

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** _____
Project Description: Maintenance Agreement for Cityworks Software (Azteca Systems, LLC)

Item Description:


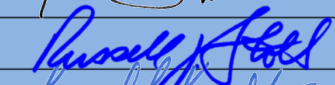
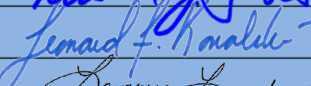

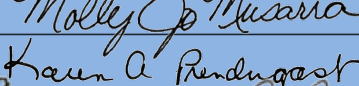
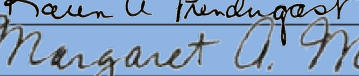

- | | | | |
|---|--|---|---------------------------------------|
| <input checked="" type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input type="checkbox"/> Other _____ | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input checked="" type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>10/18/20</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>10/19/2020</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>10/16/2020</u>
<input checked="" type="checkbox"/> Director of Administration		Date: <u>10/19/2020</u>
<input checked="" type="checkbox"/> Risk Manager		Date: <u>10/19/2020</u>
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>10/16/2020</u>
<input checked="" type="checkbox"/> Legal		Date: <u>10/15/20</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>10/19/20</u>
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Remarks: _____

Resolution Date: _____ **Item No:** _____



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

October 16, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: Jeffrey C. Schlierf, Acting Manager of Information Technology *JCS*

Subject: Cityworks (Azteca Systems LLC)
Software and Licensing Agreement Renewal
December 1, 2020 to November 30, 2021
ECWA Project No. 202000275

The above referenced software and licensing agreement will expire on November 30, 2020. The Vendor, Azteca Systems, LLC – Cityworks, as of this year, requires us to accept the terms and conditions on their quote before they will issue an invoice to renew our agreement for another year. Margaret Murphy, General Counsel, reviewed and requested changes which Azteca implemented. This agreement enables the Authority to utilize Cityworks software and obtain any necessary support. Cityworks software is currently used for Line Maintenance work orders.

The following documents are attached to process the extension of the above referenced contract:

- Blue Authorization Form.
- Copy of the redlined agreement.
- Three originals of the renewal agreement and invoice as presented by Azteca Systems LLC – Citywork and approved by the Authority's Legal Department.

JCS:jmf

Attachments

cc: R.Stoll

L.Kowalski

ECWA-165-2001



Azteca Systems, LLC - Cityworks
11075 S State St, Suite 24 | Sandy, UT 84070
801-523-2751 | Fax # 801-523-3734

Quote Number Q-11433-1
Created Date 9/21/2020

Contact Information

Contact Name:	Jeff Schlierf	Prepared By Name:	Jenn Miya
Organization:	Erie County Water Authority (NY)	Prepared By Phone:	(801) 872-9528
Contact Address:	295 Main St. Buffalo, NY 14203-2494	Prepared By Email:	jmiya@cityworks.com

Quote Lines

Product Name	Quantity	Net Unit Price
Server AMS Standard ELA	1.00	\$90,000.00
AMS Native Mobile Apps ELA License	1.00	\$0.00
AMS Respond ELA License	1.00	\$0.00
Storeroom ELA License	1.00	\$0.00
Equipment Checkout ELA License	1.00	\$0.00
Contracts ELA License	1.00	\$0.00
Cityworks for Excel ELA License	1.00	\$0.00
eURL ELA License	1.00	\$0.00
Cityworks Analytics for AMS	1.00	\$0.00
TOTAL:		\$90,000.00

Maintenance Start Date: 12/1/2020 **Maintenance End Date:** 11/30/2021

Quote Notes:

Terms and Conditions

Payment Terms
Payment due within 30 days

Authorized to Invoice 30 days prior to renewal.

All quotations are valid for ninety-days (90) from the date above, unless otherwise stated in this quotation form. All prices quoted are in USD, unless specifically provided otherwise, above. These prices and terms are valid only for items purchased for use and delivery within the United States.

Unless otherwise referenced, this quotation is for the Cityworks software products referenced above only. Pricing for implementation services (installation, configuration, training, etc.), or other software applications is provided separately and upon request.

The procurement, installation and administration of the Esri software utilized in conjunction with Cityworks will be the responsibility of the customer.

The procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the customer. Currently, Cityworks supports Oracle and SQL Server. The procurement, installation and administration of the infrastructure (hardware and networking) utilized in conjunction with Cityworks will be the responsibility of the customer.

Azteca Systems, LLC acknowledges this software and licensing agreement with the Erie County Water Authority (the "Authority"), a public authority, is subject to the provisions of the New York Freedom of Information and Opening Meeting Laws.

Software Licensing

All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense and is subject to the terms and conditions of the "Cityworks Software License Agreement" and any and all addendums or amendments thereto. A fully executed copy of the Software License Agreement and any addendum(s) is required before delivery and installation and usage of the software is subject to the terms of the current license agreement.

Delivery method is by way of download through Azteca Systems, LLC. customer support web portal.

Taxes

Prices quoted do not include any state, sales, local, or use taxes. Pursuant to Public Authorities Law § 1063, the Authority is exempt from all state, sales, local, or use taxes.

International Customers

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Your signature indicates your acceptance of this Quote, and that you have read and accepted the Terms and Conditions set forth above. This software and licensing agreement shall remain in effect until November 30, 2021.

Accepted by:

Title

_____/_____/_____
Date

Azteca Systems, LLC - Cityworks | 11075 South State Street Suite 24, Sandy, UT 84070 | Corporate Main 801-523-2751 | Corporate Fax 801-523-3734

Commented [DD1]: We are fine deleting "confidential" and stating subject to the provisions of the open meeting laws. Don't think we need to state further.



