ORDINANCE NO. 2023-089

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH EATON FOR THE PURCHASE AND INSTALLATION OF AUTOMATIC METERING INFRASTRUTURE FOR WATER AND ELECTRIC SYSTEMS AND DECLARING AN EMERGENCY

WHEREAS, the City wishes to replace the existing water and electric AMI system hardware as it has reached the end of its useful life; and

WHEREAS, the City wishes to enter into an agreement with Eaton for the purchase and installation of AMI associated hardware, equipment, and software systems as outlined in the attached exhibit;

WHEREAS, bids were opened in April, 2023, with the lowest and best bid being submitted by Eaton in the amount of $ 4,244,407.96; and

WHEREAS, the City Manager may authorize change orders up to 10% of the bid amount.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lebanon, Ohio:

SECTION 1. That the City Manager be authorized and directed to execute an Agreement between the City of Lebanon and Eaton, in substantially the same Form as the agreement set forth in 'Exhibit 1".

SECTION 2. This Ordinance is hereby declared an emergency measure for the immediate preservation of the public peace, health safety, morals and welfare of the City of Lebanon, Ohio; and, for the further reason, to allow for the project to begin in a timely manner so as to replace water, sewer, and electric consumption reading equipment that has reached the end of its useful life, then this ordinance shall take effect immediately upon its adoption.

_____
Mayor

Passed:

Attest:

_____
Clerk of Council

Sponsors:
All Members of Council

City Manager	City Auditor	City Attorney

4. Additional Supporting Documentation

Eaton's Standard Master Agreement *(CONFIDENTIAL, PROPRIETARY or TRADE SECRET)*

Eaton's Master Purchase Agreement includes our Maintenance and Service Agreement as well as our Software License and Service Level Agreements. It is supplied below for the City's review. Eaton proposes to mutually negotiate contract terms with the City at the appropriate time.

F:T•N

Powering Business Worldwide

Eaton
3033 Campus Drive • Suite 350N
Minneapolis, MN 55441
763.595.7777—Main
763.543.7776—Fax

Master Purchase Agreement

Licensor	Licensee
Eaton/Cannon Technologies, Inc.	**City of Lebanon**
3033 Campus Drive, Suite 350N	**50 S. Broadway**
Minneapolis, MN 55441	**Lebanon, Ohio 45036**

This MASTER PURCHASE AGREEMENT (this "Agreement") is dated <date>, and is between Eaton Corporation ("Eaton") and **the City of Lebanon**, a <company qualifier> ("Purchaser"). Each of the foregoing may be referred to in this Agreement, individually, as a "Party", and collectively, as the "Parties".

Recitals

Purchaser desires to implement an Advanced Metering Infrastructure ("AMI") system that provides the ability to remotely interrogate electric meters as well as the option, if selected by Purchaser, to monitor and control portions of the distribution system.

Eaton and/or an affiliated entity of Eaton (each, an "Affiliate") will provide products and software to Purchaser for implementation of an AMI system.

Purchaser will install the AMI system within its distribution system.

Eaton and/or an Affiliate will provide training, consulting, and project management services, as agreed between the Parties, to assist Purchaser in implementing and using the AMI system.

The Parties therefore agree as follows:

1.   Term
The initial term of this Agreement commences on the date hereof and ends _ years thereafter (the "Initial Term"). After the Initial Term, this Agreement (will automatically renew on the same terms and conditions for up to four (4) additional terms of one (1) year each (each, a "Renewal Term") unless written notice of intent not to renew is given by either Party at least sixty (60) days prior to the termination of the Initial Term or any Renewal Term.

2.   Releases
The parties acknowledge that Eaton and/or an Affiliate may perform a particular scope of work or portion thereof, and for all purposes of this Agreement, performance of such work by an Affiliate shall be deemed performance by

The information on this page is CONFIDENTIAL, PROPRIETARY or TRADE SECRET.

F:T•N
Powering Business Worldwide

Eaton, and such Affiliate shall be referred to in this Agreement for all purposes as "Eaton". The scope of work to be performed by Eaton and products to be supplied by Eaton will be defined in individual releases issued pursuant to the terms of this Agreement ("Releases"), the form of which is attached as Exhibit A. Each Party must agree to a Release. All software provided under this Agreement will be designated in a Release but will be subject to its standard license agreement.

3.   Order of Precedence

The provisions contained in this Agreement comprise the full, complete, and final contract between Eaton and Purchaser with respect to the products, services and software sold pursuant to this Agreement. Any prior oral or written representations shall be of no force and effect. Any additional terms set forth on any other document or form of Eaton or Purchaser or shall be considered to be material alterations of this Agreement and are expressly rejected. None of the terms or conditions contained herein may be added to, modified, superseded, or otherwise altered, except in writing and signed by duly authorized representatives of both Parties. If there are conflicts among the terms of this Agreement and other documents referenced in this Agreement, the following order of precedence will apply:

      a.   For software, the terms of the applicable software license agreement.

      b.   The terms and conditions contained in this Agreement.

      c.   The terms and conditions contained in any Release issued pursuant to this Agreement.

