

AGENDA ITEM SUMMARY

APPROVE IMPLEMENTATION AND THREE-YEAR SUBSCRIPTION CONTRACT WITH UTILITY CLOUD FOR ASSET MANAGEMENT & COMPUTER MAINTENANCE MANAGEMENT SOFTWARE

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Background Summary:

The City's water system includes over 80 miles of water mains, 1411 water valves and 475 fire hydrants.

The sanitary sewer system includes over 53 miles of gravity sewer mains and 1007 manholes.

The storm water system includes over 35 miles of storm water mains, 535 manholes and 1123 intakes.

We currently have over 127 vehicles and/or large equipment in our fleet.

There are over 70 individual pieces of equipment at the water plant alone that have maintenance requirements ranging from daily to every two years.

The city currently lacks a work order / asset management software solution that integrates well with our existing GIS software and can effectively generate work orders, track regulatory compliance data, track maintenance on assets and ensure asset reliability.

Utility Cloud will be used as a single solution for managing various internal programs for the water department such as hydrant flushing, cross-connection control inspections, valve exercising, daily sample logging, recording maintenance and inspection and more.

The Street Department will use it for fleet maintenance management, logging sewer inspections and repairs, street repairs, sewer lining projects, and manhole rehabs.

This program will allow us to attach operation manuals to equipment (pumps, motors, vehicles) for access in the field. It will also enable us to assign tasks to an operator, who can then indicate when the tasks are completed. We will also be able to auto recreate work orders based on time or other selected parameters, ensuring all tasks are completed efficiently and reliably.

This program will work with our current GIS software allowing us to build on the location data we have now and allow us to track maintenance, repair, and inspection history. This will hopefully allow us to become more proactive instead of reactive when it comes to maintenance. It will allow us to log parts and expenses for individual equipment and repairs. Having all of this information in one place will become our asset management plan and can assist in our prioritizing repairs and equipment replacements.

I talked to two long-time users out of Massachusetts who have both set up their cities to use it for many more things than listed above. The big selling point for Utility Cloud over others is free access to the "library," which includes original resources like logs and reports created and shared by other users. We will also have access to all modules: water, street, wastewater, code enforcement, fleet, and parks & rec. Other programs charge a fee to "build" additional reports after the initial implementation and charge to have access to additional modules.

Brad has reviewed the contract and worked with Utility Cloud to make the needed changes.

I have included a few screen shots from Utility Cloud. These screenshots are from other cities. With Utility Cloud, we would be able to reconfigure something like this, or completely build our own.

The contract for Utility Cloud for the first year will be \$28,500. Implementation will include Utility Cloud digitalizing inspection forms so that information can be logged in the field. This will assist in maintaining a schedule for routine, preventive maintenance at the plant/shop and in the field. This will give access to 10 users, with an annual subscription of \$15,000. We have budgeted \$30,000 in FY23 water budget to be used for this. We can start the implementation process now and will not be invoiced until July 1.

RESOLUTION NO. 64-22

RESOLUTION APPROVING PURCHASE OF ASSET MANAGEMENT SOFTWARE

WHEREAS, the city has many assets, including large pieces of equipment, fire hydrants, vehicles and water and sewer mains;

WHEREAS, a software package has been identified that will help track repairs, age and other factors for each of these assets;

WHEREAS, staff is recommending the purchase of this software from Utility Cloud for a price of \$58,500 that will cover a three year period with a 5% increase per year thereafter;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Charles City, Iowa hereby approves the purchase of asset management software from Utility Cloud for a price of \$58,500 for a three year period.

COUNCIL MEMBER moved the adoption of the foregoing Resolution;

COUNCIL MEMBER seconded the motion to adopt, and on roll call the voting was as follows:

AYES:

NAYS:

Passed and approved this 16th day of May, 2022.

Dean Andrews, Mayor

Attest:

Trudy O'Donnell, City Clerk



SAAS SERVICES ORDER FORM

Customer
City of Charles City
1709 Indiana Ave.
Charles City, IA 50616

Contact:
Cory Spieker
Water Superintendent
cory@cityofcharlescity.org
(641) 257-6315

Thank you for the opportunity to serve you. Please feel free to contact me directly with any questions, comments or concerns. To accept this order, please **print and sign this document, or fill out via DocuSign**, as well as print and initial the pages of the terms and conditions document, and return via email to **Keith Hodsden at keith.hodsden@utilitycloud.us**.

