

## CONTRACT AGREEMENT

Owner: CITY OF SPRING VALLEY VILLAGE, TEXAS  
Attn: City Administrator  
Address: 1025 Campbell Road Houston, Texas 77055  
Phone: (713) 465-8308  
Fax:

Contractor: Ferguson Enterprises, Inc.  
Address: 15711 Eastex Freeway Humble, TX 77396  
Phone: 832-995-4091  
Fax:

Project Description: Supply and Installation of AMI Fixed Based Meter Reading System

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

Contract Sum: \$945,951.00

\_\_\_\_\_, a \_\_\_\_\_, ("Owner") and Ferguson Enterprises, Inc. ("Contractor") have entered into this Contract Agreement ("Agreement") as of the date set forth above. The Owner and the Contractor agree as follows:

### **1 WORK.**

- 1.1 The Contractor shall furnish all the labor, services, and materials as described in the Scope of Work attached hereto as Exhibit "A" (collectively called the "Work") necessary for the timely and proper completion of the Work described in this Agreement. The Contractor will provide a Contract Bond, as defined here, for the full amount of the Contract.
- 1.2 **CLEANUP.** Contractor shall cleanup, repair, restore, and otherwise return any site or location to the condition in which it was delivered to Contractor.
- 1.3 **COMPLETION.** The date for final completion of the Project is One year from Contract Date set forth above ("Completion Date"), unless otherwise agreed to in writing or as provided herein. The Contractor shall perform the Work in conformance with the Contract Documents so as to complete the Project by the Completion Date. All materials and equipment provided shall be new, free from liens and covered by manufacturer warranties against defects. A copy of the manufacturer's warranty is attached hereto as Exhibit "B".
- 1.4 **TAXES AND FEES.** Contractor is subject to and responsible for paying fees to obtain all applicable contractor or business licenses. Owner will be responsible for obtaining any permits or approvals required by local, state or federal agencies to permit the Project.

### **2 CONTRACT DOCUMENTS.**

- 2.1 The Contract Documents consist exclusively of this Agreement, attachments to this Agreement, and Change Orders, all of which are incorporated into this Agreement.

### **3 OWNER'S REPRESENTATIVE.**

- 3.1 \_\_\_\_\_ is the Owner's Representative with respect to all matters involving the Owner.

- 3.2 Except as specifically stated to the contrary elsewhere in this Agreement, the Contractor shall direct all communications to the Owner through the Owner's Representative.
- 3.3 The Owner's Representative, or their representative, will monitor the progress of the Contractor's Work and may conduct regular inspections of the progress of the Work as provided in the Contract Documents.
- 3.4 The Contractor shall at all times provide the Owner's Representative access to the Work.

#### **4 TIME FOR COMPLETION AND PROJECT COORDINATION.**

- 4.1 **PROJECT TIME SCHEDULE.** The Work on the Project will begin on the date Owner issues a notice to proceed for this Agreement [**AND THE CUSTOMER'S UTILITY BILLING SOFTWARE PROVIDER'S INTEGRATION IS COMPLETE**] and be substantially completed by the Completion Date, unless the Owner and Contractor agree to different commencement and completion dates in writing. The Work will be deemed to be substantially complete when Owner issues a Certificate of Substantial Completion for the project. It is anticipated that such Certificate of Substantial Completion will be deemed when all work required for the project is ready for use by the Owner, subject to punch list items to correct any matters noted by Owner in its final inspection, and excluding items turned over to the Owner to address due to being outside the scope of Work or due to lack of Contractor ability to gain access to private property after reasonable efforts as required by this Agreement. Subject to written approval by Owner, which shall not be unreasonably withheld, the date of completion shall be extended for any delays beyond the reasonable control of Contractor, including but not limited to extreme weather conditions, acts of God, war, labor difficulties, accidents, inability to obtain materials, inability to gain access to properties, delays of carriers, contractors or suppliers, deteriorated condition of existing pipes and/or connections requiring non-standard installation as defined herein or any other causes of any kind whatever beyond the control of Contractor. Contractor shall submit any requests for extension of the date of completion to Owner in writing with the number of additional days being requested and the justification for the requested additional days. Owner shall make a determination with regard to the requested extension of the date of completion within 10 days. In the event of uncooperative property owners, the Owner will assist the Contractor in gaining access to any required premises. If Contractor is unable to gain access with the Owner's assistance within ninety (90) days after completion of all other Work, then the installation in question will be turned over to the Owner who will be responsible for the installation.
- 4.2 Contractor is responsible for scheduling its subcontractors and for any delay resulting from their performance.

#### **5 DELAYS AND ACCELERATIONS.**

- 5.1 **NOTICE OF DELAYS.** The Contractor shall submit to Owner written notice of any delay affecting its Work within 10 calendar days after Contractor becomes aware of the delay and shall include the number of additional days by which Contractor is requesting that the Contract be extended, if applicable, with the justification for requesting the additional days pursuant to Section 4.1 above
- 5.2 **ACCELERATION OF THE WORK.** If the Contractor fails, due to its own fault, to perform as required by the Contract schedule, the Owner may require the Contractor, at no additional cost to Owner, to accelerate its Work by adding workers or working additional shifts, extended shifts or overtime, so that the Work is in final form before the Completion Date. If the Owner requires the Contractor to accelerate its Work, Owner shall issue a written Notice to Contractor, and the Contractor shall take

action reasonably required to comply within 10 calendar days of the Notice. If the acceleration is not due to fault of the Contractor, Contractor shall submit a written request to Owner for the issuance of a Change Order to increase the Contract Sum to pay the Contractor for the Contractor's additional costs of accelerating its Work so that the Work is in final form before the Date for Final Completion with a justification for the requested Change Order. If there is a dispute as to whether the Contractor is entitled to a Change Order for accelerating its Work, the Contractor shall proceed to accelerate its Work without waiting for a Change Order or payment of any additional compensation but may reserve its right to make a claim against the Owner for its additional costs incurred in accelerating its Work. The parties agree that any such claim shall be brought within 30 calendar days after the Completion Date. The Contractor's additional costs for accelerating its Work shall be determined in accordance with Paragraph 5.2.2 of this Agreement.

- 5.2.1 **OWNER'S OBLIGATION TO PAY.** The Owner shall pay the Contractor, as provided in this Paragraph, for the Contractor accelerating its Work so that its Work is in final form before the Completion Date so long as the acceleration is not required as a result of the Contractor's failure to stay on schedule.
- 5.2.2 **COMPENSATION FOR ACCELERATION OF THE WORK.** To the extent that the Owner requires the Contractor to accelerate its Work and is obligated to pay under Section 5.2.1, the Owner shall pay the Contractor for the Contractor's additional costs of accelerating its Work, as determined in accordance with this Paragraph. The additional costs of accelerating the Work shall be: (a) any premium for overtime, additional shift work, or extended shift work; (b) the cost of any additional supervision required by the acceleration; and (c) out of pocket cost of any additional equipment required for the acceleration.

## **6 CORRECTIVE ACTION.**

- 6.1 If the Owner determines that the Contractor is not cooperating or coordinating its work properly with its subcontractors, not supplying sufficient skilled workers, not cleaning up, not furnishing the necessary materials, equipment, or any temporary services or facilities to perform the Work in strict conformance with the Contract Documents, or is not otherwise performing its obligations under the Contract Documents, the Contractor shall within ten (10) days after notice of such determination commence such action as is reasonably necessary to correct the deficiencies noted by the Owner, including but not limited to, increasing the number of skilled workers, providing temporary services or facilities, and cleaning up the Project.

- 7 **CONTRACT SUM.** The Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Project and all of the duties, obligations, and responsibilities of the Contractor under this Agreement and the other Contract Documents will be \$945,951.00 (the "Contract Sum"). The Contract Sum is based upon the unit prices set forth in the Scope of Work and will be adjusted for agreed upon Change Orders. The Contract Sum includes all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. If the Owner is tax exempt it will provide Contractor with a tax-exempt certificate.

## **8 LIMITATION AND LIABILITY.**

- 8.1 Under no circumstances shall the elected officials, officers, employees, council members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

## **9 PAYMENT**

- 9.1 **APPLICATIONS FOR PAYMENT.** The Owner has agreed to pay in accordance with the terms of this Contract after submission of a pay application reflecting the amount of Work completed as of the date the application for payment is submitted and including invoice for work performed and materials and equipment provided for the previous pay period and lien waivers for prior payments. Contractor will bill and Owner agrees to pay for equipment, including meters, radios and AMI equipment, based on prices set forth on Contractor's quotation upon delivery to Owner's warehouse if applicable. Contractor will bill and Owner agrees to pay monthly for labor charges at the unit prices set forth on Contractor's quotation. If any additional work beyond a standard meter installation (as defined in the Scope of Work attached hereto) is required due to the condition of existing pipe or meter connections, such work shall be completed on a time and material basis if approved by the Owner. In the event Owner does not approve such additional work, then Contractor shall not complete the installation of such meter and shall not bill the Owner the installation charge for such meter.
- 9.2 The Owner may withhold payment in whole or in part to protect the Owner from loss because of: 1) The Contractor's default or failure to perform any of its obligations under the Contract Documents, including but not limited to failure to provide sufficient skilled workers; 2) Work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; 3) The filing of third party claims, or reasonable evidence that third party claims have been or will be filed; 4) The Work has not proceeded to the extent set forth in the application for payment; 4) The failure of the Contractor to make payments to its Subcontractors; and/or 5) Liens filed or reasonable evidence indicating the probable filing of such liens.
- 9.3 The Owner will pay the Contractor within 30 days after receipt of the Contractor's payment application, if the payment application has been properly submitted on a timely basis and is accompanied by all of the required documentation.
- 9.4 **DOCUMENTATION.** Upon request, the Contractor immediately shall supply the Owner with such information as may be requested so as to verify the amounts due to the Contractor pursuant to a submitted pay application.
- 9.5 **FINAL PAYMENT.** The final application for payment shall be itemized, and the Contractor shall ensure that the final application for payment shall contain one copy of each of the following documents, if not previously delivered to the Owner: a) copies of applicable manufacturer warranties; b) a list of all Claims that Contractor believes are unsettled; and c) Such other documentation as required by the Contract Documents or applicable law.
- 9.5.1 The making and acceptance of Final Payment by the Owner shall not constitute a waiver of Claims by the Owner
- 9.6 **ESCROW ACCOUNT.** The Owner and the Contractor agree that no escrow account shall be required in connection with this Agreement and that retained funds will not earn interest.

## **10 CHANGE ORDERS.**

- 10.1 A Change Order is a written instrument signed by the Owner and the Contractor stating their agreement upon a change in the Work, the amount of the adjustment or the method for computing the amount of the adjustment of the Contract Sum, if any, and the extent of the adjustment in the Project Time Schedule, if any.
- 10.2 Any changes to the approved Contract must be submitted by Contractor to the Owner in the form of a Change Order for the Owner's review and consideration. Owner
- 10.2.1 The Contractor shall submit all Change Orders within ten (10) days after the occurrence of the event giving rise to the requested Change Order.
- 10.2.2 If the Contractor has submitted a Change Order for an increase in the Contract Sum, written Notice as provided herein shall be given before proceeding to execute the Work except in the case of repairs authorized by Owner as provided in Section 10.1.
- 10.2.3 If the Contractor has submitted a Change Order for additional time, the Contractor shall include an estimate of cost and probable effect of delay on progress of the Work. If adverse weather conditions are the basis for a Change Order for additional time, such Change Order shall be documented by data substantiating that weather conditions had an adverse effect on the scheduled construction.
- 10.2.4 Within ten (10) days of its receipt of a written request from Owner, the Contractor shall make available to the Owner or its representative any books, records, or other documents in its possession or to which it has access relating to any Change Order and shall require its Subcontractors, regardless of tier, and materialmen to do likewise.

## **11 DEFAULT OF THE CONTRACTOR.**

- 11.1 EVENTS OF DEFAULT. Each of the following constitutes an event of default of the Contractor:
- 11.1.1 The Contractor's failure to perform any of its obligations under the Contract Documents and to proceed to commence to correct such failure within five (5) days after written notice thereof from the Owner or such other time as is provided in the Contract Documents, or
- 11.1.2 or
- 11.1.3 The Contractor's failure to pay its obligations as they become due or the Contractor's insolvency.
- 11.2 OWNER'S REMEDIES. Upon the occurrence of an event of default the Owner shall have the following remedies, which shall be cumulative:
- 11.2.1 Order the Contractor to stop the Work, which the Contractor shall do immediately;
- 11.2.2 To perform through others all or any part of the Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Sum or, if the unpaid balance of the Contract Sum is inadequate, to demand reimbursement of amounts previously paid to the Contractor;
- 11.2.3 To terminate this Agreement and take possession of, for the purpose of completing the Work or any part of it, all materials and equipment to be installed as part of the Work, and to employ any

person or persons to complete the Work, and the Contractor shall not be entitled to receive any further payment until the Work is completed; and/or,

- 11.2.4 All other remedies which the Owner may have at law or in equity or otherwise under the Contract Documents.
- 11.3 **TERMINATION OF AGREEMENT.** The termination of this Agreement shall be without prejudice to the Owner's rights and remedies, including without limitation the Owner's right to be indemnified by the Contractor.
- 11.4 **PAYMENTS DUE CONTRACTOR.** If the unpaid balance of the Contract Sum exceeds the cost of finishing the Project, including any costs, expenses or damages incurred by the Owner as a result of the event of default, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligations under this Paragraph shall survive the termination of this Agreement.

## **12 DEFAULT OF THE OWNER.**

- 12.1 **EVENTS OF DEFAULT.** The following constitutes the exclusive events of default of the Owner:
  - 12.1.1 The failure of the Owner to perform any of its obligations under the Contract Documents and to correct such failure within thirty (30) days after receipt of written notice thereof from the Contractor specifying the default and the necessary corrective action; and/or
  - 12.1.2 The failure of the Owner to pay any undisputed amounts within the times established by paragraph 9 above and such failure continues for 5 days after notice from the Contractor that such amount is unpaid.
- 12.2 **CONTRACTOR'S REMEDY.**
  - 12.2.1 The Contractor's sole and exclusive remedy for the default of the Owner, other than the failure of the Owner to pay the Contractor, will be to bring a suit for damages. The Contractor's right to exercise that remedy shall be subject to it giving the Owner the required notices and following any other procedures required by the Contract Documents.
  - 12.2.2 If the Owner fails to pay the Contractor as payment becomes due as described in paragraph 9 above, the Contractor may, upon ten (10) days written Notice, stop the Work until payment of the amount owing has been received. An adjustment to the Contract Sum will be made as if the Work had been suspended for the convenience of the Owner under Section 13 of this Agreement.

## **13 SUSPENSION OR TERMINATION FOR THE CONVENIENCE OF THE OWNER.**

- 13.1 **SUSPENSION FOR THE CONVENIENCE OF THE OWNER.**
  - 13.1.1 The Owner may, without cause, order the Contractor to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.
  - 13.1.2 An adjustment shall be made for increases in the cost of performance of the Work, including profit and overhead on the increased cost of performance, caused by the suspension, delay or interruption.
  - 13.1.3 In the event the Work is suspended by the Owner for more than thirty (30) days for any reason other than breach by the Contractor, then the Contractor shall have the right, upon fifteen (15) days notice to terminate this Agreement as to any remaining Work.

## **13.2 TERMINATION FOR THE CONVENIENCE OF THE OWNER.**

- 13.2.1 The Owner may, in its discretion and without cause, by written notice to the Contractor terminate this Agreement for the Owner's convenience.
- 13.2.2 Upon receipt of a written notice from the Owner terminating this Agreement without cause and for the Owner's convenience, the Contractor shall: (a) immediately cease performing the Work, unless otherwise directed by the Owner, in which case the Contractor shall take the action directed by the Owner; (b) take all reasonable and necessary action to protect and preserve the Work; and (c) unless otherwise directed by the Owner, terminate all agreements with Subcontractors and suppliers.
- 13.2.3 If this Agreement is terminated without cause and for the Owner's convenience and there exists no event of the Contractor's default, as defined in this Agreement, the Owner will pay the Contractor for Work performed under this Agreement up to the date the notice of termination is received by the Contractor at the rates for Work provided under this Agreement. Owner will also pay Contractor for all equipment and meters purchased for installation as part of the Work if not previously billed and paid by Owner.
- 13.2.4 The termination of this Agreement shall be without prejudice to any rights or remedies that exist at the time of termination.

## **14 INSURANCE AND INDEMNIFICATION.**

- 14.1 The Contractor shall maintain the following insurance coverages, on which the Owner shall be listed as an additional insured:
- Commercial general liability insurance in the amount of \$1,000,000.00;
  - Automobile liability insurance in the amount of \$1,000,000.00;
  - Workers compensation coverage as required by applicable state Law; and
  - Umbrella/Excess liability coverage in the amount of \$2,000,000.00.
- 14.2 Insurance furnished by the Owner, if any, is not intended and shall not cover equipment and materials before they are physically incorporated into the Work or tools. The Contractor shall bear the entire risk of loss with respect to tools, equipment, and materials prior to incorporation into the Work.
- 14.3 To the maximum extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's consultants, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' and consultants' fees—whether made by Owner or a third-party—arising out of or related to the Contractor's negligence in performance of the Work including but not limited to any claims for bodily injury, sickness, disease, or death or to injury to or destruction of or loss of use of real or personal property, claims for additional storage and handling charges, liens against funds, and/or claims related to the removal, handling, or use of any hazardous materials.
- 14.4 The Contractor and/or the Contractor's subcontractors shall comply with Occupational Safety and Health Act of 1970 during the conduct and performance on and in connection with this Project.

## 15 WARRANTIES.

- 15.1 In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents, the Contractor warrants and guarantees that:
- The Owner will have good title to the Work and all materials and equipment incorporated into the work will be new;
  - Contractor guarantees installation services for a period of one (1) year from completion of the Work. All materials and equipment incorporated into the Work will be covered by applicable manufacturer's warranties provided to Owner;
  - All manufacturers' warranties shall be made available to Buyer or end user. Seller shall coordinate manufacturer warranty service with the end user at Buyer's request. The sole warranty applicable to installation service provided (as applicable) is delineated as Installation Warranty (see above). Product warranties are solely from the respective manufacturer. With respect to the underlying products, **THE OWNER'S SOLE AND EXCLUSIVE WARRANTY IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. CONTRACTOR HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL CONTRACTOR BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES RELATED TO THE UNDERLYING PRODUCTS PROVIDED.** All manufacturers' warranty and service obligations shall be for the benefit of the Owner.

## 16 GENERAL.

- 16.1 MODIFICATION. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents shall be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of the Owner shall require the signature of the Owner's Representative acting under the authority of a specific resolution of the Owner. Under no circumstances shall forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Paragraph.
- 16.2 ASSIGNMENT. The Contractor may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.
- 16.3 THIRD PARTIES. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Contractor.
- 16.4 LAW AND JURISDICTION. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Contract. The parties agree that this Contract is performable in Harris County, Texas, and that exclusive venue shall lie in Harris County, Texas.
- 16.5 NOTICES. Notices, requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served, forwarded by expedited messenger service, or



be given by registered or certified mail, return receipt requested, postage prepaid, and, in the case of the Owner, addressed to the address set forth at the beginning of this Agreement and, in the case of the Contractor, addressed to its address set forth at the beginning of this Agreement. Any party may change its address/FAX number by giving written notice hereunder. All notices, requests, and demands shall be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; upon the expiration of three (3) days from the time of deposit in the United States mail or one day after delivery to overnight messenger with delivery receipt.

- 16.6 **CONSTRUCTION.** The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and has voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.
- 16.7 **APPROVALS.** Any approvals required hereunder shall be made in the reasonable discretion of the individual providing approval.
- 16.8 **PARTIAL INVALIDITY.** If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement shall remain in full force and effect, and such term shall be deemed stricken; provided this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.
- 16.9 **COMPLIANCE WITH LAWS AND REGULATIONS.** The Contractor, at its expense, shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work.
- 16.10 **PROJECT SAFETY.** The Contractor shall follow all applicable safety and health regulations during the progress of the Project and shall monitor all of its employees and its subcontractors for compliance with such safety and health regulations. In undertaking the responsibilities set forth in this Paragraph, the Contractor does not assume any duty or responsibility to the employees of any Subcontractor or supplier, regardless of tier. The Owner assumes no responsibility for the development, review, or implementation of the any project safety plan or for Project safety and has no authority to direct the means and methods of the Contractor.
- 16.11 **EQUAL OPPORTUNITY.** Contractor agrees that, in the hiring of employees for the performance of work under the Contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, color, citizenship status, religion, creed, gender, national origin, ancestry, age, physical or mental disability, military status, veteran status, genetic status, or any other characteristic protected by law. Contractor further agrees that neither it, its subcontractors, or any person on the Contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, color, citizenship status, religion, creed, gender, national origin, ancestry, age, physical or mental disability, military status, veteran status, genetic status, or any other characteristic protected by law
- 16.12 **COMPLIANCE WITH CHAPTER 2270 OF THE TEXAS GOVERNMENT CODE.** In accordance with Chapter 2270 of the Texas Government Code, Contractor hereby verifies that it (a) does not boycott Israel, and (2) will not boycott Israel during the term of this Contract or any extensions thereof.
- 16.13 **COMPLIANCE WITH CHAPTER 2252.908 OF THE TEXAS GOVERNMENT CODE.** In accordance with Chapter 2252.908 of the Texas Government Code, Contractor shall electronically file a Form 1295,

Certificate of Interested Parties, with the Texas Ethics Commission utilizing the process required by such Commission and provide a completed, printed, and signed Form 1295 bearing the unique certification of filing number to the City along with the signed Contract.

16.14 PREVAILING WAGES: APPLICABLE \_\_\_\_\_ NOT APPLICABLE X \_\_\_\_\_

16.15 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives as of the date first set forth above.

City of Spring Valley Village, Texas

Ferguson Enterprises, Inc.

By: Tom Ramsey  
Name: Tom S. Ramsey  
Title: Mayor

By: Zeb Wright  
Name: Zeb Wright  
Title: Business Development Manager

## Exhibit "A"

### SCOPE OF WORK and Pricing

Installation of Endpoints: The proposer's pricing and installation scope of water meters and radio modules assume a "standard" installation. A standard meter installation is recognized as one which involves the replacement of an existing meter or the installation of a new meter provided the necessary setter/fittings are present and the following conditions are met:

1. Meters will be located in outside meter boxes (pits) or vaults with adequate access, or if access is restricted, proposer will be able to obtain access from the property owner within one week of request during normal business hours;
2. Meter access will not subject proposer's employees to dangerous or unsafe working conditions;
3. No additional labor or groundwork will be needed to access meters, including but not limited to cutting, removal and replacement of asphalt, tree roots, shrubbery or landscaping obstructions;
4. Existing meter locations and depths do not require confined space entry.
5. Proposer will not be required to remove excessive amounts of dirt, silt, water or other debris from meter boxes. Excessive amounts shall be defined as dirt, silt, water or other debris that requires 10 or more minutes of hand digging or hand pumping by one installer.
6. Proposer will not be required to repair or replace pipe due to corrosion, existing damage, plumbing irregularities, substandard conditions or existing connections not in conformity to current building codes;
7. Water meters are on setters or equipped with standard meter connections that can be reused during meter installation;
8. Meter exchanges are like-for-like, same lay length and no plumbing is required;
9. Existing meter boxes or meter vaults will be used, and curb stops and valves are in good working condition.
10. Existing meter boxes must be in good condition, allowing enough room for easy replacement of the existing meter. Standard requirements are 6" on all sides of a residential meter/connections and 12" on all sides of a commercial meter/connections;
11. Proposer presumes they will be able to find the meter box at the specified physical address within 10 minutes or less. This may require that the Proposer is provided with accurate meter box location notes or that meter box locations are marked with blue paint/blue flags.

12. Existing meter box lids must be in good condition. Proposer will not be required to perform any modifications to the existing meter box lids or any replacement of meter box lids.
  
13. Installer must take a photo of the handheld screen reporting successful commission and communications. Nodes MUST be commissioned/activated within 24 hours of meter installation, to be confirmed by installation and photographic data taken at both time of installation and time of node commissioning. If a given MiNode is not reporting due to installation related conditions (for example, handheld was not synced in a timely manner and installation data was lost), or non-responsive at time of commissioning, the installing entity shall take steps to remediate. Nodes that are not commissioned/activated, but submitted on an invoice, will not be paid.

### **Installation Guidelines**

#### **A. Installation Responsibilities of the Proposer:**

1. **Water Shutoffs.** The Proposer, including its agents and subcontractors, will be responsible for shutting off the water to each meter serviced as well as notifying each customer of the water shutoff. Some assistance may be required by Buyer with the notification of its customers. The Installation team will knock on the doors of residential customers as well as leave notifications on their doors. In the case of large commercial customers such as: schools, hospitals, nursing homes or any other commercial customer, special efforts will be made to ensure minimum disruption to their water needs. In order to prevent any damage from running flush valves or any other plumbing fixtures that are sensitive to water shutoffs, the Proposer, with the assistance of the City, will schedule replacements with these commercial customers and will notify the maintenance personnel when turning the water back on at these facilities.

2. **Meter Boxes, Vaults, and Roadways.** The Proposer is responsible for repairing any damage it causes to meter boxes or vaults that result from the installation of the Project; the Proposer shall not be liable for pre-existing conditions or leaks. The Proposer may install new meter boxes or vaults as part of the project as authorized by the Buyer, if this work is requested it shall be billed per item at a rate established under the Contingency item section of the pricing schedule. Boxes shall be concrete box with metal top provided by the City. The Proposer may use salvageable meter box parts to repair existing meter boxes.

3. **Disposal.** The Buyer will work with The Proposer for the disposal of all waste, debris and materials from the installation of the Project. The Proposer shall collect all debris from the work area and return them to a central collection point which the Buyer shall establish at the Buyer's work facility. The Buyer shall establish a storage location for any goods they wish to salvage and provide a refuse container for item they wish to dispose of.

4. **Liability.** The Proposer is responsible for any damages that occur within 12" on either side of the water meter resulting from the Project installation. Any damages incurred within this 12" area will be promptly repaired at the expense of the Proposer. The Proposer is not liable for damages outside the 12" zone, either on the water distribution side or on the customer side incurred from the Project installation including shutoff, temporary outage, and restart of water service. The Proposer is not liable for any preexisting conditions including leaks, faulty workmanship and materials from previous projects or rust. Should such conditions occur (*i.e.* leaks) the Proposer may document them and at Buyer's written request repair them for a negotiated price.

5. Data Integration. The Proposer shall be responsible for all data collected with its AMR and Implementation system and shall configure its software to interface with the Buyer's Import/Export file.

6. Non-Covered Work. Contracted meter change outs contemplate a standard meter change out. In the event that location's conditions require nonstandard work (i.e. move a service location, move fences for or other customer structures and items for access, install systems in heavy traffic locations, alleys, parking lots, resize or re-plumb services, etc.), Proposer and the Buyer will discuss pricing and work may proceed from this point or the Buyer may elect to excuse this work from the project.

# Spring Valley Village - V4 Mi.Net PD Composite or Bronze Meter AMI System w/Tyler Data Trnsf.

## 1. Meters & Transmitters

Item Description	Quantity	Unit Material Price	Extended Mtrl. Price	Unit Install Price	Extended Install Price	Total Price
5/8" Water Meter - 420 Composite or Bronze PD Meter, w/ Mi. Node 4, TTL bracket	1,090	\$210.00	\$228,900.00	\$52.00	\$56,680.00	\$285,580.00
1" Water Meter -452 Bronze PD Meter w/Mi.Node 4, TTL bracket	1,155	\$335.00	\$386,925.00	\$52.00	\$60,060.00	\$446,985.00
1 1/2" Water Meter -DI Nylon Coated PD Meter w/Mi.Node 4, TTL Bracket.	25	\$570.00	\$14,250.00	\$400.00	\$10,000.00	\$24,250.00
2" Water Meter - DI Nylon Coated PD Meter w/Mi. Node 4, TTL bracket	33	\$615.00	\$20,295.00	\$400.00	\$13,200.00	\$33,495.00
3" MVR Water Meter- 350 MVR Vertical Turbine Meter w/Mi.Node 4, TTL Bracket	1	\$1,550.00	\$1,550.00	\$475.00	\$475.00	\$2,025.00
4" MVR Water Meter - 650 MVR Vertical Turbine Meter w/Mi.Node 4, TTL Bracket	1	\$2,085.00	\$2,085.00	\$475.00	\$475.00	\$2,560.00
	2,305		\$654,005.00		\$140,890.00	\$794,895.00

## 3. Furnish and Install MiNet AMI System

Item Description	Quantity	Unit Material Price	Extended Mtrl. Price	Unit Install Price	Extended Install Price	Total Price
Infrastructure: Mi. Hub-XR Fixed Base RF Data Collector - Mi. Net AMI Collector w/antenna and 3G backhaul radio.	2	\$5,900.00	\$11,800.00	\$4,800.00	\$9,600.00	\$21,400.00
Infrastructure: Mi. Node AC Repeater	1	\$2,150.00	\$2,150.00	\$245.00	\$245.00	\$2,395.00
Infrastructure: Mi. Node DC Repeater	2	\$1,400.00	\$2,800.00	\$1,550.00	\$3,100.00	\$5,900.00
MS Supplies Pole 25' to 100' (Only if needed)	2	\$0.00	\$0.00	\$4,900.00	\$9,800.00	\$9,800.00
Minet 3G Backhaul - cellular data transmission from collector to server. ****	2	\$440.00	\$880.00	\$0.00	\$0.00	\$880.00
Mi. Tech H4Handheld w/Install Kit	1	\$7,500.00	\$7,500.00			\$7,500.00
AMI Water Prem Host - Mi. Host**	2,305	\$4.20	\$9,681.00	\$0.00	\$0.00	\$9,681.00
CIS File Interface	1	\$18,500.00	\$18,500.00	\$0.00	\$0.00	\$18,500.00
			\$53,311.00		\$22,745.00	\$76,056.00

## 4. Training and Support Services -AMI

Item Description	Quantity	Unit Service Price	Extended Service Price	Unit Install Price	Extended Install Price	Total Price
Project Management -- Covers complete project coordination by Ferguson Project Manager/Integration Specialist and Mueller Project Manager. Includes On-site Training, Coordination &	1	\$65,000.00	\$65,000.00			\$65,000.00
			\$65,000.00			\$65,000.00

**Total Price for Mi.Net AMI PD Meter System: \$935,951.00**

**Tyler/Incode Data File Interface & Transfer:**

Item Description	Quantity	Unit Material Price	Extended Mtrl. Price	Unit Install Price	Extended Install Price	Total Price
CIS Custom File Interface	1	\$5,000.00	\$5,000.00			\$5,000.00
Automated Data Services	1	\$5,000.00	\$5,000.00			\$5,000.00
				Tyler/Incode Data Transfer:		\$10,000.00
<b>Total Price for MI.Net AMI PD Meter System w/WaterSmart Portal:</b>						<b>\$945,951.00</b>

**Year 2 thru 20 Annual Fees:**

After 1st Year Optional Maintenance Fee-Equip. ** Annual Fee	Quantity	Unit Material Price	Extended Mtrl. Price	Unit Install Price	Extended Install Price	Total Price
Year 2 - Collector Maintenance	2	\$1,450.00	\$2,900.00			\$2,900.00
Year 2-Handheld Maintenance	1	\$775.00	\$775.00			\$775.00
<b>Total Annual Fees-Equipment &amp; Backhaul:</b>						<b>\$3,675.00</b>

**Mueller AMI Hosting:  
(Includes 24/7 NOC Center Monitoring)**

After 1st Year Software Maintenance ** Annual Fee	Quantity	Unit Material Price	Extended Mtrl. Price	Unit Install Price	Extended Install Price	Total Price
Year 2- Mueller AMI Water Prem Host-Per Year	2305	\$4.20	\$9,681.00			\$9,681.00
Year 2 - MI.Net 3G Backhaul	2	\$440.00	\$880.00			\$880.00
<b>Total Annual Fees-Mueller AMI Host:</b>						<b>\$10,561.00</b>

**Tyler/Incode Date File Transfer - For Portal**

After 1st Year Software Maintenance ** Annual Fee	Quantity	Unit Material Price	Extended Mtrl. Price	Unit Install Price	Extended Install Price	Total Price
Year 2 - Tyler/Incode File Transfer - Per Year	1	\$5,200.00	\$5,200.00			\$5,200.00
<b>Total Annual Fees-WaterSmart Consumer Portal:</b>						<b>\$5,200.00</b>

Exhibit "B"

MANUFACTURER'S WARRANTIES

MUELLER SYSTEMS  
MASTER AGREEMENT

THIS MASTER AGREEMENT (this "Agreement") is entered into this 28th day of January 2019 between MUELLER SYSTEMS, LLC, a Delaware limited liability corporation having its principal offices at 10210 Statesville Blvd, Cleveland, North Carolina 27013 (referred to in this Agreement as "Mueller Systems" or "Provider"), and City of Spring Valley Village (referred to in this Agreement as "Customer"). This Agreement governs the sale by Provider and the purchase by Customer for its own use and not for resale of, as applicable, Equipment, Software, Documentation and other items related to advanced metrology infrastructure systems. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and terms and conditions of any other agreement or document, the terms and conditions of this Agreement shall govern and control and the conflicting or inconsistent terms and conditions are hereby rejected. In consideration of the mutual obligations set forth in this Agreement, Customer and Mueller Systems agree as follows:

1. DEFINITIONS.

a. "Content" means the information developed or legally acquired by Customer which may be used in connection with or accessed by any module of the Software.

b. "Documentation" means the user guides, reference manuals, and installation materials provided by Provider to Customer related to the Software and Equipment.

c. "Equipment" means the components, devices, products, equipment and related items

provided by Provider identified in Appendix A.

d. "Services" means activities related to deployment and installation services, repair services, hosting services and technical support/maintenance services as provided by Mueller Systems and as identified in Appendix B.

e. "Software" means the object code versions of Mueller Systems' software identified in Appendix A, together with all subsequent



authorized updates, replacements,  
modifications or enhancements.

## 2. SOFTWARE

a. Software on Equipment License. For Equipment purchased by Customer from Mueller Systems, Mueller Systems hereby grants Customer a limited, non-exclusive, non-sublicensable, non-transferable, perpetual, irrevocable license to use and execute the Software embedded in the Equipment for its internal business purposes in connection with such Equipment ("Firmware").

b. Online Software Access. Subject to the terms of this Agreement and the payment of the fees specified in Section 6a herein, Mueller Systems grants to Customer, for its internal business purposes and during the term of this agreement, a limited, non-exclusive, non-sublicensable, non-transferable right to access and use and make available to Customer's utility users, as applicable, and/or employees the online, hosted Software specified herein.

c. Restrictions. Except as specifically and expressly permitted in writing by Mueller Systems, Customer shall not (i) violate any restriction set forth in this Agreement; (ii) modify, translate, de-compile, reverse compile, disassemble, or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software; (iii) adapt the Software in any way for use to create a derivative work; (iv) include or combine the Software in or with any other software; or (v) use the Software to provide processing services to third parties or on a service bureau basis. Except as expressly permitted in this Agreement, Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes. Customer may only make copies of Documentation as reasonably necessary for the use contemplated herein and with proper inclusion of Mueller Systems' copyright notices.

d. Ownership. This Agreement does not grant to Customer any ownership interest in the Software or Documentation. Customer has a license to use the Software and Documentation as provided in this Agreement. Customer hereby

agrees and acknowledges that Mueller Systems owns all right, title, and interest in the Software and Documentation, and Customer will not contest those rights or engage in any conduct contrary to those rights. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Software and Documentation made by or at the direction of Customer shall be owned solely and exclusively by Mueller Systems, as shall all patent rights, copyrights, trade secret rights, trademark rights and all other proprietary rights, worldwide.

e. Reservation. Mueller Systems reserves all rights not specifically granted under this Agreement.

3. **EQUIPMENT** In consideration of the fees set forth in Appendix D of this Agreement, Mueller Systems will provide the Equipment identified in Appendix A.

4. **SERVICES** In consideration of the fees set forth in Appendix D of this Agreement, Mueller Systems will provide the Services identified in Appendix B.

5. **CONFIDENTIALITY** The Software, Equipment and Documentation, including any ideas, concepts, know-how and technology contained therein, shall be considered the proprietary and confidential information of Mueller Systems and, as such, shall be subject to the confidentiality provisions of this Agreement. If a separate, written non-disclosure agreement exists between Mueller Systems and Customer, such agreement will control and will apply according to its terms and conditions to all confidential information the parties exchange with each other. If no separate, written non-disclosure agreement exists between Mueller Systems and Customer, the terms listed in Appendix C will apply to the confidential information the parties exchange with each other.

## 6. FEES AND PAYMENT

a. Software Fees. Customer shall pay the Software fees set forth in Appendix D of this Agreement.

b. Equipment Fees. Customer shall pay the Equipment fees set forth in Appendix D of this Agreement. Title to the Equipment, except the Software and Documentation that are subject

to licenses provided in this Agreement, passes from Mueller Systems to Customer when Mueller Systems ships the Equipment.

c. Service Fees. Customer shall pay the Service fees set forth in Appendix D of this Agreement.

d. Taxes. All prices and fees are in U.S. dollars unless otherwise specified. All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. Customer will pay all taxes and duties assessed by any authority in connection with this Agreement and with Customer's performance hereunder. Customer will promptly reimburse Mueller Systems for any and all taxes or duties that Mueller Systems may be required to pay in connection with this Agreement or its performance. This provision does not apply to taxes based on Mueller Systems' income, or any taxes for which Customer is exempt, provided Customer has furnished Mueller Systems with a valid tax exemption certificate.

e. Payment. Unless provided otherwise herein, Customer agrees to pay all amounts specified in Appendix D or otherwise due under this Agreement within thirty (30) days after the date of invoice. Past due amounts will shall bear interest from the due date until paid at a rate of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law, whichever is less. All payments made under this Agreement shall be nonrefundable, except as specifically provided otherwise in this Agreement.

## 7. TERM; TERMINATION

a. Term. The term of this Agreement is one (1) year commencing upon the date of this Agreement. This Agreement will automatically renew for subsequent, successive one (1) year periods at the then-current Mueller Systems prices unless either party gives the other party written notice of its intent to not renew at least thirty (30) days prior to the expiration of the then current term. Mueller Systems may increase support fees at any time on thirty (30) days prior notice to Customer. Within such thirty (30) days, Customer may terminate the Agreement by providing written notice to Mueller Systems.

b. Termination for Breach. If either party breaches this Agreement, and such breach is not cured within ten (10) days of the breach, after receiving written notice, the non-breaching party may terminate this Agreement, including all licenses provided herein, effective upon written notice to the other party. The breaching party agrees that if it breaches this Agreement, the non-breaching party will be entitled to injunctive or similar equitable relief and that the breaching party will not argue in any proceeding that its breach will not cause irreparable harm to the non-breaching party or that the non-breaching party can be adequately compensated for any such harm by any remedies other than by injunctive relief.

c. Effect of Termination. Termination of this Agreement shall have the effect designated in Appendix B.

d. Non-Exclusive Remedy. Termination of this Agreement or any license granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

e. Survival. Unless otherwise stated herein, any provision that, by its nature or terms, is intended to survive the expiration or termination of this Agreement, will survive.

## 8. LIMITED WARRANTIES; REMEDIES

a. Software. Subject to the exclusions herein, including those in Appendix A, Mueller Systems warrants that commencing from the date of shipment or provision to Customer and continuing for the period set forth in Appendix A (the "Warranty Period"), (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will perform substantially in conformance with the applicable Documentation provided to Customer by Mueller Systems. Mueller Systems does not warrant that the Software will operate in combinations with other software, except as specified in the Documentation, that the Software will meet the Customer's requirements or that the operation of the Software will be uninterrupted or error-free. Customer assumes responsibility for taking adequate precautions against damages which could be caused by defects, interruptions or malfunctions in the Software or the hardware on

which it is installed. Mueller Systems' entire obligation and Customer's exclusive remedy with respect to the Software warranties set forth above shall be, at Mueller Systems' option, to either (x) repair or replace any Software containing an error or condition which is reported by Customer in writing to Mueller Systems which causes the Software not to conform with the warranty set forth herein; or (y) refund a pro-rated amount paid by Customer to Mueller Systems and terminate this Agreement and all licenses provided herein.

b. Services. Mueller Systems warrants that all services provided by it to Customer under this Agreement shall be performed in a workmanlike manner. Mueller Systems' entire obligation and Customer's exclusive remedy with respect to the Service warranties set forth above shall be the re-performance of the applicable non-conforming Service.

c. Equipment. Subject to the exclusions herein, including those in Appendix A, Mueller Systems warrants to Customer that the Equipment will comply with provided specifications for the periods specified in Appendix A. Claims under this Section will be considered if submitted to Mueller Systems within sixty (60) days following the discovery of any noncompliant Equipment covered by this Agreement and provided Mueller Systems or its agents are permitted a commercially reasonable opportunity to examine and analyze the Equipment claimed to be noncompliant. Mueller Systems' entire obligation and Customer's exclusive remedy with respect to the Equipment warranties set forth herein, at Mueller Systems' option, is repair or replacement of any Equipment found noncompliant, subject to the terms and conditions herein, during the applicable warranty period after such Equipment is properly packaged and returned prepaid to Mueller Systems' designated service center.

d. Costs. Any and all costs associated with uninstalling and shipping noncompliant Equipment and Software and installing replacement Equipment and Software will be the responsibility of Customer.

e. Exclusions. The warranties provided by Mueller Systems shall not apply to Equipment and/or Software which: (i) have been altered, except with the express written consent, permission or instruction of Mueller Systems,

(ii) have been used in conjunction with another product resulting in the defect, except for those third party products specifically approved by Mueller Systems, (iii) were other than the most current version of the Software (but only to the extent that any failure of the Software would have been avoided by the use of the most current version), (iv) have been damaged by improper environment, abuse, misuse, accident, negligence, act of God, excessive operating conditions, or unauthorized attachments or modifications, (v) have not been properly installed and operated in accordance with the Documentation, or as otherwise instructed by Mueller Systems, or (vi) any other exclusion set forth in any Appendix hereto.

f. DISCLAIMERS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES STATED ABOVE ARE EXCLUSIVE AND NO OTHER WARRANTIES OR REMEDIES EXPRESS, IMPLIED OR STATUTORY, APPLY TO THE DOCUMENTATION, THE SOFTWARE, THE EQUIPMENT OR ANY SERVICES TO BE PROVIDED BY MUELLER SYSTEMS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OR PERFORMANCE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH MUELLER SYSTEMS EXPRESSLY DISCLAIMS.

9. INDEMNIFICATION. Mueller Systems will indemnify and defend Customer from any third party claim that the Software and Equipment infringe on another person's or company's patent, copyright or other intellectual property right as specified in this Section. This indemnity does not cover and specifically excludes (a) intellectual property rights recognized in countries and jurisdictions other than the United States, and (b) claims relating to infringement of intellectual property rights by a third party's products and software. Mueller Systems has no obligation under this Section for any claim to the extent it results from or arises out of Customer's modification of the Equipment or Software or from any combination, operation or use of the Software or Equipment with other third party products or services. Mueller

Systems' duty to indemnify under this Section is contingent upon Mueller Systems receiving prompt notice of a claim and Mueller Systems' right to solely control resolution of a claim. Customer's sole remedy for an indemnified claim under this Section is as follows: Mueller Systems will, at its expense and in its discretion either (a) resolve the claim in a way that permits Customer's continued ownership and use of the affected Software and Equipment, (b) provide a comparable, non-infringing replacement at no cost to Customer, or (c) accept return of the Software and Equipment, provide a reasonable depreciated refund and terminate this Agreement and all licenses herein. This Section is the exclusive statement of Mueller Systems' liability and responsibility for indemnifying Customer for infringement of intellectual property rights

**10. LIMITATION OF LIABILITY.**

a. MUELLER SYSTEMS' MAXIMUM LIABILITY HEREUNDER IS EXPRESSLY LIMITED TO THE TOTAL AMOUNT PAID FOR THE SOFTWARE, SERVICES, AND EQUIPMENT IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS AND WILL UNDER NO CIRCUMSTANCE EXCEED THE AMOUNT PAID BY CUSTOMER IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS FOR THE SOFTWARE, SERVICES AND EQUIPMENT PROVIDED BY MUELLER SYSTEMS UNDER THIS AGREEMENT. Some states do not allow the limitation and/or exclusion of liability for incidental or consequential damages, so the above limitation may not apply.

b. The provisions of this Agreement allocate the risks between Customer and Mueller Systems. Mueller Systems' pricing reflects this allocation of risk and the limitations of liability specified herein.

**11. NOTICE.** All notices required to be given hereunder shall be in writing. Notice shall be considered delivered and effective upon receipt when sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above. Either party, upon written notice, may change any name or address to which future notice shall be sent.

**12. GENERAL.** The Software will not be exported or re-exported in violation of any

export provisions of the United States or any other applicable jurisdiction. The rights and obligations of this Agreement are personal rights granted to the Customer only. The Customer may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. Any such purported transfer or assignment shall be null and void. Mueller Systems will be free of liability to the Customer where Mueller Systems is prevented from executing its obligations under this Agreement in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable. Any modification or amendment to any of the provisions of this Agreement will be in writing and signed by an authorized officer of each party. This Agreement does not create or imply any relationship in agency or partnership between the parties. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. The validity of this Agreement and the rights, obligations, and relationship of the parties resulting from same will be interpreted and determined in accordance with the law of the State of Delaware, and applicable federal law, without regard to its choice of law provisions. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement is contrary to and in violation of any applicable law, such provision will be considered null and void to the extent that it is contrary to such law, but all other provisions will remain in effect. The waiver or failure of either party to exercise any right herein shall not be deemed a waiver of any further right hereunder. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, and commitments between the parties regarding the subject matter of this Agreement.

*[Signatures Appear on the Following Page]*

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Mueller Systems

By: \_\_\_\_\_

\_\_\_\_\_  
Name (Print or Type)

\_\_\_\_\_  
Title

Customer

By: 

Tom S. Ramsey  
\_\_\_\_\_  
Name (Print or Type)

Mayor  
\_\_\_\_\_  
Title

# Appendix A

## Warranty

### 1. LIMITED WARRANTY FOR MUELLER SYSTEMS PRODUCTS

#### 2. Product Warranty

Subject to the limitations and conditions set forth herein, Mueller Systems warrants that commencing from the date of shipment to the Customer and continuing for the period set forth in Attachment A (referred to as the "Warranty Period"); (a) the Equipment will be free from defects in materials and workmanship under normal use, installation and service conditions; (b) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (c) the Software substantially conforms to the applicable published Mueller Systems functional specifications for the Software. Except as provided for in Attachment A, Mueller Systems will, at its option, either repair or replace the Product if it malfunctions or becomes inoperable due to a defect in workmanship or materials during the Warranty Period. If in its sole discretion Mueller Systems determines that it is unable to repair or replace the Product, it will refund to Customer a pro-rated amount paid for the defective Product. Products that are repaired or replaced under this Warranty will be warranted for the remainder of the original Warranty Period or 30 days, whichever is longer.

#### 3. Exclusions

If, in Mueller Systems' sole judgment, a Product has been subject to misuse, neglect or accident or has been damaged through abuse, alternation, improper installation or application, failure to follow Mueller Systems' operation or maintenance instructions or negligence in transportation, handling, or storage, or repaired by anyone other than Mueller Systems or its authorized personnel, this Warranty will not be applicable. For Software, this Warranty will not apply if there has been a change to the Software's operating environment not made or authorized by Mueller Systems; Customer fails to install any correction or enhancement provided by Mueller Systems; or a virus is introduced through no fault of Mueller Systems. This Warranty will also not cover damage due to acts of God, power failures, lightning, fire, flood, severe weather, hailstorms, insect and pest infestation, and other events reasonable beyond Mueller Systems' control.

#### 4. Product Returns

Claims under this Warranty will be considered if submitted to Mueller Systems within 60 days following the discovery of any defect covered by this Warranty and provided Mueller Systems or its agents are permitted a commercially reasonable opportunity to examine and analyze the material or workmanship claimed to be defective. If Mueller Systems elects to repair the Product, Customer will send it, properly packaged, to a repair facility designated by Mueller Systems. Customer will pay the cost of returning defective Products to the place of repair designated by Mueller Systems and Mueller Systems will pay the cost of delivering repaired or replacement Products to Customer.

#### 5. Limits of Warranty and Liability

Damage to persons or property or other loss or injury resulting from defects in the Products or from improper installation or use shall not be the responsibility of Mueller Systems. Mueller Systems will not under any circumstance be liable for any indirect, special, incidental or consequential damages of any nature, whether based on contract, tort or other legal theory including but not limited to, business interruption costs, loss of profit or revenue, loss of data, loss of use of services, cost of capital, cost

of substitute services or facilities, downtime costs or damages and expenses arising out of third-party claims, even if Mueller Systems has been advised of the possibility of such damages. In all cases, Mueller Systems' total liability will be limited to the total payments made by Customer to Mueller Systems for the Products and services provided.

**6. Disclaimer of Warranty**

EXCEPT AS EXPRESSLY SET FORTH IN THIS WARRANTY, MUELLER SYSTEMS DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AGAINST TITLE AND AGAINST INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

**ATTACHMENT A**

**1. AMR / AMI Products<sup>1</sup>:**

**Software** – Mi.Host, Mi.Data, MCM (Meter Control Management), MCM Mobile, EZReader and other software products are covered by a one (1) year warranty from the date of shipment or provision to Customer.

**Hardware** – Mi.Node electric (Smart Meter), Mi.Hub Collectors, Mi.Tech Handheld PC, Street Machine RF Receiver, PitStop handheld receivers, TRuRead™ remotes, laptops PC's, Server Hardware and all other peripheral electronic products are covered by a one (1) year warranty from the date of shipment to Customer.

**Radio Modules** – Mi.Node™ water modules and Hot Rod™ modules are covered by a ten (10) year warranty from the date of shipment to Customer. Additionally, Mi.Node water modules and Hot Rod™ modules are covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. Mi.Hydrant and Repeater Transceivers are covered by a ten (10) year warranty from the date of shipment to Customer. All prorated warranty credits listed will apply to list pricing in effect at the time of the return.

**Encoder Register Products** – Hersey Translator™ Encoder registers, Hersey SSR Solid State Register, ME-8 Encoder registers, Wall Pads and Pit Pads are covered by a ten (10) year warranty from the date of shipment to Customer. Additionally, the complete unit is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount from the date of shipment to Customer. All prorated warranty credits listed will apply to list pricing in effect at the time of the return.

**2. Water Metering Products:**

**Remote Disconnect Meters** - The Model 420 RDM is part of the 400 series of meters and has applicable coverage shown below for Model 400 meters. In addition, Model 420 RDM has a five (5) year warranty from the date of shipment to Customer on the valve and solenoid assembly.

**Models 400, 500, MVR, RFM, FM3, HM,** and cold-water mechanical meters and detector check models, **EDCIV** are covered for a period of one (1) year from the date of shipment to Customer.

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<sup>1</sup> Unless otherwise expressly stated herein, all warranty terms are provided from the date of shipment to Customer.

**Model HB MAG** electromagnetic cold water meters are covered for a period of (2) years from the date of shipment.

**Maincases** for the above listed mechanical meters are covered for a period of twenty-five (25) years from the date of shipment to Customer.

**Standard Registers** for the above listed mechanical meters are covered for a period of fifteen (15) years from the date of shipment to Customer.

**Models 400 and 500** meters perform to AWWA new meter accuracy standards as defined in the most current revision for a period of five (5) years from the date of shipment to Customer.

**Model HB MAG** electromagnetic cold water meters perform to AWWA new meter accuracy standard as defined in the most current revision for a period of two (2) years from the date of shipment to Customer.

**Models MVR, RFM, FM3, and HM** meters perform to AWWA new meter accuracy standard as defined in the most current revision for a period of one (1) year from the date of shipment to Customer.

**Models 400 and 500** meters perform to AWWA repaired meter accuracy standards for the following time periods:

5/8" – Fifteen (15) years from the date of shipment to Customer or the registration of 1,750,000 U.S. gallons, whichever comes first;

3/4" – Fifteen (15) years from the date of shipment to Customer or the registration of 2,000,000 U.S. gallons, whichever comes first;

1" – Fifteen (15) years from the date of shipment to Customer or the registration of 3,000,000 U.S. gallons, whichever comes first;

1-1/2" – Fifteen (15) years from the date of shipment to Customer or the registration of 5,500,000 U.S. gallons, whichever comes first;

2" – Fifteen (15) years from the date of shipment to Customer or the registration of 8,500,000 U.S. gallons, whichever comes first.

**Solid State Meters (SSM)** Mueller Systems SSM is will meet or exceed accuracy of +/- 1.5% between the specified minimum flow rate to the specified maximum flow rate for ten (10) years from date of shipment according to the following sizes:

5/8" Meter - 0.1 gpm to 20 gpm

5/8" x 3/4", 3/4" Short, and 3/4" Long Meter – 0.1 to 30 gpm

1" Meter – 0.4 to 55 gpm

1 1/2" Meter – 0.8 to 100 gpm

2" Meter – 0.8 to 160 gpm

The SSM is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. The prorated warranty credit listed will apply to list pricing in effect at the time of the return.

If the above listed meters do not perform as specified, Provider will repair or replace them, at Provider's option, subject to the following:

An applicable meter shall be noncompliant if it fails to pass an accuracy test, conducted by the customer according to AWWA standards. If the meter is inoperative because of foreign material, all such material must be removed prior to testing. A copy of the customer's test results must accompany the meter being returned. If the customer chooses not to test a meter before returning it, Provider will repair or replace the meter at Provider's option after the meter has been tested by Provider. When test is conducted by Provider, the customer will be charged a reasonable testing fee.



# **Appendix B**

## **Services**

### **1. Software Services and Support Obligations**

a. "Update" to the Software means a subsequent release of the Software that Provider makes generally available to its current customers for the Software. Updates include changes and corrections to the Software as are required to keep the Software in substantial conformance with the applicable Documentation and that are created by Provider as corrections for defects in the Software. Updates shall not include any release, option or future product that Provider licenses separately. Provider shall in its sole discretion determine the nature, content, timing and release of any Updates.

b. Web-based support, consisting of information on the most current release of the Software through Provider's web site.

c. Phone support in the form of advice and counsel via telephone regarding Customer's use of the most current release of the Software, as well as Customer's connectivity and ability to access Content. Phone Support is provided from 8:00 AM to 7:00 PM Eastern Time, Monday through Thursday and 8:00 AM to 5:00 PM Eastern Time on Fridays. All hours and days exclude recognized U.S. holidays observed by Mueller Systems.

### **2. Software Hosting Services**

a. Except as specifically permitted in this Agreement, Customer shall have web-based access the Software hosted by Provider pursuant to this Agreement.

b. Provider shall provide Customer with access and related hosting services to the Software installed on Provider's servers. Provider will also install the Content provided by Customer. Provider will define the appropriate performance specifications and will host the server at a Provider's location. Provider will monitor and perform routine maintenance on the server, and if the server is not operating properly, will make a good faith effort to operate Customer's system on a backup server, if available. Access to Customer's server is restricted to authorized Provider information technology and support personnel only. Differential and full server backups are performed when reasonably practicable.

c. Customer shall be responsible for installing, operating and maintaining the equipment, software, and/or facilities at Customer location recommended by Provider for effective access to and use of the Software installed on Mueller Systems server. Customer shall be responsible for providing and maintaining its own Internet access and all necessary telecommunications equipment at Customer's location necessary for accessing the Software.

d. Upon termination, for any reason, of the Agreement or any license(s) granted herein, Provider shall immediately cease providing access to the Software and Hosting Services. Customer shall (i) immediately stop access and use of all such Provider confidential information (including Software); (ii) shall return all copies of the Software, Documentation, and any Provider confidential information to Provider; and (iii) delete all Software, Documentation, and other confidential information off of any and all storage media possessed or controlled by Customer. Customer shall provide Provider with written certification signed by an officer of Customer that Customer has complied with the provisions of this Section. Customer shall immediately pay all amounts due to Provider.

## Appendix C

### 7. Confidential Information

For purposes of this Attachment, “party” or “parties” shall mean Provider and Customer, including their respective subsidiaries and affiliates who are providing information under this Agreement. The parties agree to maintain confidential information as follows:

1. **Definition of Confidential Information.** The parties understand and agree that confidential information is any and all current and future Equipment, Documentation and/or Software information, roadmap, technical or financial information, customer names, addresses and related data, contracts, practices, procedures and other business information, including software reports, strategies, plans, documents, drawings, machines, tools, models, patent disclosures, samples, materials and requests for proposals that may be disclosed between the parties, whether written, oral, electronic or otherwise, however and wherever acquired (“Confidential Information”). Confidential Information excludes any information which would otherwise fall in the definitions above, but which was (a) known to the recipient of the information (“Recipient”) before receipt from the disclosing party; (b) publicly available through no fault of Recipient; (c) rightly received by Recipient from a third party without a duty of confidentiality; (d) disclosed by disclosing party to a third party without a duty of confidentiality on the third party; (e) independently developed by Recipient without breach of this or any other confidentiality agreement; or (f) disclosed by Recipient after prior written approval from the disclosing party.

2. **Obligations of Confidentiality and Remedies.** Recipient agrees to protect the disclosing party’s Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Recipient uses with respect to its own Confidential Information. Neither party has any obligation to exchange Confidential Information. Both parties acknowledge and agree that the disclosure of the other party’s Confidential Information could cause irreparable harm. Therefore, an injured party is entitled to applicable equitable relief, including injunctions, in addition to other remedies, for such wrongful disclosure of Confidential Information. In addition, disclosure of Confidential Information required by a government body or court of law is not a violation of this Section if the Recipient gives prompt notice of the required disclosure to the disclosing party.

3. **Term of Confidentiality Obligations.** Recipient’s duty to protect Confidential Information expires three (3) years from the date of disclosure of the particular Confidential Information.

4. **No Warranties on Confidential Information.** Neither party warrants or guarantees the accuracy of any Confidential Information transferred between the parties.

**City of Spring Valley Village**  
**Appendix D**

Annual Fees

<b>Hosting Services (with Maintenance &amp; Support)</b>					
<b>Number of Metering End Points</b>	<b>1 - 1,000</b>	<b>1,001 - 5,000</b>	<b>5,001 - 25,000</b>	<b>25,001 - 50,000</b>	<b>50,001 - 100,000</b>
<b>AMI Software Module, Includes Two-Way Hosting for Water System</b>		<b>\$4.20 Per Meter</b>			
<b>AMI Software Module, Includes Two-Way Hosting for Electric or Electric-Combo System <i>Incl. Outage Management System &amp; TOU Rate Management Module</i></b>					
<b>Additional Software Modules</b>					
Homeowner Access Portal					
Transformer Loading Manager					
Demand Response Management					
3rd Party Portal Automated Data Services		<b>\$5,200</b>			
<b>Hardware Maintenance</b>					
<b>Mi.Net 3G Backhaul – each</b>	<b>440.00</b>				
<b>Handheld PC – each</b>	<b>775.00</b>				
<b>Mi.Hub Collector - each</b>	<b>1450.00</b>				

**Customer** Tom S. Ramsey, Mayor  
 Name (Print or Type) & Title