

**Meeting Date:** 11/6/2014

**Report Type:** Consent

**Report ID:** 2014-00815

**Title:** Agreements: Cityworks Update and Support and Software License

**Location:** Citywide

**Recommendation:** Pass a Motion 1) ratifying the Department of Utilities' prior approval of the License Agreement and Update and Support Agreement with Azteca Systems, Inc. for the Cityworks® asset management system, as amended (Azteca Systems Contract No. C115803), and approving the Department's expenditures under these agreements from 2004 through 2013, in the total amount of \$206,200; and 2) authorizing the City Manager or the City Manager's designee to a) sign a new License Agreement and Update and Support Agreement with Azteca Systems, Inc., for the upgrade and continued use of the Cityworks® system for an initial term of one-year with up to four one-year renewals, in an amount not-to-exceed \$313,900 for the maximum five-year term; and b) approve the annual renewals provided that sufficient funds are available for this purpose in the budget adopted for the applicable fiscal year(s).

**Contact:** Michael Malone, Operations Manager, (916) 808-6226; Elsie Fong, Program Specialist, (916) 808-4079, Department of Utilities

**Presenter:** None

**Department:** Department Of Utilities

**Division:** Operations & Maintenance Admin

**Dept ID:** 14001211

**Attachments:**

1-Description/Analysis

2-Background

3-Contract License

4-Contract Update & Support

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**City Attorney Review**

Approved as to Form

Joe Robinson

10/29/2014 12:09:57 PM

**Approvals/Acknowledgements**

Department Director or Designee: Bill Busath - 10/28/2014 10:29:13 AM

## **Description/Analysis:**

**Issue:** In 2004, the Department of Utilities (DOU) replaced its manual paper work order procedure with the Azteca Cityworks® Computer Maintenance Management System (CMMS). Cityworks® is a GIS-centric work order and asset management system that DOU utilizes to manage its infrastructure. Additionally, Cityworks® streamlines the Department's inventory process.

DOU entered into Update/Support Services and Software License contracts with Azteca Systems, Inc., in 2004. The contracts required annual payments for successive one-year terms beginning on October 1st of each year. The amounts of the annual payments were as follows: Four \$15,000 payments from 2004 through 2007 for a total of \$60,000; an additional software purchase increased the next five payments to \$22,700 from 2008 through 2012, for a cumulative total expenditure of \$113,500, and; the addition of a new site license in 2013 increased the last payment to \$32,700, for a cumulative total expenditure of \$206,200.

City Code requires City Council approval for professional service agreements of \$100,000 or more, therefore Council approval should have been requested in 2009 when the cumulative payments to Azteca exceeded that threshold. However, since each annual payment was below \$100,000 this mistake went undetected. To rectify the situation, this report requests that Council ratify DOU's prior approval of, and expenditures under, the CMMS License and Update/Support contracts, as amended, from 2004 through 2013, in the total amount of \$206,200.

In addition, this report also requests approval of new services with Azteca to continue provision of the software and services needed to operate and maintain the CMMS, with the addition of Application Programmer's Interface (API) for creating work orders, service requests, and inspections from third party applications. This upgrade will also simplify IT development, and support integration with other department web-based systems. With this new software and functionality, the annual cost of the Cityworks® CMMS system will be \$62,780, beginning October 1, 2014. The estimated annual amount for the succeeding fiscal years, up to a maximum of four additional years (if the maximum number of extensions are approved by the City), is \$62,780 per year for a five year contract amount not to exceed \$ 313,900.

**Policy Considerations:** Council approval is required for agreements in excess of \$100,000. In accordance with the City's Administrative Policy No. 4102, the Interim Director of Utilities has approved the recommendation to continue to contract with Azteca for services and support on a sole source basis, without conducting a formal solicitation process, because Azteca is the only source for Cityworks® services and support.

**Economic Impacts:** None

**Committee/Commission Action:** Not applicable

## **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The Community Development Department, Environmental Services Manager has determined that the proposed actions are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines. The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed actions also constitute ongoing administrative activities that are not a "project" under CEQA (CEQA Guidelines Section 15378(b)).

**Sustainability Considerations:** Upgrading the Maintenance Services Cityworks® CMMS and GIS systems supports the Sustainability Master Plan goals of conserving the use and protecting the sources of water and providing exceptional flood protection.

