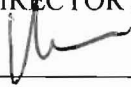


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 6/10/2013

AGENDA ITEM: Maintenance Agreement with Aclara Technologies LLC	
PREPARED BY: Karen Latimer, Operations Manager DEPARTMENT: Public Works	DIRECTOR APPROVAL: 
ATTACHMENTS: 1. Maintenance Agreement	
BUDGET CODE: 40141280.541000	AMOUNT: \$9,904.32

SUMMARY:

A few years ago the City purchased and installed an automated meter reading (AMR) system. Installed equipment includes data collection units, a network control computer, software program, meter transmission units, and handheld meter programmers. The AMR system and network control computer software should be updated at least annually, the equipment needs occasional troubleshooting and repair, and the equipment is replaced as it becomes obsolete or as technology changes.

This year the data collection units need to be replaced due to the discontinuance of a certain type of cellular phone service. The AMR system software must be updated and the network control computer replaced at the same time the data collection units are replaced to maintain compatibility throughout the AMR system.

Aclara Technologies LLC will not provide software updates, new equipment, or equipment troubleshooting and repair unless a maintenance agreement is executed. The AMR system will not function without the data collection units, so the maintenance agreement has become a necessary part of the overall AMR system.

It should be noted that the Agreement has language that significantly limits the vendor's liability. The language of both section 7 (Warranty) and section 8 (Limitation of Liability) work to the disadvantage of the City. There is an express exclusion of any warranty to the greatest degree allowed by law and the liability of Aclara for damages is limited to their gross negligence or willful acts and their aggregate liability is further limited to the dollar amount of their annual fee (see section 8). There are also limitations for incidental damages.

It is a policy decision for Council to determine whether this language is acceptable and to weigh the risk of claims against the City versus the need for the services by this unique vendor. On the advice of the City Attorney, staff has made reasonable efforts to renegotiate this language without significant success. The City has invested substantial amounts in the equipment that the vendor provides and it would be difficult and expensive to contract with a different vendor for the necessary services.

RECOMMENDED ACTION: Staff recommends that Council Authorize the Mayor to sign a Maintenance Agreement between Aclara Technologies LLC and the City of Marysville.

MAINTENANCE AGREEMENT

This Agreement is made and entered into as of the date last signed below (the "Effective Date") by and between:

Aclara Technologies LLC, an Ohio Limited Liability Company
945 Hornet Drive
Hazelwood, Missouri 53042
(Referred to herein as "Aclara")

And City of Marysville, a Washington corporation
80 Columbia Avenue
Marysville, Washington 98270
(Referred to herein as "Customer")

Individually, Aclara[®] and Customer may be referred to as "Party" and collectively as "Parties".

Whereas, Customer has agreed to license from Aclara, and Aclara has agreed to license to Customer certain computer software; and

Whereas, Customer has agreed to obtain from Aclara, and Aclara has agreed to provide to Customer associated maintenance services to the Customer's Aclara Technology System more fully described below.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the Parties agree as follows:

1. Definitions. For the purposes of this Agreement, the following definitions shall apply:
 - A. "Aclara Holidays" means New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day and New Years Eve.
 - B. "Aclara Technology System" (or "System") means the system comprised of, in part 1) the Hardware purchased from Aclara by Customer, and 2) the Software licensed by Aclara to Customer under the terms of the Software License Agreement.
 - C. "Additional Services" means services offered by Aclara for improvements and/or enhancements to the Customer's System that are not covered by this Agreement, but may be offered and provided at the rates set forth on Schedule B hereto.
 - D. "Classroom Training" means training offered by Aclara at its facility.

- E. “Customer Portal” means an electronic gateway to a secure entry point via Aclara’s website at www.Aclara.com that allows Aclara customers to log in to an area where they can view and download information or request assistance regarding Issues with the System.
- F. “On-Site Maintenance Services” means Aclara providing Maintenance Services at the Customer’s facility at the then current rates stated in Schedule B, Time and Material Rates, attached hereto.
- G. “Custom Enhancement” means any improvement, modification or addition that, when made or added to the Software or Third Party Licensed Software, changes its utility, efficiency, functional capability or application. Custom Enhancements are not included as part of this Agreement.
- H. “Customer Site Training” means Aclara providing its training at the Customer’s facility at the then current terms and pricing published on the Aclara Customer Portal. The training may be customized to meet the Customer’s needs.
- I. “Delivery” means, in the case of Software provided hereunder (and as applicable), (i) the remote installation of the Software by Aclara on the Customer-provided Designated Equipment; or (ii) delivery of the Designated Equipment provided by Aclara on which the Software is installed; or (iii) the loading of the software to an FTP site for Customer’s availability to download. “Delivery” means, in the case of Services provided hereunder, the periodic performance of such Services as described herein.
- J. “Error” means any failure of Software to conform in all material respects to the requirements of this Agreement or Aclara’s published specifications. Any nonconformity resulting from Customer’s misuse, improper use, alteration or damage of the Software, the combination of the Software with any hardware or software not supplied by or authorized by Aclara, or any other condition beyond the control of Aclara, shall not be considered an Error.
- K. “Error Correction” means either a modification or addition that, when made or added to the Software, brings the Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity
- L. “E-Learning” means on-line training offered by Aclara via the Internet.

