

STAFF REPORT

DATE: November 15, 2016
TO: City Council
FROM: Dianna Jensen, City Engineer
Michael Mitchell, Principal Civil Engineer
Diane Phillips, Project Manager
SUBJECT: Award for Advanced Metering Infrastructure and Meter Replacement Project,
CIP No. 8187

Recommendation

Approve the attached Resolution which:

1. Approves the agreement in the amount of \$6,845,814.95 with Delta Engineering Sales for the installation and operation of the hardware and software for the Advanced Metering Infrastructure and replacement of the City's existing water meters with new meters and authorizes the City Manager to execute the Agreement; and
2. Approves the agreement with Aclara meter to billing software licensing in the amount of \$45,136 and authorizes the City Manager to execute the agreement.
3. Approves the agreement with Aquahawk for the customer portal software licensing in the amount of \$23,045.40 and authorizes the City Manager to execute the agreement.
4. Approve budget adjustment (Attachment 6) in the amount of \$562,238 from CIP No. Surface Water Pipelines Funds, toward CIP No. 8187.

Fiscal Impact

The cost for this project of \$6,845,814.95 is budgeted in CIP No. 8187 and is included, along with costs for other support services, in the State Revolving Loan for \$35.5 million for the Water Quality Improvement Project. The yearly software licensing and support fee for Aclara meter to billing software is \$45,136.00 and is budgeted in the Water Division Operations and Maintenance account. The fee for the Aquahawk customer portal software licensing and support is \$23,045.40 per year and is also budgeted in the Water Division Operations and Maintenance account.

Project Costs:

Delta Engineering Contract:	\$ 6,845,814.95
On-Call Engineering Support from Brown and Caldwell:	\$ 101,500.00
On-Call Project Inspection:	\$ 60,000.00
City Staff Time	\$ 275,000.00
TOTAL	\$ 7,282,314.95

Yearly Fees:

Aclara meter to billing software	\$ 45,136.00
Aquahawk customer portal software	\$ 23,045.40
TOTAL	\$ 68,181.40

Project Revenue

CIP No. 8187 Original Contract Funds	\$ 6,343,577.00
BA from CIP No. 8224	\$ 562,238.00
Previously Budgeted Professional Services	\$ 101,500.00
Previously Budgeted City Staff Time	\$ 275,000.00
TOTAL	\$ 7,282,315.00

Council Goals

This work is consistent with the Council goal to Fund, Maintain, and Improve Infrastructure with the objective to Develop plans and funding strategies to address the long term needs of the community in planning for infrastructure and City assets. It is also consistent with the Council goal to Pursue Environmental Sustainability with the objective to conserve resources in an environmentally responsible manner; increase water and energy efficiency of existing resources and explore alternatives.

Background and Analysis

In 2008, the City hired Brown and Caldwell to prepare an Automated Meter Reading Feasibility Study. The City identified fixed radio meter reading as the preferred method to read meters. This method of reading meters consists of fixed radio antennas which access all meter data for the entire customer base.

The City conducted a pilot fixed radio meter reading system by having Golden State Flow Measurement install transmitting endpoints and one radio antenna on the 300 City owned meters only. This project was complete in 2014 at a cost of \$198,881 and operation and consumption data has been gathered for these meters through radio reads. The yearly meter to billing software licensing fee to read these 300 meters is \$28,000.

The remaining approximately 16,500 meters are currently read by a contracted company driving past the meters once each month and gathering consumption information thru radio transmission.

Some of the advantages of the fixed radio method include:

1. Avoid labor cost of manually reading meters (Approximately \$185,000 per year)
2. Provide real-time water consumption data to help customers reduce water use.
3. Reduce pollution by eliminating the need for a vehicle to read meters.
4. Water leaks can be noticed as they occur, rather than when billed.

This project involves the replacement of the all the 16,800 meters in the City and conversion to a fixed radio system. This will include all residential, commercial, industrial and irrigation customers and replacement of all the old City meters. The existing meters are past their useful life and some are not gathering data accurately. A study has been completed that identified the

general areas of town where seven antennas will be needed for the radio system. Antennas can be attached to light poles, tanks, towers or other appurtenances.

A Request for Proposals (RFP) was posted and sent out in February 2016 and four proposals were received in March. The proposers then gave presentations about their project approach. City staff that were on the review team consisted of the Environmental Resources Manager, Accounting and Fiscal Analyst, Administrative Analyst II, Project Manager, and Water Distribution Programs Supervisor. The Project Manager from Brown and Caldwell also assisted with the review. Proposers were rated on both their presentation and proposal according to the criteria listed in the RFP of Technical Capabilities, References, Ease of Use and Project Cost.

The team name, proposed cost and project 20 year life cycle cost for each proposer are listed below:

Equarius	\$7,061,909.58	\$8,476,097.11
National	\$6,703,574.07	\$12,613,107.07
Delta	\$6,845,814.95	\$8,426,912.19
Sensus	\$6,656,632.84	\$8,308,469.07

The RFP required that transmitters that are a part of the Advanced Metering Infrastructure system operate on a FCC-licensed radio frequency or use cellular technology. Three proposers (Equarius, Delta, and Sensus) proposed transmitters that operate on a FCC-licensed radio frequency. National proposed a system that uses cellular technology. The cellular technology requires an monthly fee of approximately \$1 per meter. This annual fee drives the 20-year life cycle cost to be significant higher than with radio transmitter technology.

The RFP required that “meter casing must be made of brass, stainless steel, or copper alloy material. Plastic or polymer bottoms are not acceptable.” Metal body meters are preferred by operations staff due to the durability of metal body meters compared to plastic body meters. The increased cost of frequent maintenance and replacement for polymer will exceed any life cycle cost savings. Meters for residential homes proposed by Sensus were constructed of polymer bodies, which did not comply with the RFP requirements. The other three proposers proposed metal body meters. Therefore, although Sensus was the lowest cost, they were removed from consideration.

Delta was selected because of responsiveness to the RFP requirements, lower 20-year life cycle costs, and response of references.