4.   Changes in Specifications

Specification changes requested by Purchaser are subject to written acceptance by Eaton, to price revisions and to any adjustments necessary to cover material procured and processed and labor expended prior to receipt by Eaton of revised specifications.

5.   Delivery

Delivery of products will be made EXW (Incoterms 2000) Eaton's facility, with transportation arranged by Eaton on behalf of Purchaser. Such costs will be prepaid by Eaton and added to invoices at a standard rate of 2% of line item purchase price for shipment in the contiguous 48 states and at appropriate quoted rates elsewhere. If Purchaser requests transportation in a manner different from that arranged by Eaton, Eaton will invoice Purchaser for such costs. Purchaser may request shipment freight collect.

6.   Returns

Material returned for credit or replacement may be accepted by Eaton only if a written return authorization and related instructions have previously been obtained by Purchaser from Eaton's manufacturing location, which may be issued at Eaton's sole discretion. Only standard products of current design, regularly carried in Eaton's stock, and in saleable condition may be accepted for credit. Applicable restocking fees apply to return for credit transactions not to exceed 25% of original invoiced price.

7.   Cancellation

Orders may be canceled on the condition that Purchaser shall be liable to and pay Eaton for reasonable cancellation charges which shall include, among other things, charges for completed work allocated to Purchaser's order at the time of termination of work, the unit selling price and all costs, direct and indirect, for work in process, as well as costs resulting from the cancellation, and a reasonable profit.

8.   Title

Title to and right to possession of (but not risk of loss or damage to) any goods sold hereunder remains with Eaton until all payments are made in full by Purchaser, and Purchaser agrees to do all acts necessary to protect such right and title.

Eaton will retain all intellectual property rights to its software and hardware, and any modifications thereto.

9.   Payment

Purchaser will make payments net thirty (30) days from date of invoice in U.S. Dollars. Any invoices not paid when due will be subject to a late charge at the rate of 1.5% per month or the highest rate allowable by law, whichever is lower. If Eaton institutes court action to collect any past due amounts, Eaton may recover all costs associated with the proceedings, including attorney's fees. If Purchaser is in default for any payments to Eaton under any order, Eaton may withhold shipment of such order or any other outstanding order. If, in the reasonable judgment of Eaton, Purchaser's financial condition at any time poses an unacceptable credit risk, Eaton may require full or partial payment in advance or cancel any outstanding orders and receive reimbursement for Eaton's reasonable cancellation charges. In the event of bankruptcy or insolvency of Purchaser, or if any such proceeding is brought

by Purchaser under any bankruptcy or insolvency laws, Eaton may cancel any outstanding orders at any time during the period allowed for filing claims, and Eaton will receive reimbursement for its reasonable cancellation charges. The rights of Eaton hereunder are cumulative and in addition to all rights available to Eaton at law or in equity.

10. Pricing
Pricing shall be as set forth in each Release.

11. Taxes
Prices do not include sales, use, excise, or other taxes. All such taxes will be paid by Purchaser.

12. Limited Warranty
Eaton warrants to Purchaser that the products provided under this Agreement will be free from defects in material and workmanship when used in accordance with Eaton's operating instructions. Eaton will, if given prompt notice by Purchaser, correct, by repair or replacement at Eaton's option, any defect that appears under proper and normal use of the purchased products within one (1) year after installation of the products, but not exceeding eighteen (18) months from date of shipment. The furnishing of warranty repairs or replacement will not extend the original warranty period. Eaton will not be liable for the following costs relating to the products to be repaired or replaced: (a) removal; (b) reinstallation; (c) transportation to Eaton's facilities; or (d) any other cost incidental to the foregoing. However, Eaton will pay for transportation of repaired or replaced products from Eaton's facilities to Purchaser's facilities.

Eaton warrants to Purchaser that the services provided under this Agreement will be free from material errors and from defects in workmanship, for a period of one year after the provision of the service at issue. Eaton, if given prompt notice by Purchaser, will, at its option, re-perform the services at issue or refund the purchase price of the services at issue.

The options under this limited warranty are Purchaser's sole and exclusive remedy for failure of the products or services provided under this Agreement to be as warranted.

EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, EATON MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS OR SERVICES, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THEIR MERCHANTIBILITY, THEIR QUALITY, THEIR NONINFRINGEMENT, OR OTHERWISE. EATON'S LIABILITY UNDER THIS WARRANTY SHALL BE LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES AT ISSUE. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS OR FOR ANY SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, STATUTORY DAMAGES, EXEMPLARY DAMAGES, LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE.

13. [Reserved.]

14. Tests
The conditions of any test of the products or services will be agreed in writing, and Eaton will be notified of, and may be represented at any such tests.

15. Protection Against Infringement
In the event any products manufactured by Eaton are made in accordance with drawings, samples or specifications designated by Purchaser, Purchaser will defend, indemnify and hold Eaton harmless, at its own expense, from any and all damages, costs and expenses (including attorney's fees) relating to any claim that such equipment, or the use thereof, infringes any patents, foreign or domestic.

In the event any products are designed by Eaton, and the products have not been modified by Purchaser or used in combination with other products, Eaton agrees to defend, indemnify, and hold Purchaser harmless against any damages awarded by a court of final jurisdiction in any suit for the infringement of any United States patent by reason of the sale or use of such products, provided that Eaton is notified promptly in writing of any claim or suit and is permitted to assume the full control of the defense against any such claim and Purchaser provides reasonable assistance for such defense; provided, however, that Eaton shall have no indemnity or other obligation

for damages arising from or related to Purchaser's negligence or willful misconduct. In case any judgment rendered in such suit becomes final (beyond right of appeal), and where Purchaser has complied with the foregoing provisions to Eaton's satisfaction, Eaton agrees to pay damages awarded against Purchaser. Subject to the above limitations, if Eaton agrees to a settlement or is otherwise enjoined from manufacture, use or sale of products (or any parts thereof), in a suit in which the products are held to infringe (beyond right of appeal), then Eaton may, at its own expense, either: (a) procure for Purchaser rights to the patent; or (b) modify or replace the products with non-infringing products accomplishing the same purposes; or (c) withdraw the products and refund to Purchaser the purchase price of the products. Purchaser's remedies for damages resulting from the infringement or claimed infringement of any patent by the products are exclusively limited to the provisions of this paragraph.

16. Limitation of Liability
NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, STATUTORY DAMAGES, EXEMPLARY DAMAGES, LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EITHER PARTY'S LIABILITY FOR DAMAGES SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE PRODUCT, SERVICE, OR SOFTWARE FROM WHICH THE CLAIM AROSE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER A PARTY'S LIABILITY ARISES FROM BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), STRICT LIABILITY, BY OPERATION OF LAW, OR OTHERWISE.

17. Assignment
It is agreed that neither Party shall delegate the performance of any obligation hereunder or assign any rights arising under this Agreement to any third Party without written consent of the other Party.

18. Safety and Compliance with Codes and Other Laws
Both Parties shall at all times be responsible for complying with all applicable federal and state laws, ordinances, regulations, and codes, including those relating to the safety of all persons and property. This shall include obtaining all required licenses and permits.

As a condition of purchase, Purchaser shall comply with all applicable export control laws and regulations of the United States, the European Union and any other country having proper jurisdiction and shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all products, services and technology delivered under these terms and conditions. Purchaser shall provide all information requested by Eaton relating to Eaton's voluntary or mandatory compliance with any law or regulation, and Purchaser shall indemnify Eaton for any losses incurred by Eaton arising from Purchaser's failure to provide the information requested by Eaton.

Purchaser represents and warrants that it has not and will not in the future do any of the following: (1) offer, promise, or give financial or any other advantage, directly or indirectly, to any Party directly or indirectly interested in this transaction, intending to improperly obtain or retain a business advantage; or (2) request, agree to receive, or accept financial or other advantage, directly or indirectly, in return for acting or failing to act in an honest, proper, and transparent manner or as a reward for improper act or omission.

19. Insurance
Eaton shall furnish to Purchaser a certificate of insurance showing minimum coverage of general and product liability insurance with combined single limits of five million dollars (US$5,000,000) per occurrence, which may include a combination of primary and excess liability insurance. The certificate of insurance shall list the insurance company, amount of coverage, policy numbers, expiration date, and include a 30-day-notice-of-cancellation-to-Purchaser clause.

20. Proprietary and Confidential Information
Each Party ("Receiving Party") acknowledges that the other Party ("Disclosing Party") has "Proprietary Information", including but not limited to, business information, technical information not in the public domain, including trade secrets which the Receiving Party will receive, learn, view, and/or access. The term "Proprietary Information", hereunder includes: (i) written materials delivered to the Receiving Party marked as confidential or

similar legend of confidentiality, (ii) visual information indicated as confidential by means of written notices or signs, (iii) oral information that is indicated orally to be confidential and subsequently summarized and designated as confidential in a written memo sent to the Receiving Party within thirty (30) days and (iv) disclosed in the form of tangible products or materials transmitted to the Receiving Party with an accompanying written memorandum. It is the responsibility of each Party to identify its own information which it deems to be "Proprietary Information". All Proprietary Information disclosed after the execution of this agreement shall be received by the Receiving Party under the terms of this Agreement.

Disposal of Proprietary Information. A Receiving Party shall return or properly dispose of all Proprietary Information (including tangible products or materials) received from the Disclosing Party upon request of the Disclosing Party except that the Receiving Party may retain in the office of its legal counsel one copy of written Proprietary Information and written documentation of verbal or visual Proprietary Information, for record purposes only.

Obligations of a Receiving Party. A Receiving Party shall protect the disclosed Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use or disclosure of the Information, as the Receiving Party uses to protect its own Proprietary Information of like nature. Proprietary Information will be restricted to those employees, agents, or contractors of each Party having a need-to-know. In the event that the Receiving Party is required by judicial or administrative order to disclose Proprietary Information, the Receiving Party shall, unless otherwise prohibited by law, promptly notify the Disclosing Party prior to disclosing any Proprietary Information so that the Disclosing Party may have a reasonable opportunity to seek protective measures. If, in the opinion of its legal counsel, the Receiving Party must disclose Proprietary Information to comply with any order contemplated by this section, Recipient shall only disclose such portion of Proprietary Information necessary to satisfy such order.

Period of Confidentiality. The obligations of confidentiality set forth above shall remain in effect for a period of three (3) years after the termination of this Agreement.

Exceptions to Proprietary Information. This Agreement imposes no obligation upon a Receiving Party with respect to information that: (i) was in the Receiving Party's possession before receipt from the Disclosing Party; (ii) is or becomes available to the public through no fault of the Receiving Party; (iii) is received in good faith by the Receiving Party from a third-party and is not subject to an obligation of confidentiality owed to the third-party; (iv) is independently developed by the Receiving Party without reference to information received hereunder; or (v) is disclosed by Disclosing Party to a third-party without a duty of confidentiality on the third-party.

21. Waiver

The waiver by either Party of any provision hereof will not constitute: (a) a waiver of any other provision hereof; or (b) a waiver of a subsequent breach of the same provision.

22. Governing Law, Dispute Resolution

The formation, validity, interpretation and implementation of this Agreement, as well as any dispute, claim or controversy arising out of or relating in any way to this Agreement, shall be governed exclusively by the laws and regulations of the State of Ohio, without regard to Ohio's conflicts of laws provisions. If any dispute between the Parties arises under or in relation to this Agreement and the amount in controversy is no greater than $200,000, then the dispute shall be adjudicated in state or federal court in Cleveland, Cuyahoga County, Ohio. If the amount in controversy is greater than $200,000, the dispute will be resolved by binding arbitration to be held in Cleveland, Ohio in accordance with the Commercial Rules of the Arbitration Association of America. The language of the arbitration will be English. The prevailing Party in any suit will be entitled to recover its reasonable and necessary attorney fees and other litigation costs from the other Party.

23. Force Majeure

Neither the Purchaser nor Eaton shall be considered in default in the performance of its obligations under this Agreement to the extent that the performance of its obligations is prevented or delayed by any cause beyond its or its suppliers' control, including without limitation: acts of God; acts or omissions of governmental authorities; acts of public enemy; wars; blockades; riots; civil disturbances; floods; hurricanes; tornadoes; unanticipated lack of materials; strikes and any other similar events, acts, or conditions. Eaton shall not be responsible for any failure to perform, or delay in performance of, its obligations resulting from the COVID-19 pandemic or any future epidemic, and Purchaser shall not be entitled to any damages resulting thereof.

24. Severability

Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Purchaser and Eaton, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

25. Notice

Any notice required by this Agreement or given in connection with it shall be in writing and shall be given to the appropriate Party by personal delivery, certified mail or other recognized delivery service that confirms delivery.

Notice to the Purchaser shall be sent to:
Name:_____
Organization:_____
Address:_____
City/State/Zip: _____

Notice to Eaton shall be sent to:
Controller
Eaton Corporation
3033 Campus Drive
Suite 350N
Minneapolis, MN 55441

with a copy to:
Law Department
Eaton
1000 Eaton Blvd., Mail Code 4N
Cleveland OH 44122

26. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, together, shall be one and the same instrument. Facsimile or .pdf transmission of any signed, original document will be the same as delivery of an original document.

27. Attachments

The following attachments are hereby made a part of this Agreement.

27.1   Addendum A. Hosted Services Agreement
27.2   Addendum B. Pricing

The parties are signing this agreement on the date stated in the introductory clause.

Eaton Corporation   **City of Lebanon**

 Signed:_____   Signed:_____

 Name:_____   Name:_____

 Title:_____   Title:_____

EAT•N
Powering Business Worldwide

Addendum A. Software License and Maintenance Agreement

This Software License and Maintenance Agreement (the "Agreement") is entered into and effective as of the later of the two signature dates below between Eaton Corporation ("Licensor") and **the City of Lebanon** ("Licensee").

WHEREAS, Licensor and/or an affiliated entity of Licensor (each, an "Affiliate") is the developer and owner of a set of programs, technology, and information collectively referred to as Yukon®;

WHEREAS, Licensor and/or an Affiliate of Licensor owns or has the right to license the software set forth in Appendix A (the "Licensed Software");

WHEREAS, Licensor and/or an Affiliate may perform a particular scope of work or portion thereof as set forth in this Agreement, and for all purposes of this Agreement, performance of such work by an Affiliate shall be deemed performance by Licensor, and such Affiliate shall be referred to in this Agreement for all purposes as "Licensor"; and

WHEREAS, Licensee desires to obtain a license to use the Licensed Software.

NOW, THEREFORE, in consideration of the mutual covenants herein contained in this Agreement, the parties agree as follows:

1.   License and Rights

1.1. <u>License</u>. The Licensed Software is licensed, not sold. This Agreement gives Licensee only such rights to use the Licensed Software as specifically set forth in this Agreement and Licensor reserves all other rights. Licensee shall use the Licensed Software only as expressly permitted in this Agreement. Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a nontransferable, perpetual, nonexclusive license only:

(i) to install and use the Licensed Software, in object code form only, and any enhancements, improvements or modifications of the Licensed Software provided by Licensor to Licensee pursuant to this Agreement or a separate Software Services Agreement, on one (1) Yukon server for use in a production environment;

(ii) to make one (1) identical back-up copy of the Licensed Software for archival purposes;

(iii) to have one (1) server operational on a backup computer for use when the primary system is unavailable or to test software releases and data base changes;

(iv) to use any documentation provided with the Licensed Software for Licensee's internal purposes; and

(v) to operate the Licensed Software solely for the Business Unit or Department assigned to the license. Licensee shall not have the right to sell, sublicense or distribute or otherwise dispose of the Licensed Software and/or know-how to third parties without the prior written consent of Licensor.