- M. “Hardware” means the equipment supplied by Aclara which may include the Substation Communication Equipment (SCE), Remote Communications Equipment (RCE), Test Equipment, Meter Transmission Unit (MTU), Data Collection Unit (DCU) and MTU programmer.
- N. “Issue” means a problem with the System identified by the Customer, which requires a response by Aclara to resolve.
- O. “Maintenance Services” means activities to investigate, resolve Issues and correct product bugs arising from the use of the Software in a manner consistent with the published specifications and functional requirements defined during implementation.
- P. “Patch” means a version of the Software that provides an Error Correction to address an urgent need that is outside the schedule of regularly released Software Revisions or Software Versions.
- Q. “Renewal Period” means each of one or more consecutive twelve (12) month periods following the Initial twelve (12) month Term of this Agreement.
- R. “Severity Level” means a designation of the effect of an Issue on the Customer’s use of the System. The Severity of an Issue is initially defined by the Customer and confirmed by Aclara. Until the Issue has been resolved, the Severity Level may be raised or lowered based on Aclara analysis of impact to business. The four Severity Levels are:

Severity Level	Description
1	Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the system. Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.
2	Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.
3	Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.
4	There is a problem or issue with no loss of service and no business impact.

- S. “Software” means the software and firmware provided by Aclara, and listed in Attachment A to the Software License Agreement. All Software, Software Revisions and Software Versions provided by Aclara shall be subject to the terms and conditions of the Software License Agreement entered into by and between Aclara and Customer, including any mutually agreed to amendments thereto.
- T. “Software Version” means the base or core version of the Software that contains significant new features and significant fixes and is available to the Customer. Software Versions may occur as the Software architecture changes or as new technologies are developed. Software Versions are not provided or included as part of this Agreement.
- U. “Software Revision” means an update to the released version of the Software code which consists of minor enhancements to existing features and code corrections. Software Revisions are provided and included as a part of this Agreement.
- V. “Supplemental Services” means the services set forth on Schedule C hereto, and offered at the prices set forth on Schedule C hereto.
- W. “Target Response” refers to the period of time between a Customer’s initial contact with Aclara to report an issue (by phone, email or through the Customer Portal, thereby creating a ticket which has been assigned a number for tracking purposes) and Aclara’s initial contact back to Customer to begin investigation of the reported Issue.
- X. “Third Party Licensed Software” shall have the meaning as it is defined in Attachment A to the Software License Agreement.
- Y. “Training Services” means all training provided by Aclara to the Customer, including but not limited to Classroom Training, E-Learning Training and Customer-Site Training.
2. Term of Agreement. Subject to the termination provisions set forth below, this Agreement shall become effective as of the Effective Date. Maintenance Services shall begin upon Delivery of the Licensed Software; and shall continue in full force and effect for an initial term of one (1) year (“Initial Term”). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive Renewal Periods, unless sooner terminated by either Aclara or Customer as provided for in Section 6 of this Agreement.
3. Scope
- A. Software Maintenance. The Software maintained under this Agreement shall be the Software set forth in Attachment A to the Software License

Agreement. Any additional Software for which a license is obtained by the Customer from Aclara shall be automatically incorporated into this Agreement and the pricing for Maintenance Services adjusted accordingly.

- B. Hardware Maintenance. The hardware maintained under this Agreement shall include those items identified in Section 1.M. above, which have been purchased by Customer from Aclara.
- C. Levels of Maintenance Services. Two (2) Levels of Maintenance are available to Customer under this Agreement. Each level is identified and described in Schedule A, Levels of Maintenance Services attached hereto and made a part hereof. Customer may, at its option, change the Level of Maintenance for any subsequent Renewal Period, provided Customer gives Aclara written notice of the requested change no less than thirty (30) days prior to the end of the Initial Term or then current Renewal Period.
- D. Maintenance Services Provided. Aclara shall provide Maintenance Services at the level selected by the Customer as designated in Schedule D, Level of Maintenance Services Selected. The following are included as part of this Agreement:
- 1) Aclara Software Revisions and Patches. Aclara shall provide Software Revisions and Patches to the Customer as they become available. In support of such Software Revisions and Patches, Aclara shall provide updated user technical documentation reflecting the Software Revisions and Patches as soon as reasonably practicable after the Software Revisions and Patches have been released. Updated user technical documentation that corrects Errors or other minor discrepancies will be provided to Customers when available.
 - 2) Third Party Software Revisions. At the option of Aclara, periodic Software Revisions of the Third Party Licensed Software will be provided by Aclara without further charge provided the following conditions are met: (i) the Software Revision corrects a malfunction in the Third Party Software that affects the operation of the Software; and (ii) the Software Revision has, in the opinion of Aclara, corrected malfunctions identified in the Aclara Technology System and has not created any additional malfunctions; and (iii) the Software Revision is available to Aclara. Customer is responsible for obtaining and installing the Software Revision if the Third Party Software was not licensed to Customer by or through Aclara. Software Revisions to Third Party Licensed Software provided by Aclara are specifically limited to the Third Party Software identified and set forth in Attachment A to the Software License Agreement. Any associated Hardware or Hardware