**Rationale for Recommendation:** DOU has an ongoing need for the Cityworks® CMMS and GIS system to ensure continuation of services to its customers and compliance with regulatory mandates. CMMS attributes include: Asset and Inventory Management, Service Requests, Address and Asset based Work Orders, Labor, Material and Equipment Utilization, Inspections and Tests, GIS, and an array of other useful tools. DOU is very satisfied with the performance of Cityworks® CMMS and a significant amount of resources and staff training have been expended on fully developing the system, thus making the consequences of transitioning to a new system very undesirable. The Interim Director of Utilities has approved continuing to contract with Azteca for services and support on a sole source basis, without conducting a formal solicitation process, because Azteca is the only source for Cityworks® and it is the most efficient and cost effective method for DOU to receive these services.

**Financial Considerations:** Sufficient funding is available in the DOU Fiscal Year 2014/15 operating budget for the purchase of the Cityworks® software and support services in the amount of \$62,780. The estimated annual amount for the succeeding fiscal years, up to a maximum of four additional years (if the maximum number of extensions are approved by the City), is \$62,780 per year, for a five year contract amount not to exceed \$ 313,900. The cost of the agreement will be split between Water Distribution (14001411), Wastewater Collection (14001421), Drainage Collection (14001431) and Water Conservation (14001381). Renewal of the agreement on an annual basis will be subject to funding availability in the adopted budget of the applicable fiscal year.

**Local Business Enterprise (LBE):** Azteca Systems' Cityworks® system was selected and implemented prior to establishment of the City's LBE participation requirements.

## **Background**

In 2001/2002 DOU did an investigation into different work order, asset management and inventory systems available for the Department's operation and maintenance functions. These investigations lead to a pilot program, City contract 2002-618, using Azteca Cityworks® CMMS System. In 2003 after a successful pilot, DOU supplemented city contract 2002-618 for Cityworks® software, training, and implementation of the CMMS system.

The Azteca Cityworks® system is extensively utilized associating work orders to assets. This system supports the Department managing its infrastructure capital assets while minimizing the total cost of owning, operating, and maintaining assets at acceptable levels of service. Cityworks® also has a proven GIS-centric asset management system, combined with ArcGIS asset data management repository, which performs intelligent and cost-effective inspection, monitoring, and condition assessment. Additionally, Cityworks® was one of the only CMMS software services companies that offered an add-on desktop application designed to track warehouse transactions (called Storeroom).

In 2004, DOU entered into new contracts with Azteca Systems, Inc. for a CMMS License and Update/Support services (Azteca Systems Contract No. C115803), for the use of Azteca's Cityworks® system that included CMMS modules for Water Distribution, Wastewater Collection, Drainage Collection, and their respective warehouse inventory systems.

DOU requests that City Council ratify its prior approval of, and expenditures under, the CMMS License and Update/Support contracts from 2004 through 2013, in the total amount of \$206,200. This report also requests approval of new contracts with Azteca to continue provision of the Cityworks® software and services needed to operate and maintain the CMMS, including API (Application Programmer's Interface) for creating work order service requests, and inspections from third party applications.

Azteca Systems, Inc.  
11075 South State St.  
Suite 24  
Sandy, Utah 84070



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Email: [info@cityworks.com](mailto:info@cityworks.com)  
<http://www.cityworks.com>

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**CITYWORKS®**  
**SOFTWARE LICENSE AGREEMENT**  
Contract No. **C115804**

This is a license agreement and not an agreement for sale. This license agreement (Agreement) is between the **City of Sacramento, CA** (Licensee) and **Azteca Systems Inc.** (Azteca Systems™), a Utah corporation, with its principal place of business at 11075 South State Street, Suite #24 Sandy, Utah, 84070, and gives Licensee certain limited rights to use the proprietary software The Software Cityworks and Related Materials. All rights not specifically granted in this Agreement are reserved to Azteca Systems.

**1. Definitions:** As used herein, the following words, phrases, or terms in this Agreement shall have the following meanings:

1.1 "The Software Cityworks" means the actual copy of all or any portion of the computer programs delivered as listed in paragraph 5.1 Licensed Software, inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied by Azteca Systems.

1.2 "Related Materials" means all of the printed materials, user documentation, training documentation, and confidential activation code for The Software Cityworks supplied by Azteca Systems under this Agreement.

1.3 "Effective Date" shall mean the date on which Licensee receives the Software Cityworks and Related Material from Azteca Systems.

**2. Term:** This Agreement shall become effective on the Effective Date and shall be valid for as long as Licensee complies with the Permitted Uses and Uses Not Permitted provisions of this Agreement. Azteca Systems may terminate this Agreement by 30 calendar days' prior written notice to Licensee if Licensee fails to comply with the Permitted Uses and Uses Not Permitted provisions of this Agreement. Unless otherwise agreed in writing, Licensee shall have 60 days after receiving notice of such failed compliance from Azteca Systems to cure the default. If this Agreement is terminated either under Section 8 or Section 17 below, 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 perpetual license to the Licensee which will allow Licensee to retain the ability to access records and data contained in The Cityworks Software or will provide hard copies of all files needed by the

Licensee. The parties hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach occur.

**3. Reservation of Ownership and Grant of License:** Azteca Systems retains exclusive title and ownership of any copy of The Software Cityworks and Related Material licensed under this Agreement and grants to Licensee a personal, nonexclusive, nontransferable license to use The Software Cityworks and Related Materials pursuant to the terms and conditions of this Agreement. From the Effective Date, Licensee agrees to use reasonable effort to protect The Software Cityworks and Related Materials from unauthorized use, reproduction, distribution, or publication.

**4. Copyright:** The Software Cityworks and Related Material are owned by Azteca Systems and are protected by United States copyright laws and applicable international treaties and/or conventions. Licensee agrees not to export The Software Cityworks into a country which does not have copyright laws that will protect Azteca System's proprietary rights.

**5. Licensing and/or Royalty Fees:** In consideration of the License fees ("License Fees") paid under Purchase Order No. \_\_\_\_\_ dated \_\_\_\_\_ see attachment A), Azteca Systems grants to Licensee a nonexclusive, nontransferable license to use the Licenses obtained under this Agreement as follows:

**5.1 Licensed Software** **Site License including: Server AMS, Desktop, Anywhere, Storeroom, Cityworks Analytics, Mobile, Work Order API, Service Request API, and Inspection API**

**5.2 Permitted Uses:**

- Licensee may use the number of copies of The Software Cityworks specified in paragraph 5.1 for which License Fees have been paid on the computer systems(s) and/or specific computer networks(s) for Licensee's own internal use.
- Licensee may install the number of copies and modules of The Software Cityworks specified in paragraph 5.1 for which License Fees have been paid onto the permanent storage device(s) on the computer system(s) and/or specific computer network(s).
- Licensee may maintain one (1) copy of The Software Cityworks to a CD or DVD type medium for archival purposes during the term of this Agreement unless the right to make additional copies is granted to Licensee in writing by Azteca Systems. Regularly scheduled full system and partial system archival backups are allowable and specifically exempted from this provision.
- Licensee may use, copy, alter, modify, merge, reproduce, and create derivative works of the on-line documentation accessible on MyCityworks.com for Licensee's own internal use. The portions of the on-line documentation merged with other software, hard copy, and digital materials shall continue to be subject to the terms and conditions of this Agreement and shall provide the following copyright attribution notice acknowledging Azteca Systems proprietary rights in the on-line documentation:

Software License Agreement, Page 2 of 8

“Portions of this document include intellectual property of Azteca Systems and are used herein by permission. Copyright© 2014 Azteca Systems Inc. All Rights Reserved.”

### **5.3 Uses Not Permitted:**

- Licensee shall not sell, rent, lease, sub-license, lend, assign, time-share, transfer or export, in whole or in part to unlicensed third parties, or provide access to prior or present versions of The Software Cityworks, any updates, or Licensee’s rights under this Agreement. Nothing in this Section shall prevent use of and access to The Software Cityworks by Licensee’s employees, agents or others performing work for or on behalf of the Licensee.
- Licensee shall not reverse engineer, decompile, or disassemble The Software Cityworks, or make any attempt to unlock or bypass The Software Cityworks keycode, as applicable, subject to local law.
- Licensee shall not make additional copies of The Software Cityworks and Related Materials beyond that described in the Permitted Uses section above.
- Licensee shall not remove or obscure any Azteca Systems copyright or trademark notices.