Software as a Service (SaaS) Invoicing Start Date: 05/15/2022

SaaS Services: Utility Cloud Operations Management System (the "Service(s)").

Invoicing Frequency: Annually

Term: The term of this Agreement shall remain effective until the three-year anniversary of the Effective Date. Term will auto renew for one year unless cancelled prior to the end of the renewal term with a five percent annual price increase.

Professional Services: AESC will use commercially reasonable efforts to provide Customer the professional services described in this document (the "Professional Services"), and Customer shall pay AESC the fees set forth in this document in accordance with the terms therein.

Product List:

	List Price (\$)	Term (years)	Subtotal	Discount (\$)	Total
Professional Subscription	15,000	3	45,000	-	45,000
Premium Implementation	20,000	1	20,000	(6,500)	13,500
0 Additional 5 User Pack	-	0	-	-	-
Total	35,000		65,000	(6,500)	58,500

Services Fees:

	Year 1	Year 2	Year 3	Total
Annual Subscription Fee	15,000	15,000	15,000	45,000
Implementation Fee	13,500	-	-	13,500
Total	28,500	15,000	15,000	58,500

Pricing presented above valid until: **6/1/2022**
Users seats included: **10**

SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this **15th day of May, 2022** (the "Effective Date") between Advanced Enterprise Systems Corporation ("AESC"), and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

Advanced Enterprise Systems Corp.

City of Charles City

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

TERMS & CONDITIONS

1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, AESC will use commercially reasonable efforts to provide Customer the Services. As part of the registration process, Customer will identify an administrative username and password for Customer's AESC account. AESC reserves the right to refuse registration of or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, AESC will endeavor to provide Customer with reasonable support services, through electronic mail or another online mechanism, in accordance with AESC's standard practice.

1.3 Customer will cooperate with AESC in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, including all information provided by AESC that is required for launch.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (the "Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by AESC or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with AESC's standard published policies then in effect (the "Policy") and all applicable laws and regulations and that it has all rights necessary to permit AESC to use the Customer Data (as defined below) as contemplated hereunder. Customer hereby agrees to indemnify and hold harmless AESC against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although AESC has no obligation to monitor Customer's use of the Services, AESC may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of AESC includes non-public information regarding features, functionality, and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to AESC to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge

to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. AESC shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Professional Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, AESC shall have the right to anonymize, collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, Customer Data and data derived therefrom), and AESC will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other AESC offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

4. PAYMENT OF FEES

4.1 Customer will pay AESC the then applicable fees described in the Order Form for the Services and Professional Services in accordance with the terms of the applicable SOW (the "Fees"). AESC may increase fees annually without written notice by no more than the Consumer Price Index (CPI). If Customer believes that AESC has billed Customer incorrectly, Customer must contact AESC no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to AESC's customer support department.

4.2 AESC may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by AESC thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on AESC's net income.

5. TERM AND TERMINATION

5.1 The initial term of the Agreement will be as set forth and agreed by the parties in the Order Form. Either party may terminate this Agreement if the other party (i) materially breached this Agreement and has not cured such breach within 30 days after receiving notice (if curable), without prejudice and in addition to any right or remedy that the non-defaulting party may have under this Agreement or the applicable law, or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. At the end of the initial term, the term shall automatically renew for additional 12-month periods unless Customer notifies AESC in writing, at least 30 days prior to the end of the then-current term, that it chooses not to renew (initial subscription term, with any renewal subscription terms, the "Term").



Upon any termination, AESC will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter AESC may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. WARRANTY AND DISCLAIMER

AESC shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Professional Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by AESC or by third-party providers, or because of other causes beyond AESC's reasonable control, but AESC shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, AESC does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND AESC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, AESC AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF PROFITS OR BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND AESC'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO AESC FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT AESC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. GOVERNMENT MATTERS

Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

9. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with AESC's prior written consent. AESC may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind AESC in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Notwithstanding anything to the contrary in this Agreement, the parties acknowledge that the obligations of the Customer under this Agreement are subject to compliance with applicable open meeting or public records laws of the State of Iowa. This Agreement shall be governed by the laws of the State of Iowa without regard to its conflict of laws provisions.

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