modifications required to support revisions of Third Party Software are not included under the terms of this Agreement.

- E. Response to Issues. Aclara will provide verbal or written responses to Issues identified by the Customer in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times as defined in Schedule A, Level of Maintenance Services.
- F. Service Limitations. The Maintenance Services defined in this Agreement are applicable only to the Aclara Technology System, excluding third party equipment, and Third Party Software identified in Attachment A to Software License Agreement. The following limitations apply to Maintenance Services under this Agreement.
- 1) New Software Versions are not included as a part of this Maintenance Agreement. Such Software Versions will be offered to Customer for additional fees and costs.
 - 2) Services requested by Customer for assistance with installation or implementation of Software Revisions and Patches are not included in this Maintenance Agreement, but are offered to the Customer on a time and materials basis at the rates stated in Schedule B hereto.
 - 3) System administration, database maintenance and recovery, server malfunctions, database backup processes, management and training services, repair of Hardware under warranty or master station computer equipment repair are not included as part of this Agreement.
 - 4) Maintenance services shall be limited to the latest Software Revision, and the two previous Software Revisions provided to the Customer and currently maintained by Aclara in accordance with Section 4.E below. All code changes, Enhancements or fixes will be incorporated into the latest Software Revision or a future Software Revision. Aclara has no obligation to make code changes, Enhancements or fixes to previous Software Revisions.
 - 5) Maintenance Services do not include costs incurred by Aclara while investigating problems that are the result of Customer's negligence, misuse, or unauthorized application, alteration, or modification of the Software, Hardware, or interfaces to the equipment configuration, which shall be invoiced to Customer on a time-and-material basis at Aclara's then current published rates. The current rates are set forth on Schedule B hereto.

- 6) Services offered outside of Maintenance Services as noted in Schedule C, Supplemental Services attached hereto are not included in this Agreement. Such additional services are available and may be provided upon Customer's request at the fixed price established on Schedule C, and if no fixed price is established, in accordance with the terms and rates provided in Schedule B hereto.
- 7) During Renewal Periods, certain follow-up training is provided as outlined in Schedule A, Levels of Maintenance Services. Additional training is available and may be purchased. Please contact Aclara Customer Support at 1-800-892-9008 for training requirements and fees.
- 8) Aclara shall consider and evaluate the development of Custom Enhancements for the specific use of Customer and shall respond to Customer's requests for Custom Enhancements or other additional services pertaining to the Software. Such Custom Enhancements or additional services shall be subject to a separate charge in accordance with Aclara's rates then in effect. The current rates are listed on Schedule B hereto.
- 9) Maintenance Services do not include any problem arising from the use of components manufactured or authorized by anyone other than Aclara as an interface or peripheral to the Software.
- 10) Maintenance Services do not include any problem resulting from the combination of the Software with such other programming or equipment unless such combination has been pre-approved by Aclara.
- 11) Maintenance Services do not include any problem caused by changes to other software (including releases and patches), interfaces or systems connected to the Software including but not limited to changes of operating systems database servers, web servers, and communications software.
- 12) Maintenance Services do not include changes in workflow, practices, procedures, or processes that differ from the Software approved specifications.
- 13) Customer specific testing and reimplementation of Custom Enhancements are not part of this Maintenance Agreement

Customer will be responsible to pay Aclara for time or other resources provided by Aclara to diagnose or attempt to correct any of the items set

forth above in this Section 3.F., at Aclara's then current time and material rates. If Aclara incurs expense in servicing claims which are later shown to result from any of the above activities, Customer shall pay Aclara the costs associated with the performance of such service. Aclara's time and material rates are attached hereto as Schedule B. Aclara, in its sole discretion, may change these rates from time to time with thirty (30) days advance notice to Customer.

4. Customer Responsibilities

A. Backups. Customer shall maintain a current backup copy of all Software and databases. Customer shall perform regular daily backups of its data, and weekly backups of its entire system maintained under this Agreement.