Azteca Systems, LLC - Cityworks
11075 S State St, Suite 24 | Sandy, UT 84070
801-523-2751 | Fax # 801-523-3734

Quote Number Q-11433-1
Created Date 9/21/2020

Contact Information

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Contact Address:	295 Main St. Buffalo, NY 14203-2494	Prepared By Email:	jmiya@cityworks.com

Quote Lines

Product Name	Quantity	Net Unit Price
Server AMS Standard ELA	1.00	\$90,000.00
AMS Native Mobile Apps ELA License	1.00	\$0.00
AMS Respond ELA License	1.00	\$0.00
Storeroom ELA License	1.00	\$0.00
Equipment Checkout ELA License	1.00	\$0.00
Contracts ELA License	1.00	\$0.00
Cityworks for Excel ELA License	1.00	\$0.00
eURL ELA License	1.00	\$0.00
Cityworks Analytics for AMS	1.00	\$0.00
TOTAL:		\$90,000.00

Maintenance Start Date: 12/1/2020 **Maintenance End Date:** 11/30/2021

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All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense and is subject to the terms and conditions of the "Cityworks Software License Agreement" and any and all addendums or amendments thereto. A fully executed copy of the Software License Agreement and any addendum(s) is required before delivery and installation and usage of the software is subject to the terms of the current license agreement.

Delivery method is by way of download through Azteca Systems, LLC. customer support web portal.

Taxes

Prices quoted do not include any state, sales, local, or use taxes. Pursuant to Public Authorities Law § 1063, the Authority is exempt from all state, sales, local, or use taxes.

International Customers

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

Your signature indicates your acceptance of this Quote, and that you have read and accepted the Terms and Conditions set forth above. This software and licensing agreement shall remain in effect until November 30, 2021.

Accepted by:

Title

_____/_____/_____
Date



2015023

Erie County Water Authority

295 Main Street, Rm. 350 • Buffalo, NY 14203-2494
716-849-8484 • Fax 716-849-8467

November 20, 2015

Brian Haslam
President-CEO
Azteca Systems, Inc.
11075 South State
Suite 24
Sandy, Utah 84070

Re: License Agreement
For the Purchasing of a Software Program
known as Cityworks

Dear Mr. Haslam:

Enclosed herewith please find an Extract from the Minutes of the Meeting of the Erie County Water Authority held on Thursday, November 19, 2015 authorizing execution of the above-referenced agreement.

Also enclosed, please find a duly executed original agreement for your files.

Sincerely,

ERIE COUNTY WATER AUTHORITY

A handwritten signature in black ink, appearing to read "J. T. Burns", written over a horizontal line.

Joseph T. Burns
Secretary to the Authority

JTB:tf

Enclosures

cc: Wes Dust
Paul Riester
Gary Murray /
EMA, Inc.

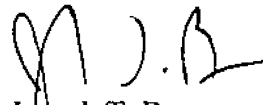


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CERTIFICATION

I, JOSEPH T. BURNS, the duly elected and qualified **SECRETARY TO THE AUTHORITY** to the **ERIE COUNTY WATER AUTHORITY**, a corporation existing under the Laws of the State of New York, do hereby certify that I have compared the annexed resolution which is an extract from the Minutes of the Meeting of the Authority held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 19th day of November, 2015 a quorum being present and that said resolution is a true and correct copy of the resolution so adopted and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 20th day of November, 2015.



Joseph T. Burns
Secretary to the Authority

(SEAL)

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**EXTRACT FROM THE MINUTES OF THE MEETING OF THE
ERIE COUNTY WATER AUTHORITY
NOVEMBER 19, 2015**

At a regular meeting of the Erie County Water Authority held in the office, 295 Main Street, Room 350, Buffalo, New York, on the 19th day of November, 2015, a quorum being present, the following resolution was adopted:

WHEREAS, The Erie County Water Authority ("Authority") has retained EMA, Inc. to provide the Authority with services identified as Management and Operations Enhancements, Assistance in Optimizing Operations and Maintenance; and

WHEREAS, One of the recommendations from EMA, Inc. has been to implement a Work Asset Management System (WAM); and

WHEREAS, Paul H. Riester, Director of Administration advises that in order to support this implementation, the Authority needs to acquire software known as Cityworks; and

WHEREAS, Azteca Systems, Inc. has developed and is the owner of an extensive platform of products such as Cityworks; and

WHEREAS, The Authority desires a non-exclusive license to use Cityworks; and

WHEREAS, Azteca Systems, Inc. has submitted a License Agreement to grant such a license; and

WHEREAS, Paul H. Riester, Director of Administration recommends acceptance of said agreement by the Authority;

NOW, THEREFORE, BE IT RESOLVED:

That the Authority accepts the License Agreement of Azteca Systems, Inc. to grant a license for the use of Cityworks under the terms and conditions set forth in said agreement; and be it further

RESOLVED: That the Chairman is hereby authorized to execute said agreement on behalf of the Authority; and be it further

RESOLVED: That the Secretary is hereby authorized to forward an executed copy of said Agreement together with a certified copy of this resolution to Azteca Systems, Inc.

A motion was made by Mr. Anderson seconded by Mr. Schad and carried to adopt the foregoing resolution.

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CITYWORKS® LICENSE AGREEMENT

This Master Software License Agreement made by and between Azteca Systems, Inc. ("Azteca Systems") a Utah corporation, with a place of business at 11075 South State, Suite 24, Sandy, Utah 84070 USA and **Erie County Water Authority, Buffalo, NY**, using certain of Azteca Systems Licensed Products hereinafter referred to as "Licensee." The parties hereto acknowledge that this Agreement is intended to be a master agreement under which Licensee may license licensed Products from time to time. Pursuant to the terms of this Agreement, the Maintenance Addendum, and any additional addenda or amendments thereto, Azteca Systems or its Affiliates may license the Licensed Products and provide support and maintenance to Licensee or Affiliates of Licensee. This Agreement is effective immediately upon delivery of Licensed Products (the "Effective Date").