**6. The Software Cityworks Update and Support:** Update and support services for The Software Cityworks is available if Licensee and Azteca Systems have executed a Cityworks Update and Support Agreement. Fees for any such support services shall be governed by the Cityworks Update and Support Agreement.

**7. Limited Warranty:** Limited Warranty: Azteca Systems warrants that it owns or has the full right and authority and all associated intellectual property rights necessary to grant Licensee rights and licenses set forth in this Agreement to The Software Cityworks and Related Materials. Azteca Systems warrants that The Software Cityworks, unaltered, will substantially conform to the Related Materials for a period of one (1) year from the Effective Date (“Warranty Period”). Azteca Systems warrants that the media upon which The Software Cityworks is provided will be free from defects in materials and workmanship under normal use and service during the Warranty Period.

AZTECA SYSTEMS DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE CITYWORKS. AZTECA SYSTEMS DOES NOT WARRANT THAT THE OPERATIONS OF ITS RESPECTIVE SOFTWARE AND RELATED MATERIALS WILL BE UNINTERRUPTED AND/OR ERROR FREE.

**8. Exclusive Remedy and Limitation of Liability:** Exclusive Remedy and Limitation of Liability: One (1) year from the Effective Date and during the Warranty Period, Azteca System’s entire liability and Licensee’s exclusive remedy for breach of the warranties against defect(s) in materials and workmanship shall be to request Azteca Systems correct the defect(s) by whatever means reasonably available to Azteca Systems such as remedy the defect(s), or provide a

Software License Agreement, Page 3 of 8

suitable work around, or replace The Software Cityworks in accordance with the Cityworks Update and Support Agreement (if then in effect with Licensee). If Azteca Systems exhausts available remedies and is unable to remedy the defect(s) Licensee may by written notice of its election to Azteca Systems, terminate this Agreement for its convenience and have Azteca Systems return 100% of the License Fees paid upon the Licensee's return of The Software Cityworks to Azteca Systems. Azteca Systems shall not be liable for indirect, special, incidental, or consequential damages related to Licensee's use of The Software Cityworks, unless such damage is caused by Azteca System's actual negligence.

IN NO EVENT SHALL AZTECA SYSTEMS BE LIABLE TO THE LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST SALES OR BUSINESS EXPENDITURES, INVESTMENTS, OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR USE OF THE SOFTWARE AND RELATED MATERIALS, UNLESS SUCH LOSS OR DAMAGE IS CAUSED BY AZTECA SYSTEM'S ACTUAL NEGLIGENCE.

**9. Indemnity:** Indemnity: Azteca Systems, at its own expense, will hold harmless, defend and indemnify Licensee from all claims that The Software Cityworks or Related Materials furnished under this Agreement infringes a U.S. Copyright or other intellectual property rights of a third party, provided that Licensee gives Azteca Systems prompt written notice of such claims and permits Azteca Systems the sole right to control the defense of such claims and provides Azteca Systems all reasonable cooperation.

As to The Software Cityworks which are or in the opinion of Azteca Systems may become subject to a claim of infringement, Azteca Systems, at its option, will obtain the right for Licensee to continue using The Software Cityworks or replace or modify The Software Cityworks so as to make them non-infringing. If none of the alternatives is available on commercially reasonable terms, then Licensee agrees to, upon Azteca Systems' written request, terminate for convenience the Agreement upon the Licensee returning The Software Cityworks to Azteca Systems and Azteca Systems will refund to the Licensee 100% of the License Fees paid.

Azteca Systems will not indemnify or defend Licensee from any infringement claim resulting from Licensee's unauthorized modification or alteration of The Software Cityworks or Related Materials.

This section states Azteca System's entire obligation to Licensee and Licensee's sole and exclusive remedy for infringement.

**10. Additional Software Licenses:** Additional copies and modules of The Software Cityworks licenses may be ordered without signed amendments provided the following language is incorporated in the signed Purchase Order: *"By accepting this order, both parties agree to amend the Master Software License Agreement Contract No **C115804** between the **City of Sacramento** and Azteca Systems, Inc., dated \_\_\_\_\_ which is incorporated herein by*

Software License Agreement, Page 4 of 8

*reference, to include the above software licenses, which are hereby licensed under the same terms and conditions.”*

**11. Export Regulations:** Licensee acknowledges that this Agreement and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders relating to the export of computer software or know-how relating thereto. The Software Cityworks are determined to be Technical Data under United States export laws. Licensee agrees to comply with all laws, regulations, and orders of the United States in regard to any export of such Technical Data. Licensee agrees not to disclose or re-export any Technical Data received under this Agreement in or to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer, unless Licensee has obtained prior written authorization from Azteca Systems and the U.S. Office of Export Control.

**12. Force Majeure:**

Neither party shall be liable to the other for failure or delay in the performance of a required obligation during any period where such failure or delay is caused by strike, riot, fire, flood, natural disaster, or other similar cause beyond such party's control, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible.

**13. Severability:** If any provision(s) of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The provisions of this Agreement shall be enforceable to the extent permissible under the laws of the State of **California**.

**14. 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.

**15. Order of Precedence:** Any conflict between the terms of this License Agreement and any Purchase Order or other terms shall be resolved in favor of the terms of this License Agreement.

**16. Governing Law:** This Agreement, entered into in the County of **Sacramento** shall be construed and enforced in accordance with, and be governed by, the laws of the State of **California** without reference to conflict of laws principles. The parties hereby consent to the personal jurisdiction of the courts of this county and waive their rights to change venue.

**17. Termination for Convenience:** In the event that either funding from the Licensee or other sources is withdrawn, reduced, or limited, or the authority of the 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.

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.

Also, set forth elsewhere in this Agreement are specific provisions which allow the parties to terminate this Agreement for convenience (see Exclusive Remedy and Limitation of Liability provision).

**18. Non-Binding Mediation:** Azteca Systems and Licensee will attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If those attempts fail then the dispute will be mediated by a mutually acceptable mediator to be chosen by Azteca Systems and the Licensee within thirty (30) days after written notice by one of the parties demanding non-binding mediation. Neither party may unreasonably withhold consent to the selection of a mediator. Azteca Systems and the Licensee will share the cost of the mediation equally. By mutual agreement, however, Azteca Systems and Licensee may postpone mediation until both parties have completed some specified limited discovery about the dispute. The parties may also agree to replace mediation with some other form of non-binding alternate dispute resolution procedure (“ADR”).

Any dispute which cannot be resolved between the parties through negotiation or mediation within two (2) months of the date of the initial demand for it by one of the parties may then be submitted to a court of competent jurisdiction in the County of **Sacramento, California**. Both Azteca Systems and Licensee consent to jurisdiction by such a court. The use of any ADR procedures will not be considered under the doctrine of laches, waiver or estoppel to affect adversely the rights of either party. Nothing shall prevent either of the parties from resorting to the judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful; or (b) interim relief from the court is necessary to prevent serious and irreparable injury to one of the parties or others.

**19. Entire Agreement:** This Agreement constitutes the sole and entire agreement of the parties as to the matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto. Except as otherwise expressly provided herein, any Amendments to this Agreement must be in writing and signed by an authorized representative of each party.

**20. Confidentiality of Licensee Information.** Azteca agrees to protect all Licensee data and / or confidential information (data) provided to Azteca Systems and treat such data as confidential, agrees not to disclose or communicate Licensee data to any third party, and agrees to take all reasonable measures to assure that the data is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by Licensee for the purpose of testing to resolve database or software performance issues, software enhancement, or software defects (“bugs”) will be deleted once testing has been completed if requested by Licensee. In addition, Azteca Systems shall comply with all Licensee policies governing the use of the Licensee network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by Azteca Systems of this Section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.

Accepted and Agreed:

**City of Sacramento**  
(Licensee)

**Azteca Systems, Inc.**  
(Azteca Systems)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

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

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

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

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

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

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

*This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other agreed electronic form. The parties adopt any signatures received by a receiving fax machine or other agreed electronic form as valid and binding original signatures of the parties even if an original paper document bearing a party's original signature is not delivered. Any party providing its signature in such manner will upon request promptly forward to the other party an original of the signed copy of this Agreement.*

**Attachment A – Purchase Order**

Azteca Systems, Inc.  
11075 South State St.  
Suite 24  
Sandy, Utah 84070



Phone: (801) 523-2751  
FAX (801) 523-3734  
Email: [info@cityworks.com](mailto:info@cityworks.com)  
<http://www.cityworks.com>

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**CITYWORKS®**  
**UPDATE & SUPPORT AGREEMENT**  
Contract No. **C165014**