B. Notification of Issues

During the hours between 6:30 a.m. and 6:00 p.m. Central Time on Monday through Friday, excluding Aclara Holidays:

- 1) Customer shall provide Aclara with timely notification of any new System issues by one of three methods:
 - a. By entering the problem on the Aclara Customer Portal (See Note 1 below);
 - b. Contacting Aclara Customer Support at **1-800-892-9008**; or
 - c. Emailing the problem to **support@aclara.com**

Note 1: Customer's utilization of the Aclara Customer Portal is the preferred method for Issue notifications.

- 2) Premier Level. Selection of the Premier level of services provides technical support for Severity 1 and 2 issues, 24 hours per day; seven (7) days per week; 365 days per year. All Severity 1 and 2 notifications submitted between the hours of 6:00 p.m. and 6:30 a.m. Central Time (Monday through Friday, Weekends and Aclara Holidays) must be submitted through the Aclara Customer Portal. If Customer cannot readily access the Aclara Customer Portal, Customer may contact Aclara at the "800" number listed above. Premier Level Customers will receive priority treatment over Base Level Customer when resources are allocated to competing, same-priority issues.
- 3) Base Level. Selection of the Base level of services ensures tickets will be processed on the next business day within the normal

business hours (6:00 p.m. and 6:30 a.m. Central Time) noted on Schedule A, Levels of Maintenance Service. If an emergency arises, Aclara does offer support for Issues arising during other than normal business hours at the Time and Material Rates set forth in Schedule B hereto.

- C. Technical Staff. Customer shall be responsible for maintaining sufficient suitably trained technical staff to operate and maintain the System on a day-to-day basis, including backing up the Software and report handling. Aclara training for designated contacts shall be made available to Customer.
- D. Support for Problem Investigation. Customer shall support all reasonable requests by Aclara as may be required in problem investigation and resolution. For troubleshooting purposes, Aclara may need remote system access to Customer's system.
- E. Maintain Current Software Revision. Customer shall install new revisions of defined Software in the production environment within six (6) months of receipt of the Software Revision. Customer shall maintain the required version of the Third Party Licensed Software, if applicable, specified by Aclara for each released Software Revision provided. Aclara Error Corrections will be provided on Aclara's latest release of the Software Revision.
- F. Additional Requirements. Customer is responsible for procuring, installing and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and obtain Maintenance Services from Aclara.
- G. Designation of Point of Contact. Customer shall assign an individual or individuals to serve as the designated contact(s) for all communication with Aclara during Issue investigation and resolution.
- H. Discovery of Errors. Upon discovery of an Error, Customer agrees, if requested by Aclara, to submit to Aclara a listing of output and any other data that Aclara may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.
- I. Test Environment. Customer should maintain a test copy of the Program and a separate test data base (other than Customer's production database) and shall test all new Software Revisions, Patches, Custom Enhancements, hotfixes and Error Corrections before integrating them into system productions.

- J. Technical Infrastructure Management. Customer shall manage hardware, software, network, storage, database, and peripheral devices for optimal operating performance and availability as required by end users.
 - K. Proactive Monitoring. Customer shall regularly monitor the hardware, software and infrastructure that support the Software application. Customer shall define system (OS/Oracle) level event logging, notification and escalation procedures, and detect and react to events. Customer shall regularly monitor event logs, server logs, and other debug information generated by the application to proactively identify problems.
 - L. Acceptance. On or before thirty (30) business days after Aclara's release of a new Custom Enhancement, hotfix or Error Correction that Aclara issues in response to an Error Report, Customer shall test and notify Aclara if there are any problems that need further resolution, or if Customer accepts the solution, Customer shall send such notification to Aclara's e-mail support address. If Aclara receives neither a request for further assistance nor an acceptance of the solution, the solution will be deemed accepted by Customer, and Aclara will have no further obligation to maintain the Software in its earlier form or version. Problems arising from the aforementioned items requiring further resolution will be included as part of this Agreement.
 - M. Routine System Management. Customer shall monitor the system logs and database and perform routine system and database management to ensure proper system operation.
5. Payment and Charges
- A. Basis of Support Service Fee. Pricing for Maintenance Services is calculated based on the cumulative Software License Fee paid by the Customer. The cumulative Fee is identified on Attachment A to the Aclara Software License Agreement as amended during the term of this Agreement. Pricing for each Support Level during the Initial Term is detailed in Schedule D, Level of Maintenance Services Selected hereto.
 - B. Billing Rate. The charge for the Service Level selected by the Customer and defined herein shall be at the annual Fee as identified in Schedule D, Level of Maintenance Services Selected hereof during the Initial Term of this Agreement. The annual Fee shall not be subject to adjustment during the Initial Term. Thereafter, during any subsequent Renewal Period, upon receipt of a 30 day notice, the Fee shall be subject to adjustment [not to exceed five percent (5%)] at the commencement of each Renewal Period.
 - C. Currency and Taxes. Prices and charges stated herein are in U.S. dollars and are exclusive of Import Duties, Tariffs, Provincial, Federal, State,

Municipal or other Government Excise, Sales, Use or like Taxes, all of which shall be Customer's responsibility.