WHEREAS, Azteca Systems has developed and is the owner of an extensive platform of products (the Software, as defined below);

WHEREAS, Licensee desires a non-exclusive license to use some of the products of the Software known as Cityworks® (as set forth herein); and

WHEREAS, Azteca Systems is willing to grant such a license on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained in this Agreement, Azteca Systems and Licensee agree as follows:

ARTICLE I—DEFINITIONS

1.1 Definitions. The terms used are defined as follows:

- a. "Agreement" means this Software License Agreement between Azteca Systems and Licensee, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.
- b. "Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, account user name and password, or other mechanism required for use of a Product.
- c. "Authorized User" or "User" shall mean: (i) a direct user of the Licensed Products, including but not limited to Licensee's employees; or (ii) Licensee's consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Licensee.
- d. "Client Data" means the data provided or inputted by or on behalf of Licensee, including personally identifiable information, for use with the Software.
- e. "Covered Software" shall mean the particular Cityworks Software, scripts, interfaces and custom code identified in Addendum 1.
- f. "Custom Applications" shall mean any scripts, interfaces, reports or program code created by Azteca Systems, Licensee, Cityworks Partner, or other third-party, other than Program Modifications to the Cityworks applications, that provide specific functionality uniquely designed for the Licensee. Any Custom Applications delivered to Licensee shall NOT become part of the Licensed Software unless otherwise specified in Addendum 1.
- g. "Data" means any Azteca Systems or third-party digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes, whether bundled with Software and Online Services or delivered independently.
- h. "Deployment Server License" means a license that, in addition to providing staging server License rights, authorizes Licensee to install and use the Software for deployment in Licensee's internal use.
- i. "Testing Server License" means a license that authorizes Licensee to install and use the Software on a server in Licensee's internal use to provide testing License rights prior to deployment.
- j. "Documentation" means all user reference documentation that is delivered with the Software and includes but is not limited to (a) all materials published, provided digitally, or otherwise made available to Licensee by Azteca Systems that relate to the functional, operational and/or performance capabilities of the Software; (b) all user, operator, system administration, technical, support and other manuals and all other

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materials published, provided digitally or otherwise made available to Licensee that describe the functional, operational and/or performance capabilities of the Software; (c) any Requests for Information and/or Responses for Proposals (or documents of similar effect) issued by Licensee, and the responses thereto from Azteca Systems, and any document which purports to update or revise any of the foregoing; and (d) the results of any "Proof of Concept" or similar type presentations or tests provided by Azteca Systems to Licensee.

- k. "Internal Use" means use of the Licensed Products by employees of Licensee in Licensee's internal operations but does not include access of the Licensed Products by, or use of the Licensed Products in the provisions of services to, Licensee's clients or customers. Internal Use also includes use of the Licensed Products by contractors of Licensee, including contractors providing outsourcing or hosting services, as long as Licensee assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Products (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.
- l. "Licensed Products" shall mean the portion of the Cityworks Software and the Documentation to which Licensee has purchased a License as identified as specified in Addendum 1 attached hereto. Licensed Products shall include any updates or upgrades to the Licensed Products that Azteca Systems may at its discretion deliver to Licensee.
- m. "Login" means a license that allows Licensee to permit a single authorized named end user to use the Software, Data, and Documentation installed on a server and accessed from a computer device.
- n. "Online Services" means any Internet-based system, including applications and associated APIs, hosted by Azteca Systems or its licensors, for storing, managing, publishing, and using Cityworks software and data, and other information.
- o. "Ordering Document(s)" means a sales quotation, purchase order, or other document identifying the Products that Licensee orders.
- p. "Preview" means any alpha, beta, or prerelease Product.
- q. "Product(s)" means Software, Data, Online Services, and Documentation licensed under the terms of this License Agreement.
- r. "Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.
- s. "Server" means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
- t. "Software" or "Cityworks Software" means all or any portion of Azteca Systems proprietary software technology, excluding data, accessed or downloaded from an Azteca Systems (Cityworks) authorized website or delivered on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- u. "Maintenance Addendum" shall mean the Master Software Maintenance Addendum attached hereto.
- v. "Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or transaction basis.

ARTICLE 2—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

Products are licensed, not sold. Azteca Systems and its licensors own Products and all copies, which are protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. This Agreement does not transfer ownership rights of any description in the Software, materials, or services to Licensee or any third party. Licensee agrees to use reasonable means to protect Products from unauthorized use, reproduction, distribution, or publication. Azteca Systems and its third-party licensors reserve all rights not specifically granted in this License Agreement including the right to change and improve Products.

ARTICLE 3—GRANT OF LICENSE

3.1 Grant of License. Subject to the terms of this agreement, Azteca Systems grants to Licensee a personal, nonexclusive, nontransferable license solely to use the Products as set forth in the applicable Ordering Documents (i) for which the applicable license fees have been paid; (ii) for Licensee's own internal use; and (iii) in accordance with this License Agreement and the configuration ordered by Licensee or as authorized by Azteca Systems or its authorized distributor; and (iv) for the applicable Term or, if no Term is applicable or identified, until terminated in accordance with Article 5. License types may include, but are not limited to Login, Workgroup, Departmental, ELA (Enterprise License) or Term Licenses. Licensee may allow third party consultants or contractors to access and use

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the licensed Software, provided Licensee and Third party consultant agree to and are bound by the terms set forth in Addendum 3. In addition to the Scope of Use in Article 4, Addendum 1— Product Licensing and the Software Terms and Use which applies to specific Products, Addendum 2 -- Maintenance Agreement, Addendum 2, and Addendum 3 -- Third Party Contractor Agreement (if applicable) collectively, are incorporated in this Agreement.

- a. *Software.* Use and License for specific Software products are set forth in Addendum 1- Product Licensing Addendum, which is incorporated by reference.
- b. *Maintenance.* Maintenance terms are set forth in Addendum 2, - Maintenance agreement which is incorporated by reference.
- c. *Third Party Contractor.* Terms of use for Third Party Contractor software usage (if applicable) are set forth in Addendum 3, which is incorporated by reference.

3.2 Preview Release Licenses. Products acquired under an evaluation license or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Licensee's own risk, and the Products do not qualify for Azteca or distributor maintenance.

3.3 Special Use Programs. If Licensee acquires Products under a special program for noncommercial, nonprofit, educational, or other limited-use license, Licensee's use of the Products is subject to the terms set forth in the applicable enrollment form or as described on Azteca's website in addition to the non-conflicting terms of this License Agreement. All such program terms are incorporated herein by reference.

3.4 Delivery. Unless otherwise requested by Licensee, Azteca Systems shall provide an electronic link to make available to Licensee the Licensed Property by electronic download and a license key to activate the Licensed Property.

ARTICLE 4—SCOPE OF USE

4.1 Permitted Uses

- a. For Products delivered to Licensee, Licensee may:
 - 1. Install and store Products on electronic storage device(s);
 - 2. Make archival copies and routine computer backups;
 - 3. Install and use a newer version of concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed the Licensee's licensed quantity; thereafter, Licensee shall not use more Software in the aggregate than Licensee's total licensed quantity; and
 - 4. Move the Software in the licensed configuration to a replacement Server.
- b. Licensee may use, copy, or prepare derivative works of Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portions of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this License Agreement. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of Azteca and its licensors: "Portions of this document include intellectual property of Azteca and its licensors and are used herein under license. Copyright © [Licensee will insert the actual copyright date(s) from the source materials] Azteca Systems, Inc. and its licensors. All rights reserved."
- c. *Consultant or Contractor Access.* Subject to Section 3.1 and Addendum 3, Azteca Systems grants Licensee the right to permit Licensee's consultants or contractors to use the Products exclusively and solely for Licensee's benefit. Licensee must comply with terms and provisions of Addendum 3 and provide a copy to Azteca. Licensee shall be solely responsible for compliance by consultants and contractors with this License Agreement and shall ensure that the consultant or contractor discontinues Product use upon completion of work for Licensee. Access to or use of Products by consultants or contractors not exclusively for Licensee's benefit is prohibited.

4.2 Uses Not Permitted. Except to the extent that applicable law prohibits or overrides these restrictions, or as provided herein, Licensee shall not

- a. Sell, rent, lease, sublicense, lend, assign, or time-share Products;
- b. Permit persons other than Authorized Users to access or use the Licensed Products (or any part thereof);
- c. Act as a service bureau or Commercial ASP;
- d. Use Software, Data, or Documentation for a site or service and operate the site or service for profit or generate revenue through direct or indirect methods (e.g., advertising or by charging for access to the site or service);
- e. Redistribute Software, Data, or Online Services to third parties, in whole or in part, including, but not limited to, extensions, components, or APIs;
- f. Redistribute Authorization Codes;
- g. Reverse engineer, decompile, or disassemble Products;
- h. Make any attempt to circumvent the technological measure(s) that controls access to or use of Products;
- i. Upload or transmit content or otherwise use Products in violation of third-party rights, including intellectual property rights, privacy rights, nondiscrimination laws, or any other applicable law or government regulation;
- j. Remove or obscure any Azteca Systems (or its licensors') patent, copyright, trademark, proprietary rights notices, and/or legends contained in or affixed to any Product, Product output, metadata file, or online and/or hard-copy attribution page of any Data or Documentation delivered hereunder;
- k. Separate from the licensed use of APIs, Licensee may not unbundle or independently use individual or component parts of the Products, Software, Online Services, or Data;
- l. Unbundle or independently use the individual or component parts of Software or Services;
- m. Incorporate any portion of the Software into a product or service that competes with the Software;
- n. Publish the results of benchmark tests run on Software without the prior written permission of Azteca Systems; or
- o. Use, incorporate, modify, distribute, provide access to, or combine any computer code provided with the Software in a manner that would subject such code or any part of the Software to open source license terms, which includes any license terms that require computer code to be (i) disclosed in source code form to third parties, (ii) licensed to third parties for the purpose of making derivative works, or (iii) redistributable to third parties at no charge.

ARTICLE 5—TERM AND TERMINATION

5.1. This License Agreement is effective upon acceptance. Licensee may terminate this License Agreement or any Product license at any time upon written notice to Azteca Systems. Either party may terminate this License Agreement or any license for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure. Upon termination of the License Agreement, all licenses granted hereunder terminate as well. Upon termination of a license or the License Agreement, Licensee will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from Online Services; and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Azteca Systems or its authorized distributor.

If this Agreement is terminated under section 4 of the Maintenance Addendum, Licensee shall then return to Azteca Systems all of The Software Cityworks, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will for no additional charge to Licensee and at Licensee's option either grant a license to the Licensee, for a period of one year, which will allow Licensee to retain the ability to access records and data contained in The Cityworks Software or allow Licensee to create digital copies of all files needed by the Licensee for the same period. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach occur.

ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

6.1 Limited Warranties. Except as otherwise provided in this Article 6, Azteca Systems warrants for a period of

ninety (90) days from the date Azteca Systems issues the Authorization Code enabling use of Software and that the unmodified Software will substantially conform to the published Documentation under normal use and service.

6.2 Special Disclaimer. CONTENT, DATA, SAMPLES, HOT FIXES, PATCHES, UPDATES, ONLINE SERVICES PROVIDED ON A NO-FEE BASES, AND EVALUATION, TEST AND BETA SOFTWARE ARE DELIVERED "AS IS" WITHOUT WARRANTY OF ANY KIND

6.3 Internet Disclaimer. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF ONLINE SERVICES.

6.4 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, AZTECA SYSTEMS DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. AZTECA SYSTEMS DOES NOT WARRANT THAT PRODUCTS WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. PRODUCTS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. LICENSEE SHOULD NOT FOLLOW ANY SUGGESTIONS OR INSTRUCTIONS THAT APPEAR TO BE HAZARDOUS, UNSAFE, OR ILLEGAL. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

6.5 Exclusive Remedy. Licensee's exclusive remedy and Azteca Systems' entire liability for breach of the limited warranties set forth in this Article 6 shall be limited, at Azteca Systems' sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software or Online Services subject to the Azteca Systems Maintenance Program or Licensee's authorized distributor's maintenance program, as applicable; or (iii) return of the license fees paid by Licensee for Software or Online Services that do not meet Azteca Systems limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation; ceases using Online Services; and executes and delivers evidence of such actions to Azteca Systems.