This agreement (Agreement) is between the **City of Sacramento, CA** (hereafter the User), as specified in paragraph 9.1, and **Azteca Systems Inc.** (hereafter Azteca Systems™), a Utah corporation, with its principal place of business at 11075 South State Street, Suite #24 Sandy, Utah, 84070. Azteca Systems and the User have entered into a license agreement with respect to use of The Cityworks Software (the "Cityworks Software License Agreement"); and User also desires to secure software Cityworks update and support services from Azteca Systems with respect to such Software as more specifically enumerated in this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS**

1.1 "Covered Software" shall mean the particular Software, scripts, interfaces and custom code identified in paragraph 9.2.

1.2 "Custom Applications" shall mean any scripts, interfaces, reports or program code requested by the Licensee, 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 section 9.3. The Custom Applications scripts, interfaces, reports and program code shall be provided to the client as a deliverable and client shall have full ownership rights for the Custom Applications. However, Azteca Systems shall retain the right to utilize, modify and enhance the scripts, interfaces, reports or program code of the Custom Applications as Azteca Systems deems appropriate.

1.3 "Effective Date" shall mean the date on which User receives the Software Cityworks software from Azteca Systems in accordance with the Cityworks Software License Agreement, Contract No. **C165014**, between User and Azteca Systems dated **10/01/2014**.

1.4 "Licensed Software" shall mean the particular Software identified in paragraph 9.2 item (d) Description of Covered Software.

1.5 "Program Fixes" shall mean minor corrections to the Licensed Software to correct deviations in the Licensed Software. Any Program Fixes delivered to User shall become part of the Licensed Software under the Cityworks Software License Agreement.

1.6 "Program Modifications" shall mean new versions of or additions to the Licensed Software, which adds to or alters the function(s) of the Licensed Software and new modules or products adapted to interface with the Licensed Software and add to or alter the function(s) of the Licensed Software, requested by the User. Any Program Modifications delivered to User shall become part of the Licensed Software under the Cityworks Software License Agreement.

1.7 "Product Updates" are Program Fixes, Program Upgrades and Program Modifications.

1.8 "Program Upgrades" shall mean new versions of, or additions to, the Licensed Software prepared by Azteca Systems that improve its operating performance but do not add to or alter its basic function(s). Any Program Upgrades delivered to User shall become part of the Licensed Software.

1.9 "Software" shall mean Cityworks source code, machine-readable code, and related documentation.

1.10 "Update & Support Period" shall mean the initial Update and Support period commencing upon the Effective Date of this Agreement, as set forth in section 9.2, and any subsequent twelve-month period.

1.11 "Update & Support Agreement" or "Agreement" shall mean this Update & Support Agreement between Azteca Systems and User identified in paragraph 9.1, the terms and conditions of which are hereby incorporated by reference.

## **2. SUPPORT**

2.1 The services to be provided during the Update & Support 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 make all reasonable efforts to provide upward compatibility for The Cityworks Software applications within a reasonable timeframe for minor and major Esri<sup>®</sup> 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).

2.2 Azteca Systems shall, without additional charge (except as allowed for in paragraph 3.4 and 7.3), during the term of this Agreement:

- (a) Make all reasonable efforts to provide those Program Fixes, if any, that are necessary to assure the Covered Software is functioning properly; provided User provides Azteca Systems with written notice specifying particularity in narrative, non-technical terms to the best of User staff's ability the apparent error in the system and the manner in which the Covered Software is not functioning properly (as provided in Section 8); and
- (b) Deliver to User any Program Upgrades relating to the Covered Software made available to others.
- (c) Provide Telephone User 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 7).
- (d) Implement and maintain a means of secure, remote direct network access (VPN, Web-access, dial-up, etc) to the User's systems in order to perform thorough remote diagnostics and effect remote repairs, upgrades, and fixes.

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

- (a) interpretation of program results;
- (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 the User 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 as Covered Software in paragraph 9.3.

### **3. CHARGES**

3.1 For services hereunder, User shall pay Azteca Systems an annual fee. The annual fee for the initial Update & Support Period is set forth in paragraph 9.2, and shall be paid prior to the start of the initial Update & Support Period. The annual fee for successive Update & Support Periods (twelve-month periods commencing upon the anniversary of the initial Update & Support Period) shall become due prior to the end of the preceding paid-up Update & Support Period.