- D. Suspension of Services due to Unpaid Invoices. In the event that any of the Charges remain unpaid for more than thirty (30) days after becoming due for payment, Aclara shall be entitled to withdraw the Maintenance Services.
 - E. Billing Frequency. Charges for the services provided under this Agreement shall be invoiced annually in advance. Payment of all such invoices shall be due and payable within thirty (30) days of the date of invoice.
 - F. Partial Services. Aclara reserves the right to invoice the Customer for any partial month services which may result from the Effective Date or date of termination of this Agreement, at a prorated charge.
 - G. Reinstatement Fee. In the event that Customer terminates or elects not to renew this Agreement and subsequently wishes to reinstate it, in addition to paying Aclara's then current fees and charges, Customer shall also pay Aclara, a reinstatement charge. The reinstatement charge shall include a lump sum equal to the total fees and charges which would have been paid for the period of lapse had the lapse not occurred: provided, however that if the lapse period is three (3) years or longer, Aclara shall have the option at its sole discretion to refuse to reinstate said Agreement
6. Termination
- A. This Agreement may be terminated by either party at any time by not less than thirty (30) days prior written notice.
 - B. Aclara shall have the right to terminate this Agreement at any time in the event of Customer's bankruptcy, insolvency, or any continuing non-payment for services in excess of thirty (30) days.
 - C. If either party shall at any time commit any breach of any covenant or agreement herein contained, and shall fail to remedy any such breach within thirty (30) days after the other party provides written notice specifying in reasonable detail such breach, the other party may, at its option, terminate this Agreement by prior notice in writing to such effect.
 - D. Aclara shall have the right to terminate or refuse Maintenance Services if, in Aclara's opinion, conditions at the equipment location represents a hazard to the safety or health of Aclara's personnel.

7. Warranties

- A. With respect to Services to be performed by Aclara under this Agreement, Aclara warrants that it will use reasonable care and skill in the provision of the Services. The Services shall be performed in a professional, competent and timely manner by Aclara Personnel appropriately qualified and trained to perform such Services. In the event of a breach of the foregoing warranty relating to Services occurs within twelve months from the date of the providing of such Services, Aclara shall, at its sole cost and expense, re-perform such Services. Re-performance of such Services shall be Aclara's sole liability and Customer's sole remedy for a breach of warranty.
- B. Except as expressly set out herein, all conditions and warranties, express or implied, statutory or otherwise (including but not limited to any concerning merchantability or fitness for a particular purpose) are hereby excluded to the extent permitted by law.

8. Limitation of Liability and Damages

The Parties have agreed to limit Aclara's total aggregate liability and exclude the recovery of certain types of damages. Notwithstanding anything contained herein to the contrary, except as to either Party's indemnification obligations, claims of breach of confidentiality, gross negligence or willful misconduct, the total aggregate liability of Aclara to the Customer for any and all liability arising out of or in connection with the performance of this Maintenance Agreement shall be limited to the then current annual Maintenance Services Fee paid by Customer to Aclara under this Agreement. IN NO CASE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, OR FOR THE LOSS OF BENEFIT, PROFIT, REVENUE OR DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This provision shall survive termination of this Agreement.

9. Excusable Delays.

Neither Party shall be liable to the other for failure or delay in performance of a required obligation if such failure or delay is caused by delays in shipment, delivery or taking receipt of any items sold hereunder, or loss or damage thereto, acts of God, acts of the other Party, acts of civil, regulatory or military authority, U.S. Governmental restrictions or embargoes, war, terrorism, riot, fires, strikes, flood, epidemics, quarantine, restrictions, default or delay by supplier, breakdown in manufacturing facilities, machinery or equipment, delays in transportation or difficulties in obtaining necessary materials, labor or manufacturing facilities due to such causes, or any other cause beyond a Party's reasonable control. In the event of such occurrence, performance shall be suspended to the extent made necessary

by such forces, and the time for performance shall be extended by a period equal to the time of delay. Upon the occurrence of such an event the Party whose performance is adversely affected shall promptly notify the other Party of the nature and extent of the occurrence and the anticipated period of delay in performance. Any Party so adversely affected shall use all Commercially Reasonable Efforts to minimize the extent of the delay in performance. No event of Force Majeure shall apply to any obligation by either Party to pay money.

10. Assignment.

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, provided however, that either Party may assign this Agreement to an Affiliate, or to an entity acquiring all or substantially all of the assets of Party if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Party is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Party shall provide the other Party with prompt written notice of such assignment. As used herein, "Affiliate" means a company which either owns or controls Party or which Party owns or controls directly or indirectly, or is under common control directly or indirectly with Party through a common parent company.

11. Waiver.

No waiver of any term of this Agreement by either party shall be deemed to be a further or continuing waiver of any other term of this Agreement.

12. Governing Law.

This Agreement shall be governed by the laws of the State of Missouri, U.S.A.

13. Severability.

In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. Notices.

Any notices required or permitted hereunder shall be in writing and shall be deemed to be given sent by United States registered or certified mail, postage prepaid, to the respective Parties at the addresses shown below. Notices so given shall be deemed received three business days from the date of deposit in the U.S. mails.

If to Aclara:

Aclara
Attn: Contracts Administration
945 Hornet Drive
Hazelwood, Missouri 63042

With a copy to:

ESCO Technologies Inc.
Attn: General Counsel
9900A Clayton Road
St. Louis, MO 63124-1186

If to Customer:

City of Marysville
Attn: Karen Latimer, Operations Manager
80 Columbia Avenue
Marysville, WA 98270

15. Confidentiality.

- A. The Parties understand that they may exchange information which they deem to be confidential. Customer agrees that the Licensed Software, Maintenance, the Documentation and all related information (collectively, the "Information") constitutes confidential and proprietary information of Aclara and as such, such information is deemed to be Company Private and Confidential. Customer agrees as a condition of this agreement to keep the Information confidential and not to disclose any of the Information in any manner whatsoever except that the Information may be disclosed to those of its officers, employees and agents who have a business need to know the Information for the sole purpose of operation of the Aclara Technology System. Licensee agrees to ensure that all persons who have access to the Information are informed of the confidential nature of the Information and directed to comply with the terms of this provision Customer's obligations with respect to non-disclosure of the Information will survive the termination of this Agreement.
- B. Notwithstanding the foregoing, Customer may disclose confidential information if such information is required to be disclosed pursuant to a legal, regulatory or judicial order or requirement, provided the Customer shall promptly give Aclara notice of such order or requirement so that Aclara may seek reversal, rescission or modification of such order or requirement. If Aclara is successful in having such order or requirement reversed, rescinded or modified prior to the Customer's required compliance, no disclosure shall be made if the order or requirement is reversed or rescinded and, if such order or requirement is modified, disclosure shall be made only in accordance with such modified order or

requirement. Any confidential information disclosed by the Customer pursuant to this paragraph shall, as between Aclara and Customer, remain subject to the duties and obligations with respect to confidential information set forth in this Agreement.

- C. Aclara acknowledges that Customer is subject to the State of Washington's Public Records Act (Chapter 42.56 RCW) (the "Act"). Customer agrees to promptly notify Aclara of any request made under the Act, such that Aclara may seek protection of its Information which may be exempt from disclosure under the Act.

16. Entire Agreement.

This Agreement, including Schedules A, B, C and D hereof, contains the entire agreement between the parties hereto relating to the subject matter hereof and may not be changed or modified in any manner, orally or otherwise, except by a written amendment signed by a duly authorized officer of each of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the respective dates set forth below.

Aclara Technologies LLC

By: _____

By: _____

Name: Terry M. Messmer

Name: _____

Title: Sr. VP, Operations & Finance

Title: _____

Date: _____

Date: _____

SCHEDULE A

LEVELS OF MAINTENANCE SERVICES

	Base	Premier
Technical Support: <i>Technical Support is available during the hours of 6:30am- 6:00pm Monday-Friday US Central Time, excluding Aclara Holidays and weekends, toll-free at 800-892-9008.</i>	X	
24x7 Technical Support: <i>Technical Support is available between the business hours of 6:30am to 6pm US Central Time by accessing the Aclara Customer Portal (or Toll-free at 800-892-9008, if access to the Customer Portal is not readily available to Customer). On-call technical support is available after 6pm and before 6:30am Central Time 24-hours a day/7 days a week/365 days a year, including Aclara Holidays and weekends. Such after hours support is provided for Severity 1 and 2 issues only. Non Severity 1 or 2 items will be addressed during the standard business hours of 6:30am-6:00pm US Central Time.</i>		X
Target Response Time – Severity 1: <i>Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the system. Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.</i>	<4 hours	<2 hours
Target Response Time – Severity 2: <i>Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.</i>	<1 day	<4 hours
Target Response Time – Severity 3: <i>Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.</i>	<2 days	<6 hours
Target Response Time – Severity 4: <i>There is a problem or issue with no loss of service and no business impact.</i>	<3 business days	<1 business day
Access to Aclara Customer Portal (www.aclara.com): <i>Customer will receive individual user names/passwords to the Aclara Customer Portal, as well as have access to Issue Management Reports for each case generated by Customer.</i>	X	X
Follow-up Aclara Classroom Training. <i>Training is available at Aclara's facilities as listed on the Aclara Customer Portal. The maximum number of Customer's employees attending any Classroom Training session is three (3).</i>	Aclara List Price	No Maximum Number of Classes
Aclara Web based E-Learning classes. <i>Certain E-Learning classes are available as listed on the Aclara Customer Portal to an unlimited number of Customer employees per course at the prices listed on the Aclara Customer Portal.</i>	Aclara List Price	No Cost

**SCHEDULE B
TIME AND MATERIAL RATES**

Additional Services may be provided at the Customer’s request in accordance with the following Time and Material Rates (hereinafter referred to as “Rates”¹).

Rates:

1. The following Rate categories have been defined for Aclara technical staff:

Aclara Technical Staff	Standard Hourly Rate	Off-Hours Hourly Rate	On-Call Hourly Rate
Sr. Technical Advisor	\$250	\$375	\$120
Product Manager	\$200	\$300	\$120
Project/Account Manager	\$195	\$290	\$120
Deployment Manager	\$195	\$290	\$120
Sr. Engineer	\$185	\$270	\$120
Sr. Business Analyst	\$185	\$270	\$120
DBA	\$185	\$270	\$120
Trainer	\$185	\$270	\$120
Engineer/Support Engineer	\$165	\$240	\$120
Business Analyst	\$165	\$240	\$120
Equipment Service/Installation	\$125	\$200	N/A
Administrative Support	\$125	N/A	N/A

2. Rate Adjustments.

The above hourly rates are in U.S. Dollars and are subject to adjustment upon thirty (30) days notice.

3. Service Charges.

A. Services will be charged at the applicable Rates as follows:

- 1) Standard Hourly Rates will apply to all service hours expended that do not exceed eight (8) consecutive hours during Aclara’s normal business hours of 6:30 a.m. - 6:00 p.m. Central Time, Monday through Friday, excluding Aclara Holidays.
- 2) Off-Hours Hourly Rates will apply to all service-hours expended beyond eight (8) consecutive hours during Aclara’s normal business

¹Rates exclude any applicable taxes and the like.

hours of 6:30 a.m. – 6:00 p.m. Central Time, Monday through Friday excluding Aclara Holidays.

- 3) If Aclara is requested to travel to the Customer's site to provide Services, the costs and expenses associated with such travel will be borne by Customer and invoiced as set forth below.
 - a. Travel Expenses: Unless otherwise mutually agreed, Aclara's travel expenses for On-Site Services shall include, but are not limited to airfare, lodging, meals, automobile rental, fuel, parking and will be charged to Customer on an actual basis.
 - b. Portal to Portal Invoices: Travel time for On-Site Maintenance Services will be invoiced to Customer on a portal-to-portal basis at Aclara's On-Call Hourly Rates as stated in Schedule B. The maximum hours for travel one-way are eight (8) hours.

4. On-Call Maintenance Service

On-Call Maintenance Service is a pre-arranged service by which Customer places a request to have Aclara technical staff accessible remotely for a specified time period. During the period for which Aclara technical staff is accessible, On-Call Hourly Rates will be charged. If Aclara technical staff must actually perform services during such period, the services will be billed at the appropriate Standard Hourly Rate or Off-Hours Hourly Rate, instead of the On-Call Hourly Rate. This service will be provided remotely via a telecommunications link.

5. Pre-Purchased Support Hours

- A. Pre-purchased software support hours are a block of hours intended to cover Software issues that are not covered under this Agreement, thereby allowing the Customer added flexibility to utilize Aclara's services without generating a Change Order. Should Customer request services which are not included in this Agreement and desire to utilize the pre-purchased hours, Aclara shall provide the Customer with an estimated number of hours required to resolve such request. The Customer may then advise Aclara either to stop working, sign and fund a Change Order, or use the pre-purchased support hours to resolve the request. Aclara reserves the right to decline the Customer's request, depending on the nature of the request.
- B. Pre-purchased support hours may be purchased at anytime during the term of this Agreement. Pre-purchased support hours expire

upon termination of this Agreement or within one year after purchase (regardless of use), whichever occurs first.