1.2 <u>Licensed Software Revision</u>. Licensor may revise <u>Appendix A</u> by adding or deleting software modules without re-executing this Agreement by executing a contract revision replacing <u>Appendix A</u> with an updated version as long as such contract modification is done in accordance with Section 10.4.

1.3. <u>Ownership</u>. Licensee acknowledges that Licensor or its licensors own all proprietary rights, including patent, copyright, trade secret and other intellectual property rights, in and to the Licensed Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Licensed Software provided to Licensee under this Agreement.

The information on this page is CONFIDENTIAL, PROPRIETARY or TRADE SECRET.

E·T·N
Powering Business Worldwide

1.4 <u>Restrictions</u>. Licensee agrees not to reverse engineer, alter, decrypt, extract, translate, disassemble, decompile or otherwise attempt to create any source code which is derived from any of the Licensed Software, nor shall Licensee attempt to create any passwords to allow unauthorized activation of the Licensed Software. Licensee shall not create any derivative works of or modify, enhance or otherwise alter the Licensed Software in any way.

1.5 <u>Proprietary Rights</u>. All right, title and interest in and to all Licensed Software and any accompanying documentation, manuals or other materials supplied under this Agreement, and any reproductions made thereof, remain with Licensor or its licensors. Licensee shall not remove any product identification or notices of proprietary rights from the Licensed Software.

2. Software Maintenance

2.1 <u>Software Maintenance</u>. Licensee shall subscribe to software maintenance for the Licensed Software ("System Support") for a one year term. Subsequently, such System Support services shall automatically renew for one-year terms unless either party provides written notice to the other party of intent not to renew the System Support services. Licensee must provide written notice of its intent not to renew System Support at least thirty (30) days prior to the end of the then-current one year maintenance period. Licensor must provide written notice of its intent not to accept renewal of System Support services at least six months prior to the end of the then-current one year maintenance period. Licensor agrees to refund any pre-paid one-year maintenance fees for future support period no longer under the support agreement. The System Support first year term begins on the date of software delivery. System Support shall be provided for an annual fee as indicated in <u>Appendix A</u>. First year system support will be invoiced sixty (60) days from the date of shipment of the Licensed Software from Licensor to Licensee. The System Support charges shall escalate annually by 3%. System Support will include the following:

a. Corrections of material defects in the Licensed Software so that the Licensed Software will operate substantially as described in the documentation provided with the Licensed Software;

b. Periodic updates of the Licensed Software that may incorporate (i) corrections of any substantial defects, (ii) fixes of any minor bugs, and (iii) at the sole discretion of Licensor, enhancements to the Licensed Software; and

c. With each new standard release, corresponding documentation is prepared for Licensee. The documentation includes a report which describes the enhancements, reported documented problems, and new developments to the Licensed Software; and

d. Staffed telephone support to assist Licensee in the use of or resolve issues with the Licensed Software. System support procedure details, support office hours, and contact information is provided in the System Support Procedure addendum.

2.2 <u>Services Not Included</u>. System Support does not include:

a. On-site support.

b. Licensed Software training.

2.3 <u>Other Services</u>. In addition to System Support, Licensor shall make available to Licensee installation, consulting, installation support, and training. All such services shall be provided pursuant to a separate services agreement between Licensor and Licensee.

3. Obligations of Licensee

3.1 <u>Installation</u>. Licensee agrees to install all corrections of substantial defects, minor bug fixes and updates, including any enhancements, for the Licensed Software in accordance with the instructions and as directed by Licensor.

3.2 <u>Error Documentation</u>. Upon detection of any error in the Licensed Software, Licensee shall provide Licensor a listing of output and any other data, including databases and backup systems that Licensor

reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

3.3 Verification of Licensed Software Used. No more frequently than once per year, Licensor may at its expense visit Licensee's premises and conduct an audit for the purposes of verifying Licensee's compliance with the terms of this Agreement. If any Licensee report or audit should disclose improper use of the Licensed Software, Licensee shall either immediately reduce its usage of the Licensed Software to a level equal to that amount purchased pursuant to this Agreement, or immediately issue to Licensor a purchase order for an amount that is equal to or greater than the difference of that which is purchased and the amount used. Licensee agrees to maintain, during the course of the Agreement and for a period of one year after any termination or expiration, records made by or for Licensee that reasonably allow the parties to determine the usage of the Licensed Software by Licensee.