3.2 Upon 90 days written notice, the fee for Update and Support Periods listed in paragraph 9.2 subsequent to the third Update and Support Period may be adjusted by Azteca to reflect increases in costs of providing the services described herein and/or to reflect increases in the population, users, size, usage, and other factors of User; provided, however, that (a) if the above factors remain constant the increase in the pricing shall not exceed the Consumer Price Index and (b) if any such proposed cost increase is in User's opinion excessive, User shall be entitled to terminate this Agreement prior to the start of the applicable Update & Support Period and shall not be liable for any further payment under this Agreement. Azteca will notify User 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 Agreement, User 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 Update & Support Agreement.

3.4 In the event User and Azteca Systems agree it becomes necessary for Azteca Systems to be on-site to provide support for the Covered Software, the User will reimburse Azteca Systems for reasonable and customary travel expenses directly related to the on-site work. Azteca Systems shall provide an estimate and get the prior approval of User before incurring any costs for which it shall seek reimbursement from User under this Section. Any reimbursement shall be subject to Azteca providing verifiable documentation of such expenses to User. User reserves the right to require an audit of any such cost related records of Azteca to the extent reimbursement has been made by User under the terms of this Section.

### **4. LIMITED WARRANTY**

4.1 Azteca Systems will provide support services for the Cityworks Software, Enhancements to Cityworks Software and Custom Applications created by Azteca

Systems identified as Covered Software in paragraph 9.3. The support services are provided as part of the Azteca Systems Update and Support services and will be in force for the duration of this Agreement. Update & Support Periods beyond the initial Update & Support Period are renewable unless terminated as provided in Section 6 below. The Update and Support Services consists of software and documentation updates and access to technical support via telephone, email, web-based (MyCityworks.com) and after hours support via pager as set forth in Section 2 above. The User will provide Azteca Systems in writing the names of the User individuals who are authorized to contact Azteca Systems and request support services.

4.2 Azteca Systems warrants that trained personnel employed or contracted by Azteca Systems will perform the services performed hereunder in conformance with best industry standards.

4.3 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. LIMITATION OF LIABILITY**

5.1 The liability for Azteca Systems for damages arising under this Agreement shall be limited to the fees actually paid by User to Azteca Systems for the current Update and Support Period pursuant to Section 3 hereof. In no event shall Azteca Systems be liable for any incidental, indirect, special, or consequential damages whatsoever (including but not limited to lost profits) arising out of or related to the support and services provided hereunder by Azteca Systems, even though Azteca Systems may have been advised, know or should have known of the possibility of such damages, unless such damage is caused directly by Azteca System's actual negligence.

## **6. TERM AND TERMINATION**

6.1 The effective date of this Agreement, as set forth in section 9.2, shall continue until terminated.

6.2 This Agreement shall be terminated upon termination of the Cityworks Software License Agreement and, after the initial Update & Support Period, may be terminated by either party upon 30 days' written notice prior to the end of the then current Update & Support Period. If termination occurs during a successive Update & Support Period for which the User has paid the renewal fee in full, Azteca Systems shall return a prorated portion of the renewal fee for that period to the User.

## **7. PROCEDURES FOR ACCESSING SUPPORT**

7.1 All problem categories from routine, non-critical and critical that occur during normal business hours shall procedurally occur as follows: 1) User's system administration staff as first line of support, 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.

7.2 Prior to calling Azteca Systems for support services, the User will first attempt to isolate any problems that occur with the System. The User 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 the User will first try and resolve the problem without Azteca Systems' involvement. If the User cannot resolve the problem or isolate the problem, the User will call Azteca Systems directly.

7.3 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 User, 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 User 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 User location. Azteca Systems project management will confer with the User'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 User 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 the User will submit support requests during normal business hours.

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

## **8. MISCELLANEOUS**

8.1 Azteca Systems shall not be in default under this Agreement for its failure to perform or its delay in performing any obligation under this Agreement (other than

the reimbursement of fees as set forth in paragraph 5.1) 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 User pursuant to the relevant schedule.

8.2 The illegality, invalidity or unenforceability of any provision of the Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision. The provisions of this Agreement shall be enforceable to the extent permissible under the laws of the State of **California**.

