radio, WLAN, GFS	4/30/2017	5/1/2017		\$ 462.00	\$ -	12	\$ 462.00	\$ 924.00
3	FC3 DESK DOCK - FC300 Desk Dock	4/30/2017	5/1/2017		\$ 37.80	\$ -	12	\$ 37.80	\$ 113.40
-	-				\$ -	\$ -		\$ -	\$ -
Hardware Subtotal					\$ -	\$ -		\$ -	\$ 1,472.40
Software									
1	FCSHH - FCS SFTW, UP TO 2.500 ENDPOINTS	4/30/2016	5/1/2016		\$ 720.00	\$ -	12	\$ 720.00	\$ 748.80
-	-				\$ -	\$ -		\$ -	\$ -
Software Subtotal					\$ -	\$ -		\$ 720.00	\$ 748.80
Hardware & Software Total					\$ -	\$ -		\$ 720.00	\$ 2,221.20
Total Maintenance Fees (USD)					\$ -	\$ -		\$ 720.00	\$ 2,221.20

Customer Signature of Acceptance: _____ Date: _____

Comments and/or Assumptions:
Billed Annually

****This is not an invoice**
Prices Valid for 90 Days**

MAINTENANCE AGREEMENT

This Maintenance Agreement (this "**Maintenance Agreement**") is entered into as of 04/27/2016 (the "**Effective Date**") by and between Itron, Inc. ("**Itron**") and City of Clearwater, Kansas ("**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>Severity Level 1. 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>Severity Level 2. 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>Severity Level 3. An Error other than a Severity Level 1 or Severity Level 2 Error that has a material impact on the functionality of the Software (e.g., a feature is not working as documented but a work-around is available and significant business functions are not materially impaired).</p>	<p>Itron will respond to the SR within 2 business days.</p>	<p>Itron will have technical representatives make diligent efforts during normal business hours.</p>
<p>Severity Level 4. An Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error.</p>	<p>Itron will respond to the 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>Severity Level 5. 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, THE AGGREGATE LIABILITY OF ITRON AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS MAINTENANCE AGREEMENT—WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE—SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER 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

Clearwater Financials YTD JUNE 2016

We are 50% of the way through our budget year

	CY Budget	CY YTD Actual	PRIOR YTD Actual	CY ATD % Budget	NOTES
Fund: 100 - GENERAL					
STARTING CASH	\$ 356,569.00	\$ 1,001,159.41		\$ 644,590.41	
Revenues					
Dept: 000.000	1,744,936.51	1,331,836.03	904,655.31	76.33	3 dispersements left
Revenues	1,744,936.51	1,331,836.03	904,655.31	76.33	
Expenditures					
Dept: 000.000					
ADMINISTRATION	357,334.59	200,525.91	202,971.73	56.12	Transfer to Special Parks
SENIOR & COMMUNITY CENTER	33,120.54	15,268.42	11,199.06	46.10	
POLICE	613,273.49	268,861.35	195,012.92	43.84	
COURT	82,602.40	31,220.62	24,358.80	37.80	
SHOP	19,130.00	6,137.60	4,833.36	32.08	
SANITATION	143,949.60	79,932.08	66,267.52	55.53	Waste Connection Invoices
AMBULANCE	94,542.20	54,118.79	21,187.45	57.24	Paid for Capital Expenses
FIRE	93,108.75	32,170.10	33,514.03	34.55	
PARK	181,348.58	75,178.61	117,275.11	41.46	
POOL	80,925.80	19,331.81	24,248.31	23.89	
HISTORICAL SOCIETY	6,425.00	4,407.94	2,499.88	68.61	Building Insurance
STREET LIGHTS	25,750.00	12,330.84	9,591.92	47.89	
PERSONNEL DEVELOPMENT	342,729.00	2,973.44	395.00	0.87	
LIBRARY	8,330.00	3,954.33	3,107.28	47.47	
Expenditures	2,082,569.95	806,411.84	716,462.37	38.72	
Fund: 205 - SPECIAL LIABILITY					
STARTING CASH	\$ 4,125.00	\$ 44.00		\$ (4,081.00)	
Revenues					
Dept: 000.000	2,919.00	2,036.73	9,525.12	69.77	3 dispersements left
Revenues	2,919.00	2,036.73	9,525.12	69.77	
Expenditures					

Dept: 000.000	7,000.00	7,000.00	6,811.00	100.00	Building Insurance Complete
Expenditures	7,000.00	7,000.00	6,811.00	100.00	
Fund: 206 - SPECIAL HIGHWAY					
STARTING CASH	\$ 468.00	\$ 50,577.13		\$ 50,109.13	
Revenues					
Dept: 000.000	92,300.00	46,996.02	32,380.26	50.92	3 dispersements left
Revenues	92,300.00	46,996.02	32,380.26	50.92	
Expenditures					
Dept: 000.000	92,418.62	23,027.26	46,347.72	24.92	
Expenditures	92,418.62	23,027.26	46,347.72	24.92	
Fund: 212 - CITY CAPITAL IMPROVEMENT					
STARTING CASH	\$ 75,692.00	\$ 232,189.42		\$ 156,497.42	
Revenues					
Dept: 000.000	41,239.00	34,706.78	60,205.11	84.16	3 dispersements left
Revenues	41,239.00	34,706.78	60,205.11	84.16	
Expenditures					
Dept: 000.000	116,000.00	0.00	0.00	0.00	
Expenditures	116,000.00	0.00	0.00	0.00	
Fund: 501 - WATER OPERATING					
STARTING CASH	\$ 206,747.00	\$ 213,623.79		\$ 6,876.79	
Revenues					
Dept: 000.000	354,450.00	182,439.49	168,799.40	51.47	
Revenues	354,450.00	182,439.49	168,799.40	51.47	
Expenditures					
WATER - GEN. & ADM.	551,407.00	184,392.52	127,248.29	33.44	
Expenditures	551,407.00	184,392.52	127,248.29	33.44	
Fund: 550 - SEWER OPERATING					
STARTING CASH	\$ 130,392.00	\$ 277,970.69		\$ 147,578.69	
Revenues					
Dept: 000.000	517,614.60	263,313.48	178,507.61	50.87	
Revenues	517,614.60	263,313.48	178,507.61	50.87	
Expenditures					
SEWER - COMMERCIAL & ADM.	517,614.60	214,727.60	121,541.25	41.48	
Expenditures	517,614.60	214,727.60	121,541.25	41.48	