4. Warranty

Licensor warrants to Licensee that for a period of sixty (60) days from the date of shipment of the Licensed Software from Licensor to Licensee, the Licensed Software shall perform in substantial conformity with any specifications or performance criteria published in any documentation provided by Licensor to Licensee with the Licensed Software. Licensor does not warrant that the use of the Licensed Software will be uninterrupted or error-free. Licensor warrants that the Licensed Software accurately receives, provides and processes date data, within from and between centuries, leap years and other years. Licensee shall have no rights with respect to the foregoing warranties and the warranties shall be deemed not to apply to Licensee unless: (i) the Licensed Software is used on the designated system a) in a proper manner, b) in compliance with this Agreement and with all operating instructions, documentation, specifications, interfaces and requirements, and c) solely for use as required to operate the Licensed Software as set forth in the documentation; (ii) no modifications or alterations to the Licensed Software have been made other than by Licensor or other than with Licensor's prior written consent (provided, however, that no warranties shall apply to the product of Licensee's designs, specifications, or instructions); (iii) no non-Licensor approved software has been installed onto the Licensor server, or any non-Licensor approved data insertion methods have been utilized, and (iv) no act or cause beyond the reasonable control of Licensor has occurred that was a substantial factor causing the failure of the Licensed Software to meet the warranty terms.

In the event that Licensee claims that Licensor has breached any of its obligations hereunder, Licensee's sole and exclusive remedy for a breach of this limited warranty shall be that Licensor will at its option, either repair or replace any defective Licensed Software so that the Licensed Software performs in accordance with the warranties set forth above. Licensee and Licensor agree that in the event that Licensor determines that this exclusive remedy is unable to bring the Licensed Software into conformity with the warranty, Licensee's exclusive remedy shall be to terminate this Agreement and receive a refund from Licensor of the license fee previously paid to Licensor for the nonconforming portion (application module, gateway, etc.) of the Licensed Software. In the event the nonconforming portion of the Licensed Software is the Licensor's Server Software, Licensee's exclusive remedy shall be to terminate this Agreement and receive a refund from Licensor of the license fee previously paid to Licensor for the nonconforming portion and all portions functionally dependent on the nonconforming portion of the Licensed Software. LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN RELATION TO THE LICENSED SOFTWARE OR THEIR USE BY LICENSEE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSOR DOES NOT WARRANT THAT LICENSEE OR ANY USER OF THE LICENSED SOFTWARE WILL ACHIEVE ANY PARTICULAR RESULT OR BENEFIT FROM THE USE OF THE PRODUCT LICENSED OR SERVICE RECEIVED HEREUNDER.

5. Infringement

Licensor shall defend or settle, at its expense, any suit or proceeding brought against Licensee to the extent that it is based on a claim that any Licensed Software used within the scope of the license granted under this Agreement directly infringes a unaffiliated third party patent, and will pay any costs and damages finally awarded against Licensee in such action which are attributable to such claim or the amount of any final settlement, provided that: (a) Licensor is notified promptly in writing by Licensee of any notice of such claim and is given the exclusive authority required for the defense of such claims and reasonable assistance from Licensee in defending such claims, at Licensor's expense; and (b) should any Licensed Software become, or in Licensor's opinion is likely to become, the subject of any such claim, that Licensee shall permit Licensor

either to procure for Licensee the right to continue using such program, to replace or modify the program so that it becomes non-infringing, or to grant Licensee credit for such Licensed Software on a five (5) year straight-line depreciated basis and accept its return.

Licensor shall have no liability for any claim of infringement based upon the use of other than a current unaltered release of the Licensed Software, upon use or combination of the Licensed Software with other programs or upon a modification of the Licensed Software by any party other than Licensor without Licensor's prior written consent. In the event that any preceding exceptions apply, or actions, statements or admissions by Licensee have a material adverse impact on such claim, and as a result Licensor incurs any costs or damages, including reasonable attorney's fees, Licensee shall indemnify and hold Licensor harmless from and against all such expenses.

THE FOREGOING STATES THE ENTIRE LIABILITY OF LICENSOR AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR THE LICENSES GRANTED HEREUNDER.

6. Limitation of Liability
LICENSOR'S TOTAL LIABILITY TO LICENSEE UNDER THIS AGREEMENT IS LIMITED TO THE LICENSE FEES PAID BY THE LICENSEE FOR THE LICENSED SOFTWARE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

7. Consequential Damages Waiver
IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY LICENSEE OR SUCH THIRD PARTY CAUSED DIRECTLY OR INDIRECTLY BY ANY BREACH OF THIS AGREEMENT OR THE PROVISION OF ANY LICENSED SOFTWARE, MATERIALS OR SERVICES PURSUANT TO THIS AGREEMENT, INCLUDING ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY LOSS OF OR INJURY TO EARNINGS, PROFITS OR GOODWILL, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE OR STRICT PRODUCT LIABILITY). THIS LIMITATION SHALL APPLY EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Term and Termination
8.1 Term of Agreement. This Agreement shall be effective as of the date last signed below (the "Effective Date"), and shall continue, unless earlier terminated as set forth in Section 8.2 ("Termination with Cause"), until Licensor's copyright in the Licensed Software expires.