8.3 This Agreement constitutes the entire agreement between the parties with respect to the subject matter; all prior statements, negotiations, and undertakings are superseded hereby, and may not be amended, modified or supplemented except in a writing executed by both parties, expressly purporting to amend this Agreement.

8.4 This Agreement may not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld. User may not sublicense or encumber the Licensed Software without prior written consent of Azteca Systems.

8.5 Section headings herein are for the sake of convenience only and are not intended to affect in any way the meaning of this Agreement or the related paragraphs.

8.6 This Agreement becomes effective only upon execution by both parties. One fully executed copy of this Agreement shall be delivered by User to Azteca Systems at its office in Sandy, Utah 84070.

8.7 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 St.  
Suite 24  
Sandy, UT 84070

User: The address set forth in paragraph 9.1.

**9. IDENTIFICATION AND AMOUNTS**

9.1 (a) User Name: **City of Sacramento**

(b) User Contact: \_\_\_\_\_

Number and Street: \_\_\_\_\_

City/Province/Zip/Country: \_\_\_\_\_

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

9.2 User Agreement: Between Azteca Systems and the User dated:

(a) Effective Date **10/01/2014** Initial \_\_\_\_\_  
(Software delivery date)

(b) Initial Update & Support period:

From: **10/01/2014** Initial \_\_\_\_\_

To: **09/30/2015**

(c) Renewal Date: Successive twelve-month periods from the Renewal Date specified below, subject to termination as provided in paragraph 6.2.

Renewal Date: **10/01/2015** Initial \_\_\_\_\_

Fee: **\$64,780.00** Initial \_\_\_\_\_

(d) Description of Covered Software:

**Site License including: Server AMS, Desktop, Anywhere, Storeroom, Cityworks Analytics, Mobile, Work Order API, Service Request API, and Inspection API**

Initial \_\_\_\_\_

**10. Confidentiality of User Information.** Azteca agrees to protect all User data and / or confidential information (data) provided to Azteca Systems and treat such data as confidential, agrees not to disclose or communicate User data to any third party, and agrees to take all reasonable measures to assure that the data is not inappropriately accessed or distributed to any third-party. Data provided to Azteca Systems by User for the purpose of testing to resolve database or software performance issues, software enhancement, or software defects (“bugs”) will be deleted once testing has been completed if requested by User. In addition, Azteca Systems shall comply with all User policies governing the use of the User network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by Azteca Systems of this Section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

**11. Insurance Requirements.** During the entire term of this Agreement, Azteca Systems shall maintain the insurance coverage described in this Section.

Full compensation for all premiums that Azteca Systems is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by Azteca Systems under this Agreement. No additional compensation will be provided for Azteca Systems’ insurance premiums.

It is understood and agreed by the Azteca Systems that its liability to the User shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Azteca Systems in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Azteca Systems.

No automobile liability insurance shall be required if Azteca Systems completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement."  
\_\_\_\_\_ (Azteca Systems initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the User by selecting the option below:

\_\_\_\_\_ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the Azteca Systems.

No Workers' Compensation insurance shall be required if Azteca Systems completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." \_\_\_\_\_ (Azteca Systems initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The User, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Azteca Systems, products and completed operations of Azteca Systems, and premises owned, leased or used by Azteca Systems. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the User by selecting the option below: Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The User, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, Azteca Systems' insurance coverage shall be primary insurance as respects User, its officials, employees and volunteers. Any insurance or self-insurance maintained by User, its officials, employees or volunteers shall be in excess of Azteca Systems' insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to User, its officials, employees or volunteers.
- (3) Coverage shall state that Azteca Systems' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) User will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the User Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) Azteca Systems shall furnish User with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the User representative named in Exhibit A. Copies of policies shall be delivered to the User on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The User may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The User may withhold payments to Azteca Systems and/or cancel the Agreement if the insurance is canceled or Azteca Systems otherwise ceases to be insured as required herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.

Accepted and Agreed:

City of Sacramento  
(User)

Azteca Systems, Inc.  
(Azteca Systems)

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

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

Printed Name: Brian L. Haslam

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

Title: President

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

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

*This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or other agreed electronic form. The parties adopt any signatures received by a receiving fax machine or other agreed electronic form as valid and binding original signatures of the parties even if an original paper document bearing a party's original signature is not delivered. Any party providing its signature in such manner will upon request promptly forward to the other party an original of the signed copy of this Agreement.*