- C. Pre-purchased software support hours are offered in the following increments and volume discounts:

40 hours	Hourly Rates listed in Section 1 above.
80 hours	5% discount
120 hours	10% discount

SCHEDULE C SUPPLEMENTAL SERVICES OFFERED

The following Supplemental Services are offered under the terms of this Maintenance Agreement:

STAR

STAR System Monitoring Service

Tier 1 (1,000 or less MTUs)	\$ 2,000.00
Tier 2 (1,001 to 10,000 MTUs)	\$ 4,000.00
Tier 3 (10,001 to 25,000 MTUs)	\$ 6,000.00
Tier 4 (25,001 to 50,000 MTUs)	\$ 8,000.00
Tier 5 (50,001 to 100,000 MTUs)	\$10,000.00
Tier 6 (Greater than 100,000 MTUs)	Please contact Aclara for pricing

Aclara's STAR System Monitoring service is designed to monitor end to end data transfer from meter/MTU's to and from DCU's to the NCC, and provide health status of your AMI system to minimize system downtime. Aclara will deliver a weekly diagnostic report that will identify issues which could affect the successful operation of the STAR system. The major components of the system that will be analyzed include:

- Network Control Computer
- Data Collector Units
- Meter Transmitting Units
- Handheld programmers.

Aclara's proactive approach is to look for any condition out of the ordinary and will result in an immediate issue of a troubleshooting ticket and/or field work order based on the nature and severity of the condition. Example diagnostics include:

- Battery voltage loss
- Reading reception loss
- File processing errors

Customers will be notified about the issues found, the steps to be completed to solve the problem, and the escalation path. Aclara will provide:

- A snapshot of the STAR system's health
- Generation of incident tickets, investigation and if needed, scheduling of work orders
- Notification that the issue has been resolved and confirmation that the STAR system is operating within established normal parameters.

The STAR System Monitoring Service requires that Aclara have reliable remote connectivity to Customer's System.

STAR® DCU Maintenance Service

Tier 1 (Less than 15 DCUs)	\$ 500.00 per DCU per year
Tier 2 (16 to 30 DCUs)	\$ 450.00 per DCU per year
Tier 3 (31 to 50 DCUs)	\$ 400.00 per DCU per year
Tier 4 (Greater than 50 DCUs)	Please contact Aclara for pricing

In addition to the above unit prices, Customer shall also be responsible for any associated rental equipment and delivery costs to access the DCU.

Aclara's STAR® DCU Maintenance service is designed to provide for the on-site repair of any DCU that fails under normal operation after expiration of the standard DCU Warranty. The Service covers all electronics, the Aclara provided WAN module and solar cell, but excludes the mounting frame and mounting hardware.

The Service does **not** include maintenance or repairs attributable to the unauthorized attempt by Customer or any unauthorized person other than an authorized Aclara representative to repair or maintain a DCU. Maintenance or repairs resulting from casualty, catastrophe, extreme weather conditions or natural disaster (including lightning damage), accident, vandalism, civil unrest, war, misuse, neglect or negligence of Customer, or causes external to the DCU such as, but not limited to, failed or faulty electrical power, communication failure resulting from cell or other WAN network service interruption or any causes other than ordinary use. Maintenance or repairs to attachments or to any other devices not originally a part of the DCU and added without the prior written approval of Aclara. Repairs resulting from unauthorized changes, modifications or alterations of or to the DCU are not covered under this Agreement.

Upon notification from Customer of DCU failure, Aclara will diagnose the DCU. If a failure occurs to a DCU covered under the Agreement, the unit will be repaired or replaced, at Aclara's option, at no additional cost to Customer. If the Customer has entered into a System Monitoring agreement with Aclara, Aclara will normally identify the problem as part of its System Monitoring and will take the necessary actions to correct the problem. The Customer is responsible for arranging access to DCU sites before Aclara can take action.

Customer's electing the STAR® DCU Maintenance Service must purchase the service for all DCUs purchased by Customer; STAR® DCU Maintenance Service may not be purchased on an individual, case-by-case basis.

SCHEDULE D
LEVEL OF MAINTENANCE SERVICES SELECTED

Customer: City of Marysville

Address: 80 Columbia Avenue, Marysville, WA 98270

Billing frequency is annually in advance.

1. Selected Maintenance Level (check one) (Annual First Term Price shown)

[] Base @ 20% \$ 2,080 (if taxable by 8.6%, add \$178.88 for a total of \$2,258.88)

[X] Premier @ 30% \$ 3,120 (if taxable by 8.6 %, add \$268.32 for a total of \$3,388.32)

2. Supplemental Services:

[X] STAR System Monitoring Service \$ 6,000 (if taxable by 8.6 %, add \$516.00 for a total of \$6,516.00)

[] STAR DCU Maintenance Service \$12,600 (if taxable by 8.6%, add \$1,083.60 for a total of \$13,683.60)

Designated Contact Information

Name Karen Latimer

Title Operations Manager

Address 80 Columbia Avenue

Address Marysville, WA 98270

Telephone (360) 363-8161

Designated Contact Information

Name

Title

Address

Address

Telephone

Fax

Cellular Phone

Email Address

Designated Contact Information

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