8.2 Termination with Cause. Either party may terminate this Agreement for the material breach of any term by the other party if such material breach remains uncured for thirty (30) days after receipt of written notice of such breach from the non-breaching party, which notice shall describe in reasonable detail the nature of the breach. Such termination shall be in addition to any other remedies that may be available to the non-breaching party.

8.3 Return or Destruction of Licensed Software. Upon termination of this Agreement Licensee shall immediately cease using the Licensed Software. Furthermore, Licensee agrees to return or destroy the Licensed Software and any copies thereof; and shall deliver to Licensor within fifteen (15) days of the date of such termination certification in writing that the Licensed Software and all copies thereof in any form have either been returned to Licensor or properly destroyed.

8.4 Survival. The rights and obligations contained in Sections 1.3 ("Proprietary Rights"), 2.1 ("Payment"), 4 ("Warranty"), 6 ("Limitation of Liability"), 7 ("Consequential Damages Waiver"), 8 ("Term and Termination"), 9 ("Confidentiality") and 10 ("Miscellaneous") shall survive any expiration or termination of this Agreement.

9. **Confidentiality**

9.1 <u>Scope of Confidential Information.</u> The parties acknowledge that each party may acquire information and material that is the other party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" includes, but is not limited to, all confidential, technical and business information relating to the Licensed Software, the System Support, research and development, production and engineering processes, costs, profit or margin information, marketing, production and future business plans. The parties' respective obligations with respect to Confidential Information also extend to any third party's proprietary or confidential information disclosed to such party by the other party in the course of performance of this Agreement. Confidential Information must be identified in writing at the time of disclosure by an appropriate legend, marking, stamp or other positive written identification on the face thereof to be proprietary to the disclosing party and for information transmitted orally or audibly must be confirmed as Confidential Information by a written summary submitted by the disclosing party to the receiving party within thirty days after oral or audible transmission thereof.

9.2 <u>Use of Confidential Information.</u> Each party agrees to take all steps reasonably necessary to hold in trust and confidence the other party's Confidential Information. Each party agrees to hold such Confidential Information in strict confidence, not to disclose it to third parties (except end users in accordance with the terms of this Agreement) or to use it in any way, commercially or otherwise, other than as otherwise permitted under this Agreement. Each party will limit the disclosure of the Confidential Information to employees, directly related subcontractors or end users with a need to know who: (i) have been advised of the confidential nature thereof; and (ii) have acknowledged the express obligation to maintain such confidentiality; provided that each party will be responsible for any breach of these confidentiality obligations by such employees, subcontractors or end users.

9.3 <u>Exceptions</u> Notwithstanding the other provisions of this Agreement, information and material received by one party from the other party will not be considered to be Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by the receiving party from a third party without confidential limitations; (iii) it has been independently developed by the receiving party by personnel having no access to the Confidential Information; or (iv) it was known to the receiving party prior to its first receipt from the disclosing party.

10. **Miscellaneous**

10.1 <u>Export Restrictions.</u> Licensee acknowledges that the laws and regulations of the United States restrict the export and re-export of software, including the Licensed Software and any accompanying documentation or materials. Licensee shall not export directly or indirectly all or part of the Licensed Software and related documentation, manuals and instructional materials, and any direct product derived from the Licensed Software, such as computer models or simulations, to any country without the appropriate United States and/or foreign government licenses. Licensee shall not export the Licensed Software (including over the Internet) into any country subject to US embargo.

10.2 <u>Contracts with U.S. Government Agencies.</u> If the Licensed Software is licensed to agencies of the U.S. Government, the Licensed Software is commercial computer software, and, pursuant to FAR 12.212 or DFARS 227.7202 and their successors, as applicable, shall be licensed to the Government under the terms and conditions of this Agreement.

10.3 <u>Force Majeure.</u> Neither party shall be responsible for any failure to perform due to unforeseen, non-commercial circumstances beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, fuel or energy. In the event of any such delay, any applicable period of time for action by said party may be deferred for a period of time equal to the time of such delay, except that a party's failure to make any payment when due hereunder shall not be so excused.

10.4 <u>Notices.</u> Notices between parties shall be deemed given when sent by facsimile, upon confirmation of receipt, or mailed by certified first class mail, return receipt requested, or in person at the addresses used on the cover page of this Agreement or at such address later specified by notice hereunder.

10.5 <u>Assignment</u>. This Agreement may not be assigned, or transferred by Licensee without prior written consent of Licensor; provided that Licensee may assign the Licensed Software to a different business unit, wholly-owned subsidiary or affiliate. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and representatives.

10.6 <u>Entire Agreement</u>. This Agreement, and any attachments and appendices hereto, sets out the entire agreement between the parties relative to the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, oral or written. This Agreement may not be altered or modified, except by written amendment which expressly refers to this Agreement and which is duly executed by authorized representatives of both parties. If any purchase order for the Licensed Software contains any term inconsistent with or contrary to any term of this Agreement, such term shall be of no effect and shall not form part of any contract between the parties, unless Licensor expressly accepts such term by signing a document expressly setting out such term and stating that such term is acceptable to Licensor.

10.7 <u>Severability</u>. Any provision of this Agreement held to be invalid under applicable law shall not render this Agreement invalid as a whole, and in such an event, such provision shall be interpreted so as to best accomplish the intent of the parties within the limits of applicable law.

10.8 <u>Waiver</u>. The waiver or failure by Licensor to exercise or enforce any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement.

10.9 <u>Applicable Law</u>. This Agreement and its interpretation shall be governed by the laws of the State of Delaware without regard to the choice of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from the application to this Agreement.

10.10 <u>Publicity</u>. Licensor may include Licensee's name and summary description of its use of the Licensed Software in its published customer list.

10.11 <u>Independent Contractor.</u> In connection with this Agreement, each party is an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose.

10.12 <u>Resolution of Disputes</u>. Any claim or dispute arising in connection with this Agreement which is not settled by Licensor and Licensee within sixty (60) days after written notice is first given by either party to the other will be finally settled by arbitration under the American Arbitration Association Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over it.

11.   **Attachments.** The following attachments are hereby made a part of this Agreement.

      11.1   <u>Appendix A</u>. Licensed Software.
      11.2   <u>Appendix B</u>. System Support Procedures.

E·T·N
Powering Business Worldwide

Appendix A. Licensed Software

Licensed Business Unit or Department: City of Lebanon

Licensed Software

Software Module	Agreement Number & Date	Start Date	End Date	License Value	Annual Maintenance Percent	Annual Maintenance Fee

Appendix B: Yukon AMI System Support Procedures

For Yukon software support, Licensee may either call the staffed telephone support number or email the EAS Support Desk noted below between the hours of 8:00 a.m. and 4:30 p.m., Central Time, Monday through Friday, excluding federal holidays, to assist Licensee in the use of or resolve issues with the Licensed Software; off hours messages can be left for non-emergency events for processing the next business day.

Email: EAS-Support@Eaton.com
Phone: 1-800-815-2258

Support Inquiry Documentation
A record of every support call and email is made and updated after every Licensee consultation. A continuous, online history for each Licensee is shared among support engineers and other personnel required to solve the issue to facilitate a quick response in addressing Licensed Software questions or problems.

Remote Connection Support
Software Support Service Licensee is required to provide remote access to Licensor Licensed Software support personnel to diagnose and correct the Licensed Software. Licensor support engineers are equipped with the tools to allow them to quickly connect to the Licensee system and assist in troubleshooting.

Issue Identification Processing
Once the Licensee is in contact with the Help Desk, an analyst will document the issue over the phone. In the event that the issue cannot be resolved during the initial call, the issue will be assigned a Discrepancy level and a trouble ticket will be generated and escalated for further handling. Resolution of a trouble tickets will follow the Discrepancy level as stated below to determine the priority of handling the request:

Discrepancy Level Definition and Responses:

Level	Definition/Description	Response Requirements	Resolution Requirements
Severity 1	System Failure. Not receiving data or system down. Permanent correction of the Defect may take longer, but implementing an emergency patch, workaround or other remedy gets immediate attention. A suitable emergency patch, workaround or other remedy that allows functionality to continue will lower the severity level to Severity 3.	Licensor will: – Acknowledge receipt of the Defect notice within one (1) hour. – Within 2 hours after receipt of the Defect notice, confirm that knowledgeable resources are working on a permanent fix or an emergency patch, workaround, or other remedy. – Provide status report every hour or as required by Licensee until Defect is no longer a Severity 1 Defect.	Licensor will: – Develop and test a permanent fix, workaround, emergency patch or other remedy. – Release the permanent fix, workaround, emergency patch or other remedy successfully confirmed by Licensor. – Continue to work on using all commercially reasonable efforts considering the severity of the defect until the defect is no longer a Severity 1. – Develop and test a permanent fix as soon as reasonably possible and, upon confirming the permanent fix, release it.
Severity 2	Restricted function capability or quality; Unable to proceed with selected function (i.e., control and monitoring functions do not stop but a major portion of applicable functions is adversely impacted). Severity 2 Defects indicate severe impairment in using one or more functions that are integral parts of the Deliverable. A suitable emergency patch, workaround or other remedy that allows critical functions to continue will lower the severity level to a Severity 3.	Licensor will: – Acknowledge receipt of the Defect notice within one business day. – Provide status report during periodic status calls/meetings.	Licensor will: – Develop and test a permanent fix, workaround, emergency patch or other remedy. – Release the permanent fix, workaround, emergency patch or other remedy successfully confirmed by Licensor. – Continue to work using all commercially reasonable efforts considering the severity of the defect until the defect is no longer a Severity 2. If a permanent fix, workaround, emergency patch or other remedy has not been released, as specified above, within 8 hours of receipt of the Defect notice. – Develop and test a permanent fix as soon as reasonably possible and, upon confirming the permanent fix, release it. – Release an existing workaround, temporary patch or other remedy successfully confirmed.
Severity 3	Minor irritant or cosmetic issue that does not impair documented functionality.	Licensor will: – Acknowledge receipt of the Defect notice from within two business days. – Provide status report to Licensee project manager during status calls/meetings.	Licensor will: – Resolve Severity 3 Defects after more serious Defects have been fixed and schedule the fix for release accordingly.