Aclara will provide meter to billing system software and maintenance that allows the meters to be read by transmission. This information is converted by Aclara through our SunGard financial software so that it is available in our billing system.

References for the Delta team, including sub-consultants Aclara and Aquahawk were very positive, including a reference that recently evaluated the teams in a pilot AMI project.

Currently, the City is using WaterSmart software, which yearly licensing fee is \$50,000, to allow interested water customers access to their water consumption data. Aquahawk will replace this software and provide real-time information to help customers to lower their water use and also provide additional tools for staff the current software does not have. Aquahawk will make use of existing customer's login credentials to ease in the transition from the old software to the new. Customers will receive an email notification of the new software and will only need to click on a link to update their passwords. All other water customers that are not currently using WaterSmart will be given access to their real-time consumption in Aquahawk. Aquahawk was chosen to replace WaterSmart because the yearly fee for use is less and it is more customer friendly.

Under the Delta Engineering contract cost for meter to billing software combined with customer portal software will be \$68,181.40 and the current cost for the 300 meters for meter to billing software is \$28,000 (software fee that would cover up to all city meters if they were installed) and for the customer portal is \$50,000 for a current total of \$78,000.

Current cost for billing software and customer portal:	\$78,000.00/year
Future cost for billing software and customer portal:	\$68,181.40/year

Meter installation will occur over about a 12-month period beginning in January. A Public Outreach program is being developed that will include initial letters explaining the program and door flyers as meter replacement become imminent. Meter replacement will begin with City owned meters first to establish communication with the antennae's and to assure smooth upload of real-time water consumption prior to replacing residential meters.

Attachments

1. Resolution
2. Delta Agreement
3. Aclara Software License Agreement
4. Aquahawk Agreement
5. Propagation Study
6. Budget Adjustment

RESOLUTION NO. XX-XXX, SERIES 2016

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT WITH DELTA ENGINEERING SALES FOR INSTALLATION
AND OPERATION OF ADVANCED METERING INFRASTRUCTURE
AND WATER METERS**

WHEREAS, City staff selected Delta Engineering Sales to provide advanced water meter infrastructure and meters; and

WHEREAS, the facilities to be installed by Delta Engineering Sales will support the Water Division meter reading program through data gathering, analysis, reporting, billing and other water consumption data services; and

WHEREAS, an RFP was sent out and four proposals were received and Delta Engineering Sales meet all the RFP requirements and had the lowest life cycle cost; and

WHEREAS, a separate contract with Alcara is needed for software license; and

WHEREAS, a separate contract with Aquahawk is needed for software license.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis that the agreement by and between the City of Davis, a Municipal Corporation, and Delta Engineering Sales, to provide advanced metering infrastructure and meters in the amount of \$6,845,814.95 is approved; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the agreement with Delta Engineering Sales; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the agreement with Aclara and subsequent annual contracts to continue the service; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the agreement with Aquahawk and subsequent annual contracts to continue the serves; and

BE IT FURTHER RESOLVED that all terms, conditions, and covenants of said agreements be, and the same are hereby approved, ratified, and confirmed.

PASSED AND ADOPTED by the City Council of the City of Davis this 1st day of November, 2016, by the following vote:

AYES:

NOES:

ABSENT:

Robb Davis
Mayor

ATTEST:
Zoe S. Mirabile, CMC
City Clerk

**MASTER AGREEMENT BETWEEN
CITY OF DAVIS AND DELTA ENGINEERING SALES
FOR THE
ADVANCED METERING INFRASTRUCTURE AND METER
REPLACEMENT PROJECT**

Dated: October 25, 2016

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

-1-

82506.01000\29276989.4

**MASTER AGREEMENT BETWEEN
CITY OF DAVIS AND DELTA ENGINEERING SALES
FOR THE ADVANCED METERING INFRASTRUCTURE
AND METER REPLACEMENT PROJECT**

This Master Agreement ("Contract") is made and entered into this 25th day of October, 2016, ("Effective Date") by and between the **City of Davis**, a California municipal corporation ("City"), and **Delta Engineering Sales LLC**, a Delaware limited liability company ("Contractor"), for the **Advanced Metering Infrastructure and Meter Replacement Project** (the "Project"). The City and Contractor may be referred to individually as a "Party" and collectively as the "Parties."

AGREEMENT

In consideration of the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

1. DEFINITIONS

AMI System. The term "AMI System" shall mean the Aclara STAR RF Network advanced metering infrastructure system, which shall deliver comprehensive water usage information through a secure long-range wireless network using licensed radio frequencies to connect STAR Network Water Meter Telemetry Units (MTUs) to STAR Network Data Collector Units (DCUs), and to a Hosted STAR Network Control Computer (Hosted NCC). The specific components that comprise the AMI System to be provided to City by Contractor are described in the Statement of Work.

Applicable Laws. The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

Confidential Information. The term "Confidential Information" shall mean information, whether provided directly or indirectly from the other Party (and, in the case of Contractor, from customers) in writing, verbally, by electronic or other data transmission or in any other form or media or obtained through on-site visits at the City or Contractor facilities and whether furnished or made available before or after the Effective Date, that is confidential, proprietary or otherwise not generally available to the public, including, without limitation, trade secrets, marketing and sales information, product information, technical information and technology, information about trade techniques and other processes and procedures, financial information and business information, plans and prospects, together with any excerpts, reports or documents prepared by or on behalf of the recipient of the information incorporating, referred to or reflecting, in whole or in part, any portion of any such information. The City's Customer Data, the City's Intellectual Property, and Contractor's Intellectual Property will be considered Confidential Information. Confidential Information does not include information that is: (i) rightfully known to the receiving Party before negotiations leading up to the Contract; (ii) independently developed by the receiving Party without use of, access to, or relying on the disclosing Party's Confidential Information; (iii) part of the public domain through no fault of the receiving Party or is lawfully

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

obtained by the receiving Party from a third party not under an obligation of confidentiality; or (iv) free of confidentiality restrictions by agreement of the disclosing Party.

Customer Data. The term "Customer Data" shall mean any information about the City's existing or prospective customers that Contractor acquires, develops, or derives under the Contract. Customer Data may include, without limitation, any personally identifying information relating to an existing or prospective customer, or any other information that, either individually or when combined with other information could be used to derive information specific to a particular customer or prospective customer, which information is not generally available to the public and which Contractor acquires or derives in carrying out its obligations under the Contract.

Day. The term "day," shall mean calendar day, unless otherwise specifically provided.

Delay. The term "Delay" means a delay in a Project or the failure of any assumption stated in the Project Statement of Work that Contractor reasonably believes the City caused by an act or omission and which directly causes a material delay in Contractor's performance or which has a direct cost impact.

Deliverable. The term "Deliverable" shall mean anything other than Equipment or Services that Contractor is required to provide under the Statement of Work.

Disentanglement Plan. The term "Disentanglement Plan" means a written plan that: (i) allocates responsibilities for Disentanglement Services among the Parties and, to the extent applicable, any third party service providers; and (ii) sets forth in reasonable detail the respective services and function to be provided by each of the Parties and such third party service providers.

Disentanglement Services. The term "Disentanglement Services" means those Services to be provided by Contractor under an agreed-upon Disentanglement Plan to transition Services from Contractor to the City or a City Contracted Third Party.

Documentation. The term "Documentation" shall mean the user, operations and training manuals related to the Work provided by Contractor.

Equipment. The term "Equipment" shall mean the equipment to be provided for the Project by Contractor as more particularly described in the Statement of Work for the pricing set forth in the Pricing Summary and included in the Statement of Work. The Equipment includes the equipment that comprises the AMI System, and the Replacement Water Meters, as more particularly listed in the Statement of Work.

Equipment Warranty. The term "Equipment Warranty" shall mean the warranties on the Equipment as stated in the Warranty Schedule on Equipment.

Equipment Warranty Term. The term "Equipment Warranty Term" shall mean the term of the Equipment Warranty identified in the Warranty Schedule.

Firmware. The term “Firmware” shall mean any program code and data stored in persistent memory, embedded in Equipment.

Maintenance Services. The term “Maintenance Services” shall mean the provision of certain equipment and services on an ongoing basis during and after installation and deployment of the AMI System, including but not limited to licensing, installing, implementing, hosting, and maintaining a Hosted NCC; obtaining necessary licensed radio frequencies from the Federal Communications Commission and backhaul services from third party communications providers to establish and maintain a secure, long-range wireless network connecting the Meter Transmission Units to the Data Collector Units, and to the Hosted NCC for Customer’s use for the AMI System. Such Maintenance Services shall be provided by Aclara Technologies LLC (“Aclara”) pursuant to that certain Maintenance Agreement entered into by and between City and Aclara.

Licensed Software. The term “Licensed Software” shall mean the software licensed to the City pursuant to that certain Aclara Software License Agreement entered into by and between City and Aclara.

Notice(s) To Proceed. The term “Notice to Proceed” shall mean the written notice(s) given by the City to Contractor directing Contractor to commence Work on the Project.

Performance Criteria. The term “Performance Criteria” shall mean agreed-upon operational, functional, or technical performance requirements, as specified in the Project Statement of Work.

Project. The term “Project” shall mean the Advanced Metering Infrastructure and Meter Replacement project as more particularly described in the Project Statement of Work.

Project Management. The term “Project Management” shall mean the overall Project management Services provided by Contractor for the Project as set forth in the Project Statement of Work.

Project Statement of Work. The term “Project Statement of Work” means the Statement of Work describing the quantity, type, nature, location, timing, and frequency of Work that Contractor will provide to complete the Project, attached to this Contract as **Attachment A**.

Services. The term “Services” shall mean those services to be provided by Contractor under the Project Statement of Work.

Specifications. “Specifications” means the functional, operational, or technical specifications for Equipment and Deliverables – if any – as stated in the applicable Project Statement of Work.

Subcontractor. The term “Subcontractor” means any person or firm that has a contract with Contractor or with a Subcontractor of Contractor to perform a portion of the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

Taxes. The term “Taxes” means taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction.

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

Territory. The term "Territory" shall mean the United States of America.

Work. The term "Work" shall mean that combination of Services, Equipment, and Deliverables to be provided by Contractor under the Project Statement of Work.

2. ATTACHMENTS

The following documents are attached to and made a part of this Contract:

- Attachment A – Project Statement of Work
- Attachment B – Contract Pricing
- Attachment C – Reserved
- Attachment D – Equipment Warranties
- Attachment E – State and Federal Funding Documents and Requirements

3. OVERVIEW OF ADVANCED METERING INFRASTRUCTURE AND METER REPLACEMENT PROJECT

3.1 Project Components. The Project will consist of the planning and installation of the AMI System and the sale to the City of all hardware components that comprise the AMI System, including all required data collection infrastructure and endpoints; the replacement of the City's existing water meters with new water meters that are to be sold to the City and installed pursuant to the terms of this Agreement; project management services in connection with the planning and installation of the AMI System and the installation of the Replacement meters, and associated services as more particularly described in the Statement of Work.

There are five (5) main components to the Project. These components may be conducted concurrently in accordance with the Schedule agreed upon between City and Contractor.

1. Project Management Services. Contractor shall provide project management services for the overall management of the Project as more specifically described in the Statement of Work.

2. Sale and Installation of the AMI System. Contractor shall sell and the City shall purchase the Equipment that constitutes the AMI System as more particularly described in the Project Statement of Work, which lists the name, and quantity of each item that will be supplied as part of the AMI System. The price of each item is set forth in Attachment B, Contract Pricing, attached hereto and incorporated herein by this reference. Contractor shall further complete all planning, deployment, installation and implementation of all Equipment required for the operation of the AMI System and training of City employees regarding the operation of the AMI System, all as more specifically set forth in the Statement of Work.

3. Sale of Replacement Water Meters. Contractor shall provide and the City shall purchase 16,731 Badger Water Meters, in the quantities, models and types as more specifically set forth in the Statement of Work for the prices set forth in Attachment B, Contract Pricing.

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

4. Water Meter Installation and Replacement. The Contractor will remove 16,731 of the City's existing system water meters with and install the Replacement Water Meters sold to the City as described in paragraph 2 above, all as more particularly described in the Statement of Work.

5. Water Meter Installation Modification. Contractor shall undertake modification of nonstandard water meter installations, including replacement of water meter box lids, as deemed necessary in the City's sole discretion, as more specifically set forth in the Statement of Work. Such modification of nonstandard installations shall be charged in accordance with the rates set forth in Attachment B.

4. PAYMENT FOR EQUIPMENT AND SERVICES

Contractor shall provide to City all Equipment and complete all Services described in the Project Statement of Work for a Not to Exceed Price as identified in Attachment B, attached hereto. The pricing for individual components of the Project, including the costs for all AMI System hardware components and replacement water meters, are further set forth in Attachment B.

5. STATEMENT OF WORK

5.1 Contractor Responsibilities & Obligations. Contractor shall diligently provide (a) all Work and fulfill all of the responsibilities and obligations described as Contractor's responsibilities and obligations in this Contract that are within the Statement of Work, and (b) Contractor Personnel, its expertise and the professional, technical and management services necessary and appropriate to do so in accordance with this Contract and the Statement of Work. The Services to be provided by Contractor include those that are reasonably incidental, ancillary, customary, or necessary, to and for the performance and receipt of the Services within the Statement of Work, exclusive however, of services or functions for which the City expressly retains responsibility under the Contract.

5.2 Acts & Omissions of Contractor Personnel. Contractor shall be responsible to the City for acts and omissions of Contractor, its agents, employees, and Subcontractors, and their respective agents and employees. Contractor shall at all times maintain good discipline and order among its employees and Subcontractors.

5.3 Contractor's Own Tools & Equipment. Unless otherwise expressly stated in the Project Statement of Work, Contractor will provide its own materials, tools, supplies, and equipment.

5.4 Project Performance Bond. Prior to commencement of the Work, Contractor shall provide four fully executed, identical counterparts of a Performance Bond in a form supplied by City. The bond shall be for all installation and project management work to be completed pursuant to this Contract, as determined by the City in its reasonable discretion. The surety insurer shall be admitted to transact surety business in the State of California, in accordance with Code of Civil Procedure section 995.120. Personal sureties and unregistered surety companies are unacceptable.

5.5 Conditions of Excuse from Responsibilities & Obligations. Contractor's failure to perform any of its responsibilities and obligations under this Contract will be excused for purposes of determining whether any Work – including but not limited to any Services, performance objective or service level failure, Specifications, milestone or schedule failure, Equipment or Deliverable deficiency, or other breach of this Contract by Contractor has occurred only if and to the extent (1) Contractor's failure to perform is excused under "Force Majeure" or "Delays, Defaults, and Assumption" sections of this Contract, or (2) all of the following Sections 5.5.1 through 5.5.4 apply:

5.5.1 Such failure results from the City's failure to comply with its express obligations under this Contract;

5.5.2 The City's act or omission directly caused a delay or deficiency in Contractor's performance;

5.5.3 Contractor used commercially reasonable efforts to perform notwithstanding the City's failure; and

5.5.4 Proximate to the time Contractor had (or reasonably should have had) knowledge of the City's failure, Contractor provided the City with notice of such failure in reasonable detail and the impact that such failure had or would have on Contractor's ability to perform its obligations.

6. EQUIPMENT PURCHASES

6.1 Equipment Pricing. Pricing for Equipment will be stated in the Contract Pricing, attached hereto as Attachment B.

6.2 Delivery of Equipment. Contractor shall deliver the Equipment to the City in accordance with the phasing plan and schedule as developed and agreed to between City and Contractor as more particularly described in the Statement of Work.

6.3 Firmware. The purchase of Equipment includes a perpetual, irrevocable license to use and execute any software embedded in the Equipment from the manufacturer of such third party equipment.

6.4 Equipment Invoicing and Payment. Contractor will invoice the City for equipment upon delivery to the City. The City will pay all invoices for Equipment within thirty (30) days of receipt of the Equipment reflected in the invoice.

6.5 Inspection by the City. The City shall inspect a shipment within a reasonable period of time after receiving shipment – and in all events no longer than seven (7) days – to confirm that the items delivered are the Equipment ordered and that the quantity received is the same as the quantity ordered. If upon inspection the Equipment is found to be nonconforming, defective or otherwise fail to meet any requirements or specifications contained in the Project Statement of Work, then without prejudice to any other rights or remedies, the City may reject the delivery of the Equipment. The inspection, or failure to make inspection of Equipment or payment for such Equipment shall not impair City's remedies under the Equipment Warranty, or any other remedies contained herein.

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

6.6 Title and Risk of Loss. Title and risk of loss for Equipment will transfer to the City upon delivery to and acceptance of Equipment by City and storage on City-owned property, or if such Equipment is not delivered to City-owned property, then upon installation and acceptance of such Equipment by City, provided, however, that at such time that Contractor, its agents, employees, or subcontractors remove Equipment from the City-owned property for installation of such Equipment as part of the Project, Contractor shall again assume risk of loss or damage for said Equipment, until such time that the Equipment is installed and accepted by the City.

6.7 Documentation. Contractor shall make its standard product documentation available via download. Contractor will provide the City with download instructions.

7. INVOICING & PAYMENT

7.1 Invoicing and Payment Procedures.

7.1.1 Invoicing. Contractor shall invoice the City on a monthly basis in accordance with the Project Statement of Work and Contract Pricing for Services completed and Equipment delivered to the City in the preceding month.

7.1.2 Payment of Invoices. The City shall pay undisputed amounts that are invoiced by Contractor in compliance with applicable Project Statement of Work within thirty (30) calendar days of receipt, less any retention as contained herein. The City shall pay settled disputed invoiced amounts within thirty (30) calendar days of the resolution of the invoice dispute. For invoices under this Section 7.1.2, the City may withhold a portion of invoice because of defective or otherwise non-compliant work, until such time as remedied by Contractor and accepted by the City.

7.2 Invoice Disputes. Invoice disputes will be referred for resolution under the "Dispute Resolution Procedures" section of this Contract.

7.3 Late Fees. The City will not pay late fees to Contractor on the compensation due Contractor for any Services provided under the terms of this Contract. Payment of invoices for Equipment delivered to the City shall be subject to payment as set forth in the Contract Pricing, attached hereto and incorporated herein as Attachment B.

7.4 Retention. The City shall retain five percent (5%) of the amount of Work invoiced, excluding Equipment (the "Retention"). The Retention shall be released within thirty (30) calendar days following the completion and acceptance by the City of all Services and Equipment described in the Statement of Work.

7.5 Securities In Lieu of Retention. Pursuant to Public Contract Code section 22300, Contractor may substitute securities for any moneys withheld as a retention by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to Contractor. Upon satisfactory completion of the Agreement, the securities shall be returned to Contractor.

8. TAXES

Contractor's fees are inclusive of Taxes.

9. PERIOD OF PERFORMANCE

9.1 Period of Performance. Contractor guarantees that it shall perform and complete all work necessary for final completion of the Project within the specified contract times set forth below and stated in the respective Notices-to-Proceed for the AMI System deployment work and meter replacement and new meter installation work on the Project ("Contract Time"). By its signature hereunder, Contractor agrees that the Contract Time is adequate and reasonable to complete the Work.

9.2 Installation. All installation work for the AMI System and the replacement and installation of the Water Meters shall be completed and accepted by the City no later than 548 calendar days from the first Notice-to-Proceed issued for the installation work on the Project. Contractor shall not commence the installation work under this Agreement until Contractor or the subcontractor(s) performing both the AMI System and water meter installation work is/are (1) properly licensed with the California Contractor's State License Board; (2) registered as a public works contractor with the California Department of Industrial Relations; and (3) in receipt of the Notice-to-Proceed for the installation work from the City. Contractor shall submit satisfactory evidence of its licensed and registered status to the City prior to City's issuance of a Notice-to-Proceed for the installation work.

10. HOSTING & MAINTENANCE SERVICES

10.1 Hosting and Maintenance Services. City shall enter into a separate Maintenance Agreement and Software License Agreement with Aclara, pursuant to which will provide provide ongoing hosting and maintenance services for the AMI System and the incorporated software, based on the terms and conditions set forth therein.

11. REPRESENTATIVES

11.1 City Representative. The City hereby designates Diane Phillips, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all Work provided by Contractor but not the authority to enlarge the Statement of Work or change the total compensation due to Contractor under this Contract. Contractor shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

11.2 Contractor Representative. Contractor hereby designates Bernard Dunham, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Contract ("Contractor Representative").

12. STANDARD OF CARE

12.1 Professional Standard. Contractor shall perform Services under this Contract in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

12.2 Professional Licenses. Contractor and its Subcontractors have and will maintain required contractor licenses within State of California to perform the Work. Contractor will maintain a Class A General Engineering Contractor's license. Contractor represents that it is skilled and will perform Services under this Contract in the professional calling necessary to perform the Work. Contractor represents that it, its employees and sub-consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services, and that such licenses and approvals shall be maintained throughout the term of this Contract. Contractor shall indemnify, defend and hold City harmless from and against any and all claims, demands, losses or liabilities of any kind or nature which City may sustain or incur for Contractor's noncompliance with any contractor licensing requirements applicable to the Work.

12.3 Removal of Contract Personnel. To the extent permitted by law, any employee of Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Work.

12.4 Contractor Means and Methods. Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards

13. CHANGES

13.1 General. No changes in the work covered by this Contract shall exonerate any surety or any bond given in connection with this Contract.

13.2 Contract Change Order Requests by Contractor. Either Party may request a Change Order under the procedures specified in this Section 13.2.

13.2.1 Change Order Proposal Requirement. A Change Order Request submitted by Contractor must be accompanied by a Change Order Proposal prepared by Contractor. If a Change Order Request is submitted by the City, Contractor shall prepare the Change Order Proposal. A Change Order Proposal shall be made in the form of a written Project Statement of Work to the City that: (i) if applicable, assesses the expected impact of the Change Request on any Services being provided at the time of the request; (ii) defines and describes how Contractor would fulfill or satisfy the Change Order Request, and describes any additional Services to be provided by Contractor in reasonable detail; (iii) sets forth pricing, specifications, implementation plans and time schedules, with appropriate milestone and completion dates, anticipated by Contractor in connection with fulfilling the Change Order Request; (iv) contains

proposed completion and acceptance criteria; and (v) sets forth any other information required by this Contract.

13.2.2 Requests for Additional Information. Upon request of the City's Representative, Contractor shall submit such additional information as may be requested by the City's Representative for the purpose of evaluating the Change Order Proposal.

13.3 Responses to Change Requests. The Parties will attempt in good faith to negotiate a mutually acceptable resolution to Change Order Requests, whether submitted by the City or by Contractor. Mutually agreed upon Change Order Requests will take the form of a Change Order. Following the submission of any Change Order Request and during any negotiation, Contractor will continue to provide Services as specified in the Project Statement of Work, unless otherwise agreed to by Contractor and the City in writing.

13.4 Failure to Respond to Change Request. If either Party fails to respond to a Change Order Request submitted by the other Party within ten (10) days, the Change Order Request will be deemed to be rejected.

13.5 Authorized Approvals Required. No Change Order will be binding upon the City or Contractor unless executed and delivered by an authorized signatory of both parties. All Change Orders will be governed by the terms and conditions of this Contract.

13.6 Urgent Changes. The procedures in this Section 13.6 apply where the City determines in its reasonable discretion – after reasonable consultation with Contractor – that urgent circumstances warrant Contractor proceeding with a limited scope of Work in advance of a Change Order being finalized, without invalidating the Contract and without notice to sureties.

13.6.1 Contractor shall promptly execute changes in the Work as directed in writing by the City under this Section 13.6. Contractor shall invoice the City for Service performed under this Section 13.6 at the prevailing wage rate (as set forth in the Statement of Work). For Services performed by a Subcontractor, Contractor will invoice Subcontractor Fees and materials plus a 15% mark-up. Equipment will be provided for the pricing listed on the Pricing Summary. Contractor will provide documentation in support of all amounts invoiced under this Section 13.6.

13.7 Change Orders Incorporated into Contract. Whenever any Change Order is made as provided for herein, such Change Order shall be considered and treated as though originally included in this Contract, and shall be subject to all terms, conditions and provisions under this Contract.

13.8 Authorized Approvals Required. With the exception of urgent change order work performed under Section 13.6, no Change Order will be binding upon the City or Contractor unless executed and delivered by an authorized signatory of both parties. All Change Orders will be governed by the terms and conditions of this Contract.

14. DELAYS, DEFAULTS AND ASSUMPTIONS

14.1 Delays by City. In the event of any Delay by the City, Contractor will, within seven (7) days of the occurrence of the Delay, notify the City in writing. The notice shall include specific

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

details of the Delay, including, without limitation, the estimated impact on the Project and the estimated amount, if any, of additional Services required. If the City disputes any of the matters set forth in Contractor's notice, the matter will be resolved through the dispute resolution process of the Contract. If the City does not cure the Delay and it directly causes an increase of at least three (3) business days to complete the Services set forth in the applicable Project or otherwise directly causes a failure by Contractor to comply with the requirements, timetable, or implementation plan, then Contractor will be granted an extension of the timetable or Project for a period not longer than the length of the corresponding Delay, but only to the extent set forth in (i) Contractor's notice, if the City does not dispute the notice, or (ii) a written agreement resulting from the dispute resolution process and solely with respect to the matters described therein. Contractor will not be entitled to any relief with respect to any Delay other than in compliance with the timely notice and other requirements of this Section.

14.2 Concurrent Delays. In the event of a delay to the Work attributable to concurrent delays of Contractor and the City, Contractor and City will develop a mutually agreeable plan to either modify the Statement of Work or to rectify the delays to keep the Work on schedule.

15. INSURANCE

15.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence to the City that it has secured all insurance required under this Section. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence to the City that the subcontractor has secured all insurance required under this Section. All coverages required by this Section 15 shall meet the requirements of Section 15.4.

15.2 Commercial General Liability Insurance.

15.2.1 Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CAL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury, which may arise from or out of Contractor's operations, use, and management of the site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

15.2.2 Such policy shall comply with all the requirements of this Section. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

such other actions available to the City under other provisions of the Contract Documents or law.

15.2.3 Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the City as a result thereof.

15.2.4 All general liability policies provided pursuant to the provisions of this Section shall comply with the provisions of the Contract Documents.

15.2.5 All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification provision contained herein relating to liability for injury to or death of persons and damage to property.

15.2.6 If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

15.3 Other Required Coverages.

15.3.1 Automobile Liability Insurance. Contractor shall provide "occurrence" form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars (\$1,000,000) per accident. Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the City. Such insurance shall comply with the provisions of Section 15.4 below.

15.3.2 Professional Liability. Contractor shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession covering wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Contract. Contractor shall purchase a five-year extended reporting period: i) if the retroactive date is advanced past the effective date of this Contract; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Contract. Such insurance shall be in an amount not less than \$2,000,000 per claim.

15.3.3 Employer's Liability Insurance. Contractor shall provide employer's liability insurance, including occupational disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide the City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

15.3.4 Workers' Compensation Insurance. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the site, and, in case any of sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

15.3.5 Property Damage. Contractor will maintain insurance to cover the contents of the inventory in Contractor's warehouse and staging area in Contractor's care, custody, & control.

15.4 Requirements for All Coverages.

15.4.1 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

15.4.2 Verification of Coverage. Contractor shall furnish the City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

15.4.3 Additional Insureds. The City, its directors, officials, officers, employees, agents and representatives shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be

available to the parties required to be named as Additional Insureds hereunder. Contractor and its insurance carriers shall provide a Waiver of Subrogation in favor of those parties.

15.4.3 Endorsements. Each insurance policy required by this Contract shall be endorsed to include the following provisions:

1. Coverage shall not be suspended, voided, reduced or canceled except after thirty (30) Days (10 Days for nonpayment of premium) prior written notice by mail has been given to the City and all additional insureds.
2. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City and any other additional insureds.
3. Standard separation of insureds provisions.
4. No special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers and any other additional insureds.
5. Waiver of any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance in compliance with these specifications to waive their right of recovery prior to a loss. By signing this agreement, Contractor hereby waives its own right of recovery against the City or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

15.4.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

15.4.6 Reservation of Rights. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

15.4.7 Subcontractor Insurance Requirements. Contractor shall require each and every subcontractor and sub-consultant to meet the requirements of this section before commencing work except that Contractor shall determine the appropriate dollar amount of coverage required based on the scope of the work to be performed by the Subcontractor. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

15.4.8 Other Insurance. Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

16. INDEMNIFICATION AGAINST THIRD PARTY CLAIMS

16.1 General Claims. Contractor agrees to defend the City and the City's successors and assigns, officers, directors, employees, representatives, and agents ("the City Indemnitees") from and against any and all third-party claims, demands, suits, actions, causes of action, of any kind whatsoever for damages or injuries to persons or property (together a "Claim"), and Contractor will indemnify and hold harmless the City Indemnitees from and against all damages, losses, costs and/or expenses (including legal fees and disbursements) arising out of or incident to Contractor's acts or omissions negligence or intentional misconduct (including that of its employees, agents, and contractors) in connection with this Contract.

16.2 Infringement Claims. Contractor shall defend and indemnify the City Indemnitees from and against any and all claims, demands, suits, actions, causes of action, of any kind whatsoever, for damages, losses, costs and/or expenses (including legal fees and disbursements) by an unaffiliated third party to the extent resulting from any allegation that any Contractor Deliverables and/or Services constitute an infringement, violation or misappropriation of any such third party's Intellectual Property Rights.

16.3 Conditions to Infringement Claim Defense. Contractor's infringement defense obligations under Section 18.2 are conditioned on the City's agreement that if the applicable product or service becomes, or in Contractor's opinion is likely to become, the subject of such a claim, Contractor will have the right, at Contractor's sole option and expense, either to procure the right for the City to continue using the affected product or service or to replace or modify the same so that it becomes non-infringing. Such replacements or modifications will be functionally equivalent to the replaced product or service. If the foregoing alternatives are not available on terms that are commercially reasonable in Contractor's sole judgment, Contractor shall have the right to require the City to cease using the affected product or service in which case Contractor will refund to the City depreciated value of the affected product or the unused portion the service (using straight line depreciation over 15 years), as the case may be.

16.4 Exclusions to Infringement Claim Defense. Contractor shall have no obligation under this Contract to the extent any claim of infringement or misappropriation results from: (i) use of a product or service, other than as permitted under this Contract or as intended by Contractor, if the infringement would not have occurred but for such use; (ii) use of any product or service in combination with any other product, equipment, software or data, if the infringement would not have occurred but for such combination; (iii) any use of any release of a software or any firmware other than the most current release made available to the City, (iv) any claim based on the City's use of a product after Contractor has informed the City of modifications or changes to the product required to avoid such claims and offered to implement those modification or changes, if such claim would have been avoided or mitigated by the implementation of Contractor's suggestions, (v) any modification to a product made by a person other than Contractor or an authorized representative of Contractor, or (vi) compliance by Contractor with specifications or instructions supplied by the City. Contractor shall not be liable hereunder for enhanced or punitive damages that could have been avoided or reduced by actions within the control of the City, provided the City has reasonable notice of such actions sufficient to mitigate said damages.

16.5 Conditions to Defense. As a condition to Contractor's defense obligations under this Contract, the City will provide Contractor with prompt written notice of the claim, permit Contractor to control the defense, settlement, adjustment or compromise of the claim and provide Contractor with reasonable assistance in connection with such defense; however, Contractor shall not consent to any judgment or settlement of the foregoing, that creates an obligation on any the City Indemnitee without first obtaining such indemnitee's prior written consent. The City may employ counsel at its own expense to assist it with respect to any such claim.

16.6 THIRD PARTY CLAIM DISCLAIMER. WITH THE EXCEPTION OF CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER SECTIONS 12.2 AND 17.2, THIS SECTION CONSTITUTES CONTRACTOR'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS BROUGHT AGAINST CITY.

17. LABOR LAWS

17.1 Hours of Work.

17.1.1 Contractor and Subcontractors shall furnish sufficient forces to ensure the prosecution of the work on the Project in accordance with the Performance Schedule and in such a manner to allow for the full and adequate completion of the Project within the Contract Time.

17.1.2 Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the work on the Project in accordance with job progress, work may be performed outside of regular working hours with advance written notice to the City. Regular working hours for construction work shall be 7:30 a.m. to 4:30 p.m. and shall not be changed except with written consent of the City. Working hours related to coordination, training of, or support by City staff shall be 7:30 a.m. to 4:30 p.m.

17.1.3 As provided in Article 3 (commencing at § 1910), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

17.1.4 Contractor shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1910), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

17.1.5 If the work done after hours is required by the Contract to be done outside Contractor's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the City.

17.1.6 If the City allows Contractor to do work outside regular working hours for Contractor's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to Contractor by the City and deducted from the next Progress Payment.

17.1.7 No work on the Project or other activities by or on behalf of Contractor which presents a hazard or unreasonable disruption to the public safety or health shall be allowed. The determination as to whether work on the Project or some other activity presents a hazard or constitutes such a danger to public health or safety shall be made by and pursuant to the sole discretion of the City. All work on the Project or other activities which could present such a hazard shall be performed at a time when the hazard can be avoided as designated by the City. Neither Contractor nor its subcontractors or anyone working on behalf of Contractor or subcontractors shall be entitled to additional compensation or Contract Time for having to arrange their work schedule so as not to violate the provisions of this Section. Contractor, subcontractors and persons working on behalf of Contractor and subcontractors shall be expected to arrange such work and other activities in advance so as to avoid creating monetary or time impacts.

17.2 Wage Rates.

17.2.1 Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws and any other applicable labor law.

17.2.2 Pursuant to Labor Code Section 1775, Contractor is hereby advised that in the event that Contractor fails to pay prevailing wages, Contractor will be held liable for penalties and for shortfalls in wages and such amounts may be withheld from progress payments. Contractor and each Subcontractor shall forfeit as a penalty to the City not more than two hundred dollars (\$200) for each Day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and

the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor.

17.2.4 Contractor shall post at appropriate conspicuous points on the site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

17.3 Payroll Records.

17.3.1 Pursuant to Labor Code Section 1776, Contractor and each Subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Project. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

17.3.2 In accordance with Labor Code section 1771.4, Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR. This may include electronic submission. Contractor shall ensure full compliance with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement and all other applicable labor law.

17.3.3 In the event of noncompliance with the requirements of this Section, Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this Section. Should noncompliance still be evident after such ten (10) day period, Contractor shall, as a penalty to the City, forfeit One Hundred Dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of DIR, such penalties shall be withheld from contract payments.

17.3.4 In submitting the Proposal on this Project, it shall be Contractor's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract.

17.3.5 Contractor shall include provisions of this Section in all Subcontracts and require Subcontractors to comply with these provisions at no additional cost to the City.

17.4 Public Works Contractor Registration.

17.4.1 Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. Contractor shall indemnify, defend and hold City harmless from and against any and all claims, demands, losses or liabilities of any kind or

nature which City may sustain or incur for Contractor's noncompliance with any applicable Labor Code provisions arising out of or in connection with the Work.

17.4.2 This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In executing this contract, Contractor acknowledges that it has reviewed all applicable labor compliance requirements and included the cost of complying with such requirements in its proposal.

17.5 Apprentices. Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by Contractor or any Subcontractor. Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

17.6 Nondiscrimination. Pursuant to Labor Code section 1735 and other applicable provisions of law, Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Work. Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

17.7 Labor Certification. Pursuant to Labor Code section 1960, Contractor shall secure the payment of workers' compensation to its employees in accordance with the provisions of Labor Code section 3700. By its signature hereunder, Contractor makes and agrees to the following certification:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

17.8 Ineligible Contractors. Contractor, or any subcontractor working under Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by Contractor on the project shall be returned to the City. Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

18. WARRANTIES

18.1 Warranty Overview & Relationship to Attachment D. Four types of warranties are provided by Contractor under this Section 18:

1. Warranty on Equipment (Section 18.2.)
2. Services Warranty (Section 18.3)
3. Installation Warranty (Section 18.4)

18.2 Equipment.

18.2.1 Equipment Warranty Claims. Contractor, if requested by the City, will help facilitate any warranty claims by the City under Equipment warranties. Equipment warranties are included in Attachment D. The City must deal with the manufacturer of Equipment on any warranty claim by the City under the Equipment warranties. Nothing in this Section 18.2 limits Contractor's installation warranty under Section 18.4.

18.2.2 RESERVATION. Any exclusions contained in the Equipment Warranties shall not impair the rights of the City to maintain an action for breach of contract against Contractor. The City specifically reserves all rights related to defect claims pursuant to Code of Civil Procedure 337.15.

18.3 Services Warranty.

18.3.1 Services. Services will be provided in a timely, professional, and workmanlike manner.

18.3.2 Contractor Services Standard of Care. Contractor and all Contractor personnel and Subcontractors and Subcontractors' personnel assigned to the Project will have the requisite experience, skills, knowledge, training and education to perform Services and complete all Work in a professional manner and in accordance with this Contract and the Project Statement of Work.

18.3.3 Remedy. Without limiting the Equipment Warranty, Contractor shall correct any noncompliance with this Services Warranty within a reasonable period of time under the circumstances, if the City gives Contractor written notice within ninety (90) days following the date on which such non-compliant Services were performed (which notice must describe the noncompliance in sufficient detail to enable Contractor to provide the required corrective action). If Contractor is unable to correct the noncompliance, the City shall be authorized to replace, repair, or otherwise remedy the noncompliance or damage at the Contractor's sole expense, subject to Section 19 ("Limitation of Liability").

18.4 Installation Warranty. Contractor warrants for a period of one (1) year from the completion of the Work by Contractor that its implementation and installation Work shall comply with the Statement of Work, including any Change Request Orders made prior to completion of the Work. Upon written notice of non-compliance from the City, Contractor will correct any non-compliant implementation and installation Work within a reasonable period of time under the circumstances or within such time period as may be agreed upon by the Parties pursuant to a written corrective action plan.

The City specifically reserves all rights related to defective Work, including but not limited to defect claims pursuant to California Code of Civil Procedure Section 337.15.

18.5 DISCLAIMER OF WARRANTIES. WARRANTIES UNDER THIS CONTRACT, TOGETHER WITH ALL EXPRESS WARRANTIES CONTAINED IN ANY DOCUMENT,

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

STATEMENT OF WORK, PRICING SUMMARY OR OTHERWISE INCORPORATED IN THIS CONTRACT – INCLUDING BUT NOT LIMITED TO ATTACHMENT D – CONSTITUTE AND EXPRESS THE ENTIRE STATEMENT OF THE PARTIES WITH RESPECT TO WARRANTIES. THE PARTIES DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS INCLUDING, WITHOUT LIMITATION, (I) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (II) WARRANTIES OF TITLE AND AGAINST INFRINGEMENT AND (III) 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. NOTHING IN THIS SECTION PRECLUDES THE CITY FROM PURSUING ANY CLAIMS FOR DEFECTS IT MAY HAVE UNDER APPLICABLE LAW THAT HAVE NOT BEEN DISCLAIMED.

19. LIMITATION OF LIABILITY

WITH THE EXCEPTION OF A PARTY'S BREACH OF CONFIDENTIALITY UNDER SECTION 23 AND CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER SECTIONS 12.2, 16 AND 17.2, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR LOSS OF PROFITS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT INCLUDING NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

WITH THE EXCEPTION OF A PARTY'S BREACH OF CONFIDENTIALITY UNDER SECTION 23 AND CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER SECTIONS 12.2, 16 AND 17.2, NO PARTY SHALL BE LIABLE FOR DIRECT DAMAGES IN EXCESS OF TWO TIMES THE NOT TO EXCEED CONTRACT PRICE SET FORTH IN ATTACHMENT B.

20. EMERGENCY REPAIRS

In the event that any Work performed or being performed by Contractor during the term of this Contract creates or results in an emergency constituting an immediate hazard to health or safety of the City's employees, property, or licensees, the City may undertake, at Contractor's expense and without prior notice, all work necessary to correct such condition(s) when it is caused by Work of Contractor not being in accordance with the requirements of the Contract.

21. RESERVED

22. CITY DATA

22.1 Ownership of Customer Data by the City. Subject to the limited rights granted by the City hereunder, Contractor acquires no right, title or interest from the City or its licensors under the Contract in or to Customer Data.

22.2 Restricted Use of the City Data by Contractor. If, in the course of performing Work under this Contract, Contractor has or obtains, to any extent and for any reason, any access to the City Data, then the terms and conditions of this Section 22.2 will apply.

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

22.2.1 Use of Customer Data. Contractor may only collect, access, use, maintain, or disclose Customer Data to fulfill its obligations under the Contract. The City exclusