

CONSTRUCTION, PROCUREMENT, MAINTENANCE AND PROFESSIONAL SERVICES AGREEMENT

[AGREEMENT NO. 2018-0510]

THIS CONSTRUCTION, MAINTENANCE AND PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 5th day of February, 2018 by and between City of Auburndale, FL ("CLIENT") and XtraLight Manufacturing, Ltd., d/b/a Utility Metering Solutions ("UMS").

1. SCOPE OF SERVICES:

Advanced Metering Program Services

1.1 If this box is checked ☒ UMS agrees to furnish labor, tools and the other requirements stated herein, for the compensation specified in the Task Order, to construct and install a fixed network metering system as specified in the Task Order called Attachment 1, which is incorporated by reference and expressly made a part of this Agreement.

1.2 Additions, deletions, and modifications to this Agreement may be made by the mutual written agreement of UMS and CLIENT as described in a Task Order. Task Orders may be executed from time to time by both parties to this Agreement and shall be consecutively numbered. Services shall be provided in accordance with the provisions of this Agreement and the applicable Task Order. Certain Task Orders may contain supplemental terms and conditions, in addition to those set forth in this Agreement. In the event of a conflict between the terms and conditions of this Agreement and of any particular Task Order, the terms and conditions of the particular Task Order shall take precedence. Further, by mutual written consent of the parties, any Task Order may be changed, amended or modified, without in any way impacting the validity of the Task Order.

2. INDEPENDENT CONTRACTOR:

UMS shall be considered an independent contractor in performing the Work and shall have the right to control the activities of UMS's employees, agents and subcontractors in performing the Work except as provided for in this Agreement. UMS shall be solely responsible for the compensation, benefits, workers' compensation insurance, contributions and taxes of UMS's employees, subcontractors or agents.

It is mutually understood that it is the intent of the parties that an independent contractor relationship is hereby established under the terms and conditions of this Agreement. UMS agrees that the programs and associated reports and documents, whether complete or incomplete, generated directly or indirectly out of, or arising out of the course of performance of services under this Agreement, shall become and remain the sole property of CLIENT upon payment. However, UMS may retain one copy of each of these reports and documents for its legal archives.

3. PAYMENT:

3.1 CLIENT agrees to pay UMS in accordance with the schedule of fees and expenses in each Task Order. Upon payment the final goods and services shall become the property of CLIENT. Fees and expenses will be invoiced in accordance with each Task Order and are due and payable within thirty (30) calendar days of the date of each invoice. CLIENT must notify UMS in writing of any dispute or disagreement with invoiced charges within thirty (30) days after the date of invoice. Such disagreement must be explained in detail, and all undisputed charges must be paid in full when due. Absent such timely notice by CLIENT, CLIENT shall be deemed to have agreed to the charges as invoiced after the expiration of such time period.

3.2. Late Charges. UMS reserves the right to charge, and CLIENT agrees to pay, a late charge equal to one percent (1%) per month on any amount that is not the subject of a good faith dispute that is unpaid on the due date, and on any other outstanding balance.

4. TAXES:

CLIENT shall provide UMS with a certificate of exemption from federal, state, and local taxes due as a result of the Work. If CLIENT does not produce a certificate of exemption CLIENT shall reimburse UMS for any base sales and/or use taxes, exclusive of any penalties, as a result of the use by UMS of CLIENT services, materials and supplies in the performance of this Agreement.

5. RESPONSIBILITIES OF CLIENT:

5.1 CLIENT shall make available to UMS an authorized representative who will act as UMS's primary contact person. This person will possess knowledge of the Scope of Services, will assist UMS in obtaining any and all information required to perform the Scope of Services, and will schedule necessary meetings with the appropriate individuals within CLIENT's organization (when and as requested by UMS).

5.2 CLIENT is responsible for paying hardware suppliers directly for all hardware, including but not limited to, meters and transmitters for the project.

5.3 Location and Access. CLIENT shall provide sufficient space for the installation and operation of the Work for the term of this Agreement, including access to office space with internet service and telephone lines, if necessary to allow UMS to perform required maintenance, monitoring, and training services. CLIENT shall provide access for UMS and its employees or subcontractors to install, adjust, inspect, maintain, and repair the Work in accordance with the terms of this Agreement during regular business hours, or such other reasonable hours as may be requested by UMS and acceptable to CLIENT. **CLIENT must provide legal access and prompt notice to property owners and tenants in the event UMS must enter onto private property and/or access any utility easements in the course of providing services under this Agreement.** Additionally, CLIENT shall also provide adequate, secured storage location and facilities for the disposal of old meters which are removed by UMS.

5.4 During the Term, if all or any part of the goods supplied or specified by UMS is damaged, destroyed or stolen due for any reason CLIENT shall repair or replace such goods with equipment manufactured by the same, or a comparable manufacturer by paying UMS, within thirty (30) days of receipt of UMS's invoice, the costs of such repairs or replacement. CLIENT shall have no obligation with respect to loss or damage to the goods solely resulting from acts or omissions of UMS, its employees, agents or contractors.

6. JOINT RESPONSIBILITIES:

6.1 Coordination. UMS shall consult with the personnel designated by CLIENT in order to coordinate the Work and shall not permit any act that will unreasonably interfere with the performance of CLIENT's business activities without the prior written approval of CLIENT. Further, UMS shall consult with CLIENT regarding the coordination of the Work with any other work being performed by others. UMS shall perform the Work under this Agreement in such a manner so as not to harm the structural integrity of CLIENT's operating systems, except as approved previously by CLIENT. CLIENT shall cooperate reasonably and promptly with requests for assistance in coordinating the Work.

6.2 Inspections. All materials, equipment and workmanship shall be subject at all reasonable times to inspection by CLIENT or its designated representatives, with regard to quality of materials, workmanship, and the diligent execution of the Work. UMS shall allow CLIENT access to all parts of the Work, and shall furnish such information and assistance as is required to make a complete and detailed inspection or inspections. UMS shall, upon CLIENT's request, remove or uncover such portions of the finished Work as CLIENT may direct. After the examination, UMS shall restore said portion of the Work to the standard required by this Agreement. If the Work thus exposed or examined proves acceptable, the expenses of uncovering or removing and the replacing of the parts removed shall be the responsibility of CLIENT and such uncovering, removing and replacing shall be deemed to be an excusable event of delay, if a delay in completion is caused thereby. If the Work so exposed or examined has not been performed in accordance with this Agreement, the expense of uncovering, removing and replacing any portion of the Work necessary to comply with this Agreement shall be borne by UMS.

6.3 Project Schedule. UMS and CLIENT shall participate in regularly scheduled Project Status Meetings throughout the term of this Agreement and the frequency of these meetings will vary as directed by CLIENT. Billing data must be correct, verified by UMS and CLIENT, and in read-route sequence prior to the start of installation. Extensions of time will be allowed for delays arising from unforeseeable causes beyond the control and without the fault or negligence of UMS. A request for an extension of time must be made by UMS in writing to CLIENT within fifteen (15) calendar days after the unforeseen condition manifests itself to UMS. In the case of a continuing cause of delay, only one (1) request is necessary. CLIENT shall be reasonable in granting or denying additional time to perform under the circumstances at the time of the request.

6.4 Utility Billing Data. CLIENT is responsible for providing UMS with the most accurate,

current billing data needed in order for UMS to successfully install the new metering system. CLIENT must provide current billing data to UMS prior to the start of installation. CLIENT is responsible for ensuring the accuracy of the data and for incurring all costs associated with providing this data to UMS. CLIENT and/or CLIENT's billing software provider is responsible for providing UMS with the proper file format that is needed to ensure the merging of the change out data back into the billing system. UMS will provide CLIENT's billing software provider an electronic file of meter change out data at which time CLIENT and/or CLIENT's software provider will be responsible for merging the information back into the billing system. UMS will be responsible for providing accurate meter change out data collected during the installation of the new meters. UMS will not be held liable for inaccurate data received from CLIENT nor will UMS be held liable for any problems arising due to CLIENT's inability to provide UMS with accurate data.

CLIENT is responsible for all costs associated with merging the change out data back into CLIENT's billing system. UMS assumes no responsibility nor does UMS make any warranty, expressed or implied, in regards to CLIENT's billing software system and/or the Meter Manufacturer's software. Upon completion of the Work and acceptance by CLIENT, all costs associated with ensuring and/or upgrading CLIENT's billing system to function with the Meter Manufacturer's software rest strictly with CLIENT unless stated otherwise in a Task Order.

6.5 Utility Service Shutoff. UMS shall be responsible for shutting off the utility service to each meter serviced as well as notifying each utility client of the shutoff. CLIENT hereby agrees to assist UMS in notifying the individual water utility clients. CLIENT will mail advance notice to customers of the upcoming water meter change out in their neighborhood. The UMS installation team will knock on the doors of residential clients before starting work and will leave notification on each door when work is completed. For large commercial clients, special efforts will be made to ensure minimum disruption to their utility service needs. To prevent any damage to the system, UMS will schedule these large commercial replacements directly with the clients. UMS shall be responsible for any damage or leaks that occur inside the water meter box resulting from meter removal or installation and any damage incurred inside the meter box will be repaired promptly at the expense of UMS. However, UMS is not liable for damages outside of the water meter box, either on the water distribution side or on the client side, incurred from the meter replacement process (i.e. shutoff, temporary outage, and restart of water service). The responsibility for plumbing fixtures inside of each facility belongs to each water utility client and not to UMS.

6.6 Changed Conditions. Should UMS encounter subsurface or latent physical conditions at the Premises which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, UMS shall give written notice to CLIENT before any such condition is disturbed or further disturbed. No claim of UMS under this provision will be allowed unless UMS has given the required notice. CLIENT will promptly investigate and, if it is determined that the conditions materially differ from those which UMS should reasonably have been expected to discover or anticipate, CLIENT and UMS will negotiate and make every effort to agree to a change order to address the unforeseen conditions. If such changed conditions cause an increase or decrease in UMS's cost or time of performance, the parties may negotiate a mutually acceptable alternative solution.

6.7 Alternative Dispute Resolution (ADR)

6.7.1 All Disputes. In the event that any dispute or claim related to construction or the contracts should arise between any of the parties to this Agreement, each party agrees to exercise good faith efforts to resolve the matter fairly, amicably, and in a timely manner. The parties shall consider litigation as a last resort, to be employed only when ADR methods fail. To this end, the parties agree to take affirmative steps to communicate effectively, to keep lines of communication open, and to handle all disputes in a reasonable and businesslike manner, which may include the use of a dispute resolution board.

6.7.2 Mediation: Disputes under \$50,000. Each party to any dispute under \$50,000 agrees, upon the request of any other party to the dispute, to submit the matter to mediation. The parties shall first confer informally with one another to attempt to resolve the dispute. The mediator shall be a person the parties agree is unbiased and qualified to understand the dispute and make the determinations that are required.

6.7.3 Methods of ADR: Disputes over \$50,000. Each party to any dispute over \$50,000 agrees, upon the request of any other party to the dispute, to submit the matter to ADR, in a form to be determined by agreement of the parties. The parties shall first confer informally with one another to attempt to resolve the dispute. In the event that the assistance of an unbiased neutral is required, the parties shall meet and come to an agreement as to what form the ADR should take and who the unbiased neutral should be. Forms of ADR that may be utilized include, but are not limited to, mediation and mini-trials, but do not include formal arbitration. The unbiased neutral may be a professional mediator, an attorney, an architect, an engineer, a board composed of two (2) or more qualified persons, or any person(s) the parties agreed is unbiased and qualified to understand the dispute and make the determinations that may be required.

6.7.4 Authority. When ADR is utilized, regardless of the dollar value of the dispute, each party agrees to have in attendance at their mediation (or whatever method is utilized) a person with actual authority to resolve the dispute.

6.7.5 Non-parties. Persons who have a stake in the dispute but who are not parties to this Agreement may be included in the ADR by consent of the parties. When disputes arise between only persons involved in the project who are not parties to this Agreement, the parties agree to encourage and facilitate the use of ADR when possible.

6.7.6 Court of Competent Jurisdiction. UMS agrees that ADR is a condition precedent to the filing of a court of competent jurisdiction action or other administrative proceeding seeking economic recovery from CLIENT in an amount greater than \$50,000.

6.7.7 Costs of ADR. When ADR is utilized, the parties included in the process agree to equally share the costs of same.

7. WARRANTIES:

UMS warrants that all equipment designed, procured, fabricated, and installed pursuant to this Agreement is new and is in good and proper working condition. Further, UMS shall deliver to CLIENT for inspection and approval all written warranties from the equipment manufacturers and shall pursue rights and remedies against the manufacturer in the event of an equipment malfunction, improper or defective function, or defects in parts, workmanship, or performance. UMS makes no warranty, expressed or implied, on equipment designed, procured, fabricated, and/or installed by the CLIENT or a company other than UMS. Further, UMS is responsible for the labor and material cost to replace any water meters that fail within ninety (90) days from the date of installation. After ninety (90) days, the manufacturer's warranty is in place and the installation of replacement water meters will be CLIENT's responsibility. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED ARE DISCLAIMED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. HAZARDOUS MATERIALS:

UMS' obligations expressly exclude any work or services of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of hazardous materials or substances, including but not limited to asbestos or PCBs, in or on the premises where it is working. CLIENT hereby warrants and represents that, to the best of the CLIENT's knowledge, there is no asbestos or hazardous material that will in any way affect UMS' Work. Should UMS become aware of or suspect the presence of any hazardous materials, UMS shall have the right to stop work in the affected area immediately and notify CLIENT. CLIENT will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. CLIENT further agrees to assume responsibility for any claims arising out of or relating to the presence of any hazardous materials, if the presence of said materials is not related to UMS's activities.

9. EXCUSABLE DELAY:

9.1 In no event shall either party be liable to the other for any delay or failure to perform hereunder, which delay or failure to perform is due to causes beyond the reasonable control of said party, including but not limited to Acts of God, acts of the public enemy; acts of the United States of America, or any State, territory or political subdivision thereof; fires; floods; epidemics; quarantine restrictions; or freight embargoes.

9.2 Performance under this Agreement shall be considered extended a period of time equivalent to the time lost because of any delay, which is excusable hereunder; provided, however, that, if any such delay in the aggregate lasts for a period of more than seven (7) days, the party not relying on the excusable delay, at its option, may terminate this Agreement.

10. ADVERTISING:

Neither UMS nor CLIENT shall use the name of the other in any advertising without securing the written approval of the other.

11. TERM OF AGREEMENT:

This Agreement shall be in effect from the Notice to Proceed Date until the completion AND PAYMENT FOR of the goods and services. In no event shall the Agreement extend beyond a 1 year period. Notice of proceed to begin on March 5, 2018, or as soon after if reasonably possible, with a projected completion date to be September 30, 2018.

11.1 Termination for Convenience. CLIENT may terminate this Agreement, in whole or in part, for its convenience, by providing UMS with thirty (30) days advance written notice. In such event, CLIENT shall compensate UMS for: (i) all costs and expenses incurred by UMS through the date of the termination; (ii) all cost associated with the termination (including but not limited to re-stocking fees, termination charges by subcontractors, third party financing, vendors and lessors); (iii) all materials and equipment which have been ordered, and which cannot be returned; and (iv) UMS profits and Fee on any approved Task Orders, whether or not yet performed.

11.2 Termination for Cause. In the event that either party contends that the other party is failing to perform its obligations under this Agreement, or any Task Order, the non-breaching party shall provide the breaching party with written notice of the particular alleged breaches. The party allegedly in breach shall thereafter have a period of ten (10) calendar days within which to initiate corrective or remedial measures in order to eliminate the condition of breach. Should the party in breach fail or refuse to initiate corrective or remedial measures within ten (10) calendar days of receipt of written notification, then the non-breaching party may send a second written notice indicating that if the breaching party continues to fail to initiate corrective or remedial measure within ten (10) calendar days of receipt of the second notice, that the non-breaching party will deem this Agreement to be terminated for cause. In such event, subject to section 3.3, the non-breaching party shall be entitled to all recoveries allowed by this Agreement, any Task Orders, or applicable law.

11.3 UMS' right to Suspend Performance. UMS shall be entitled, at its sole discretion, to discontinue its work under this Agreement, or any Task Order, in the event that payments due it are not paid within sixty (60) days of the date due.

12. DUTIES OF UMS:

12.1 Supervision. In order to ensure project quality, UMS shall furnish a competent and adequate staff as necessary for the proper administration, coordination and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and ensure that an adequate force of skilled workmen are available to complete the Work in accordance with all requirements of this Agreement. UMS shall be solely responsible for site safety and for all construction means, methods, techniques,

sequences, and procedures and for coordinating all portions of the Work under this Agreement. CLIENT reserves the right to reject any sequences or procedures proposed by UMS in connection with the Work which might constitute or create a hazard to the Premises, or to persons or property, or which will result in schedule delays or additional costs to CLIENT.

12.2 UMS shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement. UMS shall be responsible for the disposal of all equipment and materials removed or replaced through its performance of the Work in accordance with all applicable laws and regulations regarding such disposal, except those items designated by CLIENT as non-disposable. Replaced water meters will be the property of CLIENT and will be turned over by UMS to CLIENT in a prescribed manner agreed to by both parties.

12.3 Throughout the Engagement Period, UMS shall provide all necessary labor, supervision, management, analysis, data entry, quality control, and any other professional services necessary to complete the Scope of Services in a timely manner.

12.4 UMS Insurance

During the Term, UMS shall maintain the insurance coverage set forth below and shall provide proof of such insurance coverage to CLIENT prior to UMS's initiation of the construction activities specified under Attachment 1:

- (a) Workers' Compensation Insurance for statutory limits or a State certificate of self-insurance, and Employers Liability Insurance with limits of not less than US \$1 million per occurrence;
- (b) Commercial General Liability Insurance, including blanket contractual coverage, for bodily injury and property damage with limits of not less than US \$1 million combined single limits per occurrence;
- (c) Automobile Liability Insurance covering all owned, non-owned and hired with limits of not less than US \$1 million per combined single limit per occurrence.

Each insurance policy listed above will name CLIENT as an additional insured under the policy, expressly or by way of a blanket endorsement. UMS shall furnish CLIENT with a certificate of insurance evidencing the required insurance coverage's required herein.

13. CHOICE OF LAW AND JURISDICTION:

This Agreement shall be governed, construed and enforced according to the laws of the State where the work is to be done and, subject to section 6, suits relating to this Agreement may be filed in any court of competent jurisdiction.

14. BONDING:

Upon request by CLIENT in connection with services described in section 1.1 only, UMS shall purchase, maintain, and provide a Performance and Payment Bond throughout the duration of this Agreement.

15. LAWS AND ORDINANCES; INDEMNIFICATION:

UMS shall comply with all laws, ordinances, and regulations pertaining to the services and shall defend, protect, indemnify, and hold harmless CLIENT and its employees, officials, representatives, and agents from and against any and all claims, loss, damage, injury, expenses, judgments, costs, or attorneys' fees arising or resulting from the sole negligent performance by UMS, UMS' agents, representatives, subcontractors, employees, and assignees of this Agreement.

16. CONFIDENTIAL INFORMATION:

Section deleted.

17. AUDIT CLAUSE:

Whenever CLIENT enters into any type of contractual arrangement, including but not limited to lump sum contracts (e.g., fixed price or stipulated sum contracts, unit price, cost plus or time and material contracts) with or without a guaranteed maximum or not-to-exceed amounts, UMS's, subcontractors' and sub-subcontractors' Records shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours on reasonable advance notice. Such audits may be performed by CLIENT or an outside representative engaged by CLIENT. CLIENT or CLIENT's designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three (3) years after final payment or longer if required by law. CLIENT may (without limitation) conduct verification such as counting employees at the work site, verifying time charged and amounts paid through interviews and written confirmations with UMS's employees, field and agency labor, subcontractors, and vendors.

UMS' Records as referred to in this Agreement shall include any and all information that relates to time spent or services performed for which CLIENT receives an invoice pursuant to this Agreement. Such records shall include hard copy (as well as computer readable data if it can be made available); written policies and procedures, records of expenses incurred which are charged to CLIENT, job logs and time sheets.

18. LABOR:

UMS will furnish the necessary personnel that shall be required to complete the services in a timely manner and within the Agreement amount. UMS at UMS' sole cost and expense will be responsible for

the training of employees prior to start of work.

UMS shall, under the United States Immigration Reform and Control Act of 1986 ("IRCA"), as amended, and together with all applicable regulations, verify the identity and employment eligibility of all persons hired for work under this Agreement, which includes completing and retaining the Employment Eligibility Verification Form ("I-9"). CLIENT at CLIENT's discretion may review such forms as provided for in the Audit Clause of this Agreement.

19. EQUAL OPPORTUNITY CLAUSE:

During the performance of this Agreement, UMS agrees as follows:

19.1 UMS shall not discriminate against any employee because of sex, race, creed, religion, color, national origin, age, or disability. UMS will take affirmative action to ensure that UMS's employees are treated during performance of this Agreement without regard to their sex, race, creed, religion, color, national origin, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

19.2 UMS agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.

19.3 UMS agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of UMS on the grounds of disability, sex, race, creed, religion, color, national origin, age, disability, or any other classification protected by federal or state constitutional or statutory law. Such laws shall include, but not be limited to: Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Title II of the American with Disabilities Act of 1990. UMS shall upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

19.4 UMS shall, in all solicitations or advertisements for employees placed by or on behalf of UMS, state that UMS is an equal opportunity employer.

19.5 UMS shall provide CLIENT on reasonable request such data and reports as it is legally required to maintain regarding its EEOC obligations under the law and this Article.

20. NOTICES:

All notices required or given pursuant to this Agreement shall be deemed to have been duly served if delivered in person to an authorized representative or sent by registered or certified mail, postage prepaid, returned receipt requested, to the following address:

XtraLight Manufacturing, Ltd.
d/b/a UMS
117 East Thomas Street
Hammond, LA 70401

And

8812 Frey Road
Houston, Texas 77034

And

City Manager, City of Auburndale
P.O. Box 186
Auburndale, FL 33823

City Attorney
P.O. Box 186
Auburndale, FL 33823

21. DEFAULT AND REMEDIES:

21.1 Events of Default:

21.1.1 CLIENT shall fail to make any payment (as required in any Task Order) when it becomes due as provided in this Agreement or shall fail to make any other payment required hereunder, within fifteen (15) days after receipt of written notice of such nonpayment;

21.1.2 Either party shall fail to observe or perform any material covenants, conditions and agreements on the part of that party contained herein other than making payments and such failure shall continue for thirty (30) days after written notice thereof from the other party. If any such event of default is of such a nature that it cannot reasonably be cured within thirty (30) days, then the party in default, provided that it has notified the other party in writing that efforts to cure the default have been commenced, shall not be deemed in default during any period of time that it takes to cure such event of default, provided that such party is diligently pursuing such cure in good faith;

21.1.3 Either party shall (A) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of the assets of that party, (B) be unable, or admit in writing its inability to pay its debts as they become due, (C) make a general assignment for the benefit of creditors, (D) be adjudicated a bankrupt or insolvent, (E) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law for the purpose of effecting any of the foregoing, or (F) cease to do business as a going concern; or

21.1.4 An order, judgment or decree shall be entered, without the application, approval or consent of that party, by any court of competent jurisdiction, approving a petition seeking reorganization of that party appointing a receiver, trustee or liquidator, or of all or a substantial part of the assets of that party, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

21.2 Remedies. Upon the occurrence of an event of default set forth in this section, and subject to the limitations set forth therein, during the continuance of any such event of default, the party that is not in default (or such party as otherwise designated by proper name below) may, at its option, exercise either of the following remedies:

21.2.1 proceed by appropriate court action to (A) enforce performance by the defaulting

party of the defaulting party's obligations under this Agreement or (B) recover damages for the Default, after first submitting such claim, dispute, or alleged Default to arbitration in a manner and process that is mutually agreed to in writing by the parties; or

21.2.2 exercise any other right or remedy which may be available to it under applicable law or in equity.

21.3 Limitation of Liability: Under no circumstances shall either party be liable to the other for any consequential, indirect, exemplary or punitive damages arising out of or related to this Agreement or of any Task Order, regardless of the cause of action alleged. The total liability of UMS shall never exceed the amount of compensation paid under the Task Order, which is related to the claim.

22. REIMBURSABLE EXPENSE GUIDELINES:

All professional service rates are listed in Attachment A.

Any additional material purchased by UMS will be billed at Cost plus 15%.

23. GENERAL REQUIREMENTS:

23.1 Assignment. CLIENT shall not assign its rights or delegate its obligations under this Agreement without UMS's prior written consent. UMS shall have the right to freely assign this Agreement, in whole or in part, to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. This Agreement shall be binding upon and inure to the benefit of UMS and CLIENT and their successors and permitted assigns.

23.2 Entire Agreement. This Agreement includes the attached exhibits, which are hereby incorporated by reference. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all proposals, negotiations, conversations, discussions, letters of intent, memoranda of understanding, term sheets, whether written or oral, between Parties relating to the subject matter of this Agreement and all past dealing or industry custom.

23.3 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect in any jurisdiction, then such invalidity, illegality or unenforceability will affect only such provision in such jurisdiction, and will not in any manner affect the provision in any other jurisdiction, or any other provision of this Agreement in any other jurisdiction. The Parties hereby authorize a court or arbitrator to substitute such invalid, illegal or unenforceable provision with a valid provision that reflect the original intent of the Parties as nearly as possible.

24. OTHER PUBLIC ENTITIES

CLIENT and UMS understand and acknowledge that the terms, conditions, and pricing reflected in this contract may be enjoyed by any other state agency or subdivision, including the executive departments, the Legislature, the judicial branch, and independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities (hereinafter collectively referred to as "governmental agency"), upon mutual agreement of that governmental agency and UMS.

To the extent it is consistent with the applicable statutes and laws as well as its bylaws and procedures, a governmental agency wishing to utilize the terms, conditions, and pricing reflected in this contract, may utilize the selection process employed by CLIENT as an additional justification for its actions. Provided, however, that any governmental agency electing to utilize the terms, conditions, and pricing reflected in this contract shall deal directly with UMS in all respects, and CITY will in no way be involved in or assume any liability as a result of any utilization of this contract, in whole or in part, by another governmental entity.

Moreover, each governmental agency shall be responsible for its own purchases and shall assume total responsibility and liability for its own project, independent of CLIENT, and at its own discretion. In no event shall CITY be held liable for any costs or damages incurred by another governmental agency as a result of any future utilization of the terms, conditions, and/or pricing reflected herein by another governmental agency.

Signature Page to Follow

CLIENT

By: Robert R. Green

Robert R. Green, City Manager

As approved by the Auburnle City Commission 01/22/2018

Date: 2/7/2018

UMS

By: Richard K. Shirley

Name, title Richard K. Shirley

Date: 2/7/18

ATTACHMENT 1 –SCOPE OF SERVICES AND SERVICES PRICING

1. PRICING

INSTALLATION SERVICES PRICING

Installation Services	Quantity	Price	Total
Exchange ¾" Meter	7638	\$45.00	\$343,710.00
Exchange 1" Meter	191	\$45.00	\$8,595.00
Exchange 1.5" Meter	51	\$250.00	\$12,750.00
Exchange 2" Meter	128	\$250.00	\$32,000.00
Asset Management Services: Endpoint Activation	12656	\$5.00	\$63,280.00
Retrofit Existing Meter (Register & Endpoint)	4648	\$35.00	\$162,680.00
Retrofit Existing AMR Meter (Endpoint Only)	0	\$23.00	\$0.00
Project Management	1	\$65,000.00	\$65,000.00
Billing System Integration	0	\$11,000.00	\$0.00
Installation Services Total			\$688,015.00

- Quantities are estimated. Only actual work performed will be billed.
- Assumes no splicing of wires
- All material will be provided by CLIENT. Any material purchased by UMS will be billed at cost plus 15%.
- Installation services will be invoiced on the 25th of each month for actual work completed that month.
- Program Management Services will be invoiced upon notice to proceed.
- All other services will be invoiced once completed / installed.
- If project bonding is required the cost is 2.5% of project price.
- Insurance is included for services only.

CONTINGENCY SERVICES

Installation Services	Quantity	Price	Total
Misc. IT Services	per hour	\$110.00	\$0.00
Misc. Field Work	per hour	\$90.00	\$0.00
Lid Drilling	8000	\$10.00	\$80,000.00
Install new dual check	5000	\$55.00	\$275,000.00
Install new/replace existing curb stop	0	\$55.00	\$0.00
Install new/replace existing gate valve	0	\$55.00	\$0.00
Install new meter box (up to 1")	0	\$30.00	\$0.00
Install new meter box (up to 1.5-2")	0	\$55.00	\$0.00
Exchange 3" Meter	0	\$550.00	\$0.00
Exchange 4" Meter	0	\$700.00	\$0.00
Estimated Contingency Services			\$355,000.00

- Quantities are estimated. Only actual work performed will be billed.
- All material will be provided by CLIENT. Any material purchased by UMS will be billed at cost plus 15%.
- Contingency services will be invoiced on the 25th of each month for actual work completed that month.
- Services will be provided upon authorization by CLIENT.

2. PROJECT RESPONSIBILITY MATRIX

Pre-Implementation Services

Milestone	UMS	CLIENT	Deliverables
Establish an automated Mass Meter Change Out (MMCO) interface	Implement Xchange field tools and web-based user interface Coordinate with Billing System to establish MMCO protocol Test the MMCO interface	Facilitate receipt of existing meter and account source data Facilitate interactions between UMS and Billing System Assist in testing the MMCO interface	Interface to support accurate meter exchange data for Billing System automated processing Successful upload of new meter data into test environment
Jointly develop community outreach plan	Jointly develop plan for resident notification Review outreach templates with CLIENT Provide print-ready, release-ready collateral based on feedback Print approved post-installation door hangers	Jointly develop plan for resident notification Review and provide final edits on outreach templates Print or post desired collateral based on print-ready, release-ready collateral (i.e. bill inserts, press release, customer mailers) Manage information on CLIENT website	Communication plan to include who, what, when, where, and how residents are notified of the AMI project Print-ready, release-ready collateral for community outreach
Construction Kickoff Meeting	Schedule and manage meeting agenda	Host onsite meeting and authorizing key personnel to attend	Proposed project plan Key UMS personnel Key client personnel Assign client PM

Installation Services

Milestone	UMS	CLIENT	Deliverables
Route Data Update		Provide periodic updates to data file	
Determine Installation Sequence	Provide guidance and expectations on time required to be in each route	Provide list of available routes Provide a reading and billing schedule	Short term project plan
Provide Meter Data Updates	Request updates to meter and account source data when needed	Provide updated meter and account data as requested	

Milestone	UMS	CLIENT	Deliverables
Install Assigned Meters	Install meters and communications components Provide daily production and assistance reports	Confirm route installation sequence Provide reading and billing schedules Provide assistance when requested	Installation plans and schedule Field production reports (Xchange) Mass Meter Change Out files
Update Billing System Meter Management Data	Periodically create and transmit MMCO data files to CLIENT for processing in Billing System	Process MMCO files per Billing System instructions to complete Billing System meter exchange updates	Accurate meter exchange data for Billing System automated processing Accurate Billing System meter data
Manage onsite meter inventory	Support CLIENT process to manage and control inventory	Count and accept meters shipment(s) Secure storage of meter inventory Implement desired inventory control process Enable inventory access for UMS	
Communicate Punch List	Provide list of service connections to be addressed by CLIENT	Address punch list items within five (5) working days Accept punch list verification forms	Daily punch list
Monitor and validate AMI network performance	Verify installed meters are communicating on the network Troubleshoot meters not communicating Troubleshoot network performance issues Facilitate vendor remediation and warranty throughout the implementation phase Monitor route completions and provide route completion documents for signature	Accept meters that have been tampered with and/or destroyed outside of the installation process Accept and electronically sign route completion documents as routes reach substantial completion criteria	Signed substantial route completion documents Network performance report
Support interim billing process	Provide CLIENT with new AMI meter read data matching current read data file format in support of billing schedules until Billing System-AMI integration complete	Provide current Billing System read data file format specifications Provide schedule details for when AMI reads will be required	AMI read data files in current format used by CLIENT
Weekly Project Update Meetings	Coordinate meeting and agenda	Attend meeting and respond to support requests	Meeting minutes Updated short term project schedule

Milestone	UMS	CLIENT	Deliverables
			Punch list resolution Production statistics Risk Management

Close-Out Services

Milestone	UMS	CLIENT	Deliverables
Complete construction acceptance	Install meters and communications components	Accept project construction completion when all tasks are complete or when outstanding items have not been addressed in time accordance with SOW	Construction acceptance signed Migrate CLIENT to manufacture warranty / support model
Complete network acceptance	Facilitate AMI network acceptance	Accept AMI network	Network acceptance signed Migrate CLIENT to manufacture support model

3. SCOPE OF WORK

METER INSTALLATION

1. Receive daily workload and meter allotment
 - Meet PROJECT MANAGER at designated time and location daily
 - Work during normal work hours as determined by PROJECT MANAGER and city
2. Site arrival
 - Verify address
 - Remove meter lid and debris from meter box, and verify meter serial number and that previous out read is within range.
 - At least two of the above must be matched to proceed as normal, otherwise do not install and notify PROJECT MANAGER
3. Determine if change out or retrofit can occur
 - Verify that water flow can be shut off
 - Verify that meter is not piped directly
 - Verify meter size
4. Customer advisory
 - Knock on customer door and make them aware of activity, including that water supply will temporarily be disrupted.
 - Leave door hanger with customer, or leave behind if customer is not present.
5. Turn on hose bib and verify meter is registering water flow. This will verify correct meter and service address (important in apartment or multiple meter settings).
6. Shut off city water supply by turning off curb stop. IF THE CURB STOP IS ALREADY OFF, DO NOT TURN IT ON. MAKE APPROPRIATE NOTES, CHANGE THE METER, BUT DO NOT FLUSH THE LINES.
7. Record data on paperwork and handheld. This data shall include, but is not limited to:
 - Old meter final read
 - New meter serial number
 - New meter radio transmitter identification number (Ex: MIU, MTU)
 - GPS coordinates if required
 - Complete any check lists on handheld
 - Remove the meter and protect the entrance/exit piping from contamination.
8. Install new meter with new gaskets.
 - Meter must be straight, and not leaning toward side of box.
 - Antenna cannot touch the lid or rise above box.

- Adhere to any meter installation specifications given by PROJECT MANAGER, determined by scope of work for specific job.
9. Record any relevant comments on the handheld and paperwork.
 10. Open curb stop very slowly so you do not cause any surge or water hammer that might cause damage.
 11. After air is bled from line, turn off hose bib and allow pipes to pressurize.
 12. Verify that there are no leaks at meter before leaving job site.
 13. Replace lid and restore grounds to previous condition.
 14. Notify customer that the work is complete and service is restored.

Notes:

- Installers are NOT allowed inside of customer residence.
- If it is necessary to go inside of a customer's residence, the PROJECT MANAGER is only allowed to do so, and must be accompanied by a city representative.
- Installers should stay on the front side the house. Always use a hose bib in the front of the house if possible, avoiding the side and back of the house.

WATER METER RETROFIT

- Verify address.
- Advise customer of work crew presence.
- Remove meter box lid along with any dirt and debris from the inside of the meter box.
- Verify meter number on meter and service order on hand to ensure that they match.
- Notify CLIENT of need to replace broken meter boxes (or lids) if required.
- Install new AMR device
- Confirm there are no leaks in the meter box and that the meter is operating correctly.
- Ensure that customer is aware that work is completed.
- Replace box lid, remove any debris, rake around the meter box, and leave customer's yard as it was found.
- Input the following data into UMS hand-held device and/or CLIENT work order:
 - meter reading
 - new radio transmitter identification number (obtained via barcode scanners on the handhelds)
 - Addition work required (new lid, etc.)

DATA CAPTURE & EXCHANGE

- Data listed above will be captured electronically and downloaded to a flat file using the layout file previously provided by CLIENT. All required data fields must be populated in the file. CLIENT will be responsible for: 1) procuring the necessary data interface program from its utility billing system provider, and 2) uploading data into its utility billing system.

PROGRAM MANAGEMENT

- Management of material supply and handling process (ordering, storing, inventorying, disposing, etc.) of necessary fixed network metering equipment
- Labor, supervision, and management to upgrade and automate CLIENT's existing metering system
- Coordination of project status meetings and any risks associated to the projects success.
- Coordination of public relations outreach campaign
- Supervision, management, and quality control of data integration process to ensure accuracy of new meter data information being uploaded into CLIENT's existing utility billing software
- Supervision, management, and quality control of data integration process of MDM software into CLIENT's existing utility billing software
- Implementation of customer engagement portal

SCOPE OF WORK EXCEPTIONS & GENERAL TERMS

REQUIRED ASSISTANCE FROM CLIENT

- Advise customers within work area using combination of mailers and/or door hangers
- Accurate meter account data from billing system (including locations)
- Correction of items turned over during installation
- Dedicated CLIENT point of contact

DEFINITION OF ACCESSIBLE METER

- Meter account and location data are 100% accurate
- Meter is in proper working condition and is accessible to installation team
- Nothing is blocking or denying access to the meter (examples: car parked over a meter, meter inside of a fenced area with dogs, or any occurrence which denies ready access to a meter)
- Any meter that is not accessible will be documented as inaccessible, and CLIENT will be notified.
- Lay length is the same (inlet/outlet connections of new meter matches existing piping)
- Working curb stop
- No more than 18" below top of box

All meter spuds must be accessible within the box

ITEMS NOT COVERED IN SCOPE

- Leaks on CLIENT or customer side prior to exchanging meter.
- Inaccessible meters as described above
- Meters that cannot be located
- Meter buried in concrete or asphalt
- Meter in vault or inside locked facility
- Meter spuds / riser fittings in concrete, asphalt or state of disrepair
- Obstruction of meter (roots, vegetation, fences, etc.)
- Prevention of service (animals, customer, etc.)
- Different lay-lengths.

*Meters not covered by scope will be returned to CLIENT to address out of scope conditions. Once addressed the work order can be sent back to UMS for installation within 5 working days. After this time it will be removed from UMS's project scope.

SCOPE EXEMPTIONS/EXCEPTIONS:

- Pricing is based upon work during normal working hours. Normal working hours is 8AM - 5PM Monday through Thursday and 8AM-4PM on Friday's. Normal working hours for Commercial and Industrial customers may include change outs scheduled during weekends and afterhours. If during normal working days, Monday through Friday, work is unable to be completed, then on a case-by-case basis, approval to work on Saturday to keep the project on pace to be completed in the stated time frame, will be allowed.
- Any work exceeding that which is based upon normal working hours such as specified below will only be paid based on an approved change order executed prior to the work being undertaken.
 1. Work exceeding 8 hours per day or on non-scheduled weekends or holidays will be billed at 1½ times the unit price.
 2. Additional piping work, excessive excavation, concrete removal, tree and shrub removal, etc., will be billed at hourly rate.
 3. Material purchased by UMS will be billed at Cost plus 15%.



Date May 7, 2018
Valid Until December 31, 2018

From: Joey Mitchell
7200 Falls of Neuse, Suite 100
Raleigh, NC 27613

To: City of Venice
401 West Venice Avenue
Venice, FL 34285

City of Venice

Installation Services	Qty.	Unit Price	Line Total
Exchange 3/4" Meter	4000	\$ 45.00	\$ 180,000.00
Exchange 1" Meter	170	\$ 45.00	\$ 7,650.00
Misc. Field Work	10	\$ 90.00	\$ 900.00
Install New Meter Box (up to 1")	50	\$ 30.00	\$ 1,500.00
Residential Backflow (Install New or Existing Backflow)	0	\$ 55.00	\$ -
Residential Dual Check Coupling Installation	0	\$ 15.00	\$ -
Meter Recycling	3810	\$ (1.50)	\$ (5,715.00)
		Total	\$ 184,335.00

Project Total \$ 184,335.00

200,050.00

Pricing Assumptions

The above price includes the following assumptions:

1. UMS assumes that water meter exchanges are like for like, same lay and length, and no major plumbing is required or excessive excavation
2. Pricing assumes water meter installation will involve either complete exchange of existing meter with new meter, encoder register, and endpoint or retrofit of the existing meter register with new endpoint
3. UMS assumes that all installation material, including meters, registers, endpoints, wire, and wire connections (if required) will be provided to UMS by the utility and will be present at the time of need
4. Pricing does not include testing of new or removed meters. Pricing for such services is available upon request
5. Assumes all meters are in outside pits and UMS does not have to enter homes
6. UMS assumes there are no work stoppages
7. Mobilization waived if UMS has crews on job sites in the area
8. Work will be released in sequenced order
9. All installation services will be invoiced once a month with NET 30 payment

Scope of Works

Auburndale Piggyback SOW

City will provide door hangers

City will provide individual resources and turn on and off water

City will handle all endpoint activation

Out of Scope Unit Pricing	Qty.	Unit Price	Line Total
Exchange 1.5" Meter	0	\$ 250.00	-
Exchange 2" Meter	0	\$ 550.00	-
Exchange 3" Meter	0	\$ 750.00	-
Exchange 4" Meter	0	\$ 1,100.00	-
Exchange 6" Meter	0	\$ 1,350.00	-
Exchange 8" Meter	0	\$ 10.00	-
Meter Change Out	0	\$ 49.00	-
Endpoint Activation	0	\$ 13.00	-
Cut and Install New Meter Lid	0	\$ 10.00	-
Install New Curb Stop (up to 1")	0	\$ 55.00	-
Install New Gate Valve (up to 1")	0	\$ 55.00	-
Install New Dual Check Valve (up to 1")	0	\$ 55.00	-
Install Pipe Riser (up to 1")	0	\$ 40.00	-
Replace Existing Gate Valve (up to 1")	0	\$ 55.00	-
Replace Existing Direct Connect Meter (up to 1")	0	\$ 40.00	-
Vac Truck Mobilization	0	\$ 2,500.00	-