ARTICLE 7—LIMITATION OF LIABILITY

7.1 Disclaimer of Certain Types of Liability. AZTECA SYSTEMS, ITS AUTHORIZED DISTRIBUTOR (IF ANY), AND ITS LICENSORS SHALL NOT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT OR USE OF PRODUCTS, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT AZTECA SYSTEMS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7.2 General Limitation of Liability. EXCEPT AS PROVIDED IN ARTICLE 8—INFRINGEMENT INDEMNITY, THE TOTAL CUMULATIVE LIABILITY OF AZTECA SYSTEMS AND ITS AUTHORIZED DISTRIBUTOR HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE FEES ACTUALLY PAID BY LICENSEE DURING THE CURRENT SUPPORT PERIOD, FOR THE PRODUCTS THAT GIVE RISE TO THE CAUSE OF ACTION.

7.3 Applicability of Disclaimers and Limitations. Licensee agrees that the limitations of liability and disclaimers set forth in this License Agreement will apply regardless of whether Licensee has accepted Products or any other product or service delivered by Azteca Systems. The parties agree that Azteca Systems has set its fees and entered into this License Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN LICENSEE'S JURISDICTION. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. AZTECA SYSTEMS DOES NOT SEEK TO LIMIT LICENSEE'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

ARTICLE 8—INFRINGEMENT INDEMNITY

8.1 Azteca Systems shall defend, indemnify as described below, and hold Licensee harmless from and against any loss, liability, cost, or expense, including reasonable attorneys' fees, arising out any claims, actions, or demands by a third party alleging that Licensee's licensed use of Software or Online Services infringe a US patent, copyright, or trademark, provided:

- a. Licensee promptly notifies Azteca Systems in writing of the claim;
- b. Licensee provides documents describing the allegations of infringement;
- c. Azteca Systems has sole control of the defense of any action and negotiation related to the defense or settlement of any claim; and
- d. Licensee reasonably cooperates in the defense of the claim at Azteca Systems' request and expense.

8.2 If Software or Online Services are found to infringe a US patent, copyright, or trademark, Azteca Systems, at its own expense, may either (i) obtain rights for Licensee to continue using the Software or Online Services or (ii) modify the allegedly infringing elements of Software or Online Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, the license shall terminate, and Licensee shall cease accessing infringing Online Services and shall uninstall and return to Azteca Systems any infringing item(s). Azteca Systems entire liability shall then be to indemnify Licensee pursuant to Section 8.1 and refund the unused portion of fees paid, prorated for the current maintenance period.

8.3 Azteca Systems shall have no obligation to defend Licensee or to pay any resultant costs, damages, or attorneys' fees for any claims or demands alleging direct or contributory infringement to the extent arising out of (i) the combination or integration of Software or Online Services with a product, process, or system not supplied by Azteca Systems or specified by Azteca Systems in its Documentation; (ii) material alteration of Software or Online Services by anyone other than Azteca Systems or its subcontractors; or (iii) use of Software or Online Services after modifications have been provided by Azteca Systems for avoiding infringement or use after a return is ordered by Azteca Systems under Section 8.2.

8.4 THE FOREGOING STATES THE ENTIRE OBLIGATION OF AZTECA SYSTEMS WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 9—GENERAL PROVISIONS

9.1 Future Updates. New or updated Products and subscription renewals will be licensed under the then-current Azteca Systems license terms and conditions included with the deliverable Products.

9.2 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, import, transfer, or release Products, in whole or in part, to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any

amendments and supplemental additions to those import/export laws as they may occur from time to time.

9.3 Taxes and Fees, Shipping Charges. License fees quoted to Licensee are exclusive of any and all taxes or fees, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this License Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this License Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate Licensee's obligations under this License Agreement without Azteca Systems' prior written consent, and any attempt to do so without consent shall be void. This License Agreement shall be binding on the respective successors and assigns of the parties to this License Agreement. Notwithstanding, a government contractor under contract to the government to deliver Products may assign this License Agreement and Products acquired for delivery to its government customer upon written notice to Azteca Systems, provided the government customer assents to the terms of this License Agreement.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this License Agreement, and the provisions of section 5 of Addendum 2, shall survive the expiration or termination of this License Agreement.

9.8 Equitable Relief. Licensee agrees that any breach of this License Agreement by Licensee may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Azteca Systems shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.

9.9 US Government Licensee. The Products are commercial items, developed at private expense, provided to Licensee under this License Agreement. If Licensee is a US government entity or US government contractor, Azteca Systems licenses Products to Licensee in accordance with this License Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Azteca Systems Data and Online Services are licensed under the same subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. The commercial license rights in this License Agreement strictly govern Licensee's use, reproduction, or disclosure of Products. Azteca Systems Software source code is unpublished, and all rights to Products are reserved by Azteca Systems and its licensors. Licensee may transfer Software to any licensed government procuring agency facility to which computer(s) on which Software is installed are transferred. If any court, arbitrator, or board holds that Licensee has greater rights to any portion of Products under applicable public procurement law, such rights shall extend only to the portions affected.

9.10 Governing Law, Disputes, and Arbitration

- a. *Licensees in the United States of America, Its Territories, and Outlying Areas.* This License Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property. Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof shall be resolved in the following order:

- *Consultation and negotiation in good faith and a spirit of mutual cooperation;*
- *Mediation, by a mutually acceptable mediator chosen by the parties, which cost is shared equally;*
- *If the matter cannot be settled through negotiation or mediation, then it shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in a court of competent jurisdiction. If Licensee is a US government agency, this License Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613), in lieu of the arbitration provisions of this clause. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.*

- b. *All Other Licensees.* Except as provided in Section 9.8, any dispute arising out of or relating to this License Agreement or the breach thereof that cannot be settled through negotiation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with said rules. The language of the arbitration shall be English. The place of the arbitration shall be at an agreed-upon location. This License Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Either party shall, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

9.11 Maintenance. Maintenance for qualifying Software or Data consists of updates and other benefits, such as access to technical support, specified in Azteca Systems' or its distributor's current applicable maintenance policy, as specified in Addendum #2.

9.12 Feedback. Azteca Systems may freely use any feedback, suggestions, or requests for Product improvements that Licensee provides to Azteca Systems. Regardless of the source of any feedback or suggestions, any improvements to Cityworks Software or Products, and any related intellectual property, are owned by Azteca Systems.

9.13 Patents. Licensee may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Azteca Systems technology or services. This express prohibition on patenting shall not apply to Licensee's software and technology except to the extent that Azteca Systems technology or services, or any portion thereof, are a part of any claim or preferred embodiment in a patent application or a similar application.

9.14 Entire Agreement. This License Agreement, including its incorporated documents, addendums, and exhibits constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous license agreements, understandings, and arrangements between the parties relating to such subject matter. Additional or conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process, other than product descriptions, quantities, pricing, and delivery instructions, are void and of no effect. Any modification(s) or amendment(s) to this License Agreement must be in writing and signed by each party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives.

AZTECA SYSTEMS, INC.

By: 

Name: Brian L. Haslam

Title: President - CEO

Date: 11/18/2015

ERIE COUNTY WATER AUTHORITY –
(LICENSEE)

By: 

Name: Earl Jann

Title: Chairman

Date: 11/23/2015

ADDENDUM #1
PRODUCT LICENSING – SOFTWARE USE
TO THE MASTER SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

Licensed Software:

See table 7.3 in Addendum #2

Cityworks Standard logins include Cityworks Server AMS and AMS Mobile Native Apps for iOS/Android. (Year 1)

Cityworks Standard ELA: Unlimited user license that includes Cityworks Server AMS, Local Government Templates (LGT), Storeroom, Contracts, Cityworks Analytics, AMS Mobile Native Apps (for iOS/Android), eURL (Enterprise URL), use of all Cityworks AMS APIs with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners. (Years 2-3)

Additional Software Licenses: Additional Software licenses may be added to this License Agreement with acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary, paid.

Updates to the above licensed software means a subsequent release of the program which Azteca generally makes available to its supported customers as part of the annual maintenance plan for which fees have been paid.

Occasionally, Azteca changes the name of its licensed software as part of its ongoing process to improve and increase the functionality of the software. In the event the software licensed or listed above changes in name, and/or improvements are made, Azteca will provide software with functionality that is similar to or with substantially the same or greater functionality of the originally licensed software, provided all current license fees have been paid.

Updates may not always include any release, option or future program that Azteca licenses separately. Updates are provided when available (as determined by Azteca). Azteca is under no obligation to develop any future programs or functionality. Any updates made available will be delivered to you, or made available to you for download. You shall be responsible for copying, downloading and installing the updates.

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ADDENDUM 2

MAINTENANCE AGREEMENT & SOFTWARE TERMS OF USE

This Standard Maintenance Agreement is between the Licensee named below "Licensee" and Azteca, Systems, Inc. Maintenance provided herein consists of technical support, new version software, hot fixes, patches, and software updates. Maintenance is provided subject to the terms and conditions of the signed License Agreement and which is incorporated by reference.

1. **MAINTENANCE:** Azteca Systems will provide update and maintenance support services to Licensee for the times and periods and amounts specified in section 7.3 below. Maintenance support services consists of updates to Software Cityworks and Related Materials, documentation updates and access to telephone support, email support, web support, and other benefits deemed appropriate by Azteca Systems as provided for in the Maintenance Agreement.

1.1. The services to be provided during the Maintenance Period include Azteca Systems Product Updates to Azteca System's Cityworks applications including Program Fixes, Program Upgrades and Program Modifications (not Custom Applications). Azteca Systems will ensure upward compatibility for the Software applications within a reasonable timeframe for minor and major ESRI® ArcGIS and Cityworks supported databases revisions. If identified as "Covered Software," Azteca Systems will ensure upward compatibility within a reasonable timeframe for Custom Applications when there are minor ArcGIS and Cityworks supported databases revisions (for example, from rev 10.1 to rev 10.2). Azteca Systems will not ensure upward compatibility for Custom Applications when there are major ESRI ArcGIS and Cityworks supported databases revisions (for example, from rev 10.x to rev 11.x). Azteca Systems will make all reasonable efforts to provide upward compatibility.

1.2. Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4, during the term of this Maintenance Agreement:

- (a) Without limiting any other obligation hereunder, make all reasonable efforts to provide those Program Fixes, if any, that are necessary to assure the Covered Software is functioning properly; provided Licensee provides Azteca Systems with written notice specifying particularity in narrative, non-technical terms to the best of Licensees' staff's ability the apparent error in the system and the manner in which the Software is not functioning properly (as provided in Section 2 of this Addendum); and
- (b) Deliver to Licensee any Program Upgrades relating to the Covered Software made available to others.
- (c) Provide Telephone Support, Email Support, Web Support, during normal business hours, 8 AM to 5 PM Mountain Time, Monday through Friday (excepting Holidays) and after hour emergency support line, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 2 below).
- (d) Implement and maintain a means of secure, remote direct network access (VPN, Web-access, dial-up, etc.) to the Licensee's systems in order to perform thorough remote diagnostics and effect remote repairs, upgrades, and fixes.

1.3. The following items, among others, however, are specifically excluded as support services under this section of this Maintenance Agreement:

- (a) Interpretation of program results, including but not limited to support for applying or installing upgrades and service packs;
- (b) Assistance with questions related to computer hardware and peripherals that are not related to the use of the Covered Software;
- (c) Assistance with computer operating system questions not directly pertinent to the Covered Software or Program Modifications;
- (d) Data debugging and/or correcting;
- (e) Services necessitated as a result of any cause other than authorized ordinary and proper use by

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the Licensee of the Covered Software, including but not limited to neglect, abuse, unauthorized modification, unauthorized updates or electrical, fire, water or other damage; and

- (f) Consulting regarding Custom Applications created to function with the Covered Software unless the Custom Application is identified and listed as Covered Software in Addendum 1.

1.4. Support Periods are renewable unless terminated as provided in Section 4 below. The Maintenance Services consists of software and documentation updates and access to technical support via telephone, email, web-based (MyCityworks.com) and after hours support as set forth in Section 1 of this addendum. The Licensee will provide Azteca Systems in writing the names of the users or individuals who are authorized to contact Azteca Systems and request support services if necessary.

2. PROCEDURES FOR ACCESSING SUPPORT:

2.1. All problem categories from routine, non-critical and critical that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, and then 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support during normal business hours within 4 hours.

2.2. Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur with the System. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is The Cityworks Software component, Licensee will first try and resolve the problem without Azteca Systems' involvement. If the Licensee cannot resolve the problem or isolate the problem, Licensee will call Azteca Systems directly.

2.3. For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number or pager number that will forward the call or page to the currently assigned Azteca Systems support staff. Azteca Systems will make all reasonable efforts to acknowledge and respond to the request for support for critical problems that occur outside of normal business hours within 4 hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. Depending upon the type of problem, Azteca Systems support staff may need to be sent from Azteca Systems offices to the Licensee location. Azteca Systems project management will confer with Licensee's representative or project management before making this decision. The speed at which remote Azteca Systems staff can respond may be limited by the driving time or the airline flights that are available. The Licensee will reimburse Azteca Systems for all reasonable and customary travel expenses associated with resolving the problem (pursuant to the provisions of paragraph 3.4). For routine and non-critical problems Licensee will submit support requests during normal business hours.

2.4. For all problems involving The Cityworks Software component that are resolved without Azteca Systems' involvement, the Licensee will document the problem and the resolution and send a report to Azteca Systems so that it can be tracked, monitored, and historically recorded

3. CHARGES/FEES

3.1. For services hereunder, Licensee shall pay Azteca Systems an annual fee Maintenance Fees as set forth in paragraph 7.3 below. The annual fee for each period is set forth in paragraph 7.3, and shall be paid prior to the start for each Maintenance Period unless otherwise specified. The annual fee for successive Maintenance Periods (twelve-month periods) commencing upon the anniversary of the first maintenance period, shall become due prior to the end of the preceding paid-up Maintenance Period.

3.2. Upon 90 days written notice, the fee for Maintenance Periods listed in section 7.3 subsequent to year three (3) of the Maintenance Period, may be adjusted by Azteca Systems to reflect increases in costs of providing the services; provided, however, that the fee shall not increase by more than the CPI from the

previous annual fee. Azteca Systems will notify Licensee of the new pricing no later than 90 days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3. In addition to charges due under this Support Agreement, Licensee shall pay amounts equal to any sales tax, duties, or other consumption taxes, however designated, which are levied or based upon such charges, or upon this Maintenance Agreement.

3.4. Azteca will use all reasonable efforts to utilize remote support-type services. However, in the event Licensee and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the Covered Software, Licensee will reimburse Azteca Systems for reasonable and customary travel expenses directly related to the on-site work. As the result of mutual negotiation by the parties, Azteca Systems shall provide a lump sum estimate and get the prior approval of Licensee before incurring any costs for which it shall seek reimbursement from Licensee under this Section. The speed at which remote Azteca Systems staff can respond may be limited by the driving time or the airline flights that are available. Licensee shall have the right to request an audit of any such cost related records of Azteca Systems to the extent reimbursement has been made by Licensee under the terms of this Section.

4. TERM AND TERMINATION:

The initial term of this Maintenance and Support Agreement will begin upon the effective date set forth in section 7.2 below, and continue for twelve (12) consecutive months at the rate of fee(s) as noted in section 7.3 below. Thereafter, Licensee may continue maintenance as set forth in the table below and beyond at the then-current amount.

4.2. Termination for convenience: Either party may terminate this maintenance agreement by giving the other party thirty (30) days' notice prior to the end of the current maintenance period.

4.3. In the event that either funding from Licensee or other sources is withdrawn, reduced, or limited, or the authority of Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement and prior to normal completion, the parties shall have the authority to exercise the Termination for Convenience option to terminate this Agreement, in whole or in part. If a party to this Agreement chooses to terminate for convenience that party may do so by thirty (30) days' written notice to the other party.

4.4. If this Agreement is terminated for convenience, the Licensee is only liable for payment required by the terms of this Agreement for services rendered or software received and accepted prior to the Effective Date of termination.

5. WARRANTY, DISCLAIMER REMEDY, AND LIMITATION OF LIABILITY

5.1. Azteca Systems warrants that all technical support provided pursuant to this Maintenance Agreement shall be performed in a professional and workmanlike manner. Azteca Systems will use commercially reasonable efforts to provide corrections to a technical issue or provide a workaround, but Azteca Systems cannot guarantee that all technical issues can be fixed or resolved.

5.2. With respect to the services provided hereunder and to the extent permitted by applicable law, this warranty is in lieu of all other warranties, whether written or oral, express or implied, including without limiting the generality of the foregoing, any warranty of non-infringement, merchantability or fitness for a particular purpose.

5.3. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, AZTECA SYSTEMS

DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NON-INFRINGEMENT. AZTECA SYSTEMS DOES NOT WARRANT AND DISCLAIMS THAT MAINTENANCE OR ANY SERVICES PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS' THAT LICENSEE'S OPERATION WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAILURE-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.

5.4. **Remedy.** If Azteca Systems fails to fulfill its obligations under this maintenance addendum, Licensee's sole and exclusive remedy is the right to terminate this maintenance agreement immediately for the affected and listed Products and receive a refund of the unused portion of maintenance fees paid under this maintenance agreement, prorated for the current maintenance period.

5.5. **Limitation of Liability.** IN NO EVENT SHALL AZTECA SYSTEMS BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; COMMITMENTS IN CONNECTION WITH ANY BUSINESS; LOSS OF ANY GOODWILL; OR FOR ANY INDIRECT, SPECIAL INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS STANDARD MAINTENANCE AGREEMENT OR USE OF QUALIFYING PRODUCTS, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT AZTECA SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

6. MISCELLANEOUS

6.1. Azteca Systems shall not be in default under this Agreement for its failure to perform or its delay in performing any obligation under this Maintenance Agreement (other than the reimbursement of fees as set forth in section 8.2 of the License agreement, during any period of time during which such delay is due to fire, flood, earthquake, strike, labor trouble or other industrial disturbance, war (declared or undeclared), embargo, blockage, legal prohibition or governmental action, riot, insurrection, damage, destruction or any other cause beyond the control of Azteca Systems or any of its contractors preventing or delaying the performance of such obligation, provided that such obligation shall be performed immediately upon the termination of such cause preventing or delaying such performance; and provided further that the sole effect of any delay by Azteca Systems shall be a related delay in payment by the Licensee pursuant to the relevant schedule.

6.2. **Notices:** Until further written notice, all payments and notices relevant to this Agreement shall be sent to the following addresses:

Azteca Systems: Azteca Systems, Inc.
 11075 South State Street, Suite 24
 Sandy, UT 84070

Licensee The address set forth in section 7.1 below.

6.3. **Negotiated Agreement:** This Agreement is intended to be a master agreement for licensing and maintenance. This Agreement is a negotiated agreement between the parties and supersedes and replaces any and all other standard terms of either party set forth in any quote, purchase order, invoice or communication and applies so long as this Agreement remains in effect. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated there under, unless the context requires otherwise.

6.4. **Applicable Laws:** This maintenance agreement is governed by and construed in accordance with the laws of the state identified in the License Agreement without reference to conflict-of-laws principles except that US federal law shall govern in matters of intellectual property.

6.5. **Data Confidentiality Statement:** Azteca Systems will take reasonable measures to ensure that any Licensee data and/or confidential information provided to Azteca Systems is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by the Licensee may be loaded onto Azteca Systems servers or employee computers for the purpose of testing The Software Cityworks, database structure, or database values, and related ESRI® software to resolve database or software performance issues, software enhancements and software defects. At no time will the data be distributed to individuals or organizations who are not Azteca Systems employees without first receiving written approval from Licensee. If requested by the Licensee, and once the testing has been completed, Azteca Systems will delete all data provided by the Licensee.

6.6. **No Implied Waivers:** No failure or delay by Azteca Systems or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems

7. IDENTIFICATION AND AMOUNTS

7.1. Licensee Information

Licensee Name:	Erie County Water Authority
License Contact:	Paul Riester or Director of Administration
Number and Street	3030 Union Road
City/State/Zip/Country	Buffalo, NY 14227
Phone	(716) 685-8242
Email	priester@ecwa.org

7.2. Delivery Date/Effective Date

MM/DD/YYYY

12/1/2015

7.3. Schedule of payments and Fees under Maintenance Agreement

Support Period	Date From/To (mm/dd/yy)	Amount
Year 1	12/1/15 - 11/30/16	Cityworks Server AMS Standard logins 5: \$9,000.00 Cityworks Server AMS Standard logins 45: \$54,000.00 Cityworks Server AMS Storeroom 1" login: \$7,500.00 Total: \$70,500.00
Year 2	12/1/16 - 11/30/17	Cityworks Server AMS, Standard ELA \$90,000.00
Year 3	12/1/17 - 11/30/18	Cityworks Server AMS, Standard ELA \$90,000.00

7.4. [Additional]

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ADDENDUM 3

THIRD PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT

If Licensee engages any third party contractor and desires to grant access to or permission to use the licensed software, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Software by any third party is solely for Licensee's benefit;
2. The third party contractor (or, if applicable, its employee) shall be considered, as applicable, the Authorized User for purposes of the applicable license type, and all use by such contractor shall be in accordance with the terms and conditions of the Master License Agreement;
3. Before accessing the Licensed Software, the contractor agrees in writing that (a) the software shall be used solely in accordance with the terms of this Agreement and solely for Licensee's benefit and (b) the contractor shall be liable to Azteca Systems for any breach by it of this Agreement;
4. Licensee hereby agrees and acknowledges that Licensee will be liable for any and all actions or omissions of the contractor with respect to the use of the Licensed Software, as if such actions or omissions were the Licensee's;
5. Upon expiration or termination of this License Agreement, the rights of usage to any third party contractor shall immediately terminate;
6. Use of the Software by such third party contractors on Licensee's behalf will be governed by the terms of this Agreement, and will require that Licensee purchase the appropriate license for each user utilized by such third parties;
7. Any breach of this Agreement by any third party consultant(s)/contractor(s) will be deemed to be a breach by Licensee;
8. Licensee will ensure that Contractor agrees to comply with and does comply with the terms of this Agreement on the same basis as the terms apply to Licensee; and
9. Any third party contractor must sign a copy of this Addendum acknowledging that it has a copy of the license agreement and agrees to the terms herein, further Licensee shall provide a signed copy of this addendum for every third party contractor to which it has granted permission to access and/or use the licensed software;

The rights granted under Third-Party Addendum, do not modify the license or increase the number of licenses granted under this Agreement. Third-Party acknowledges acceptance by signing below, and providing a copy to Azteca Systems.

EMA, Inc.
Third Party Contractor Name (Print)

By: _____
Authorized Signature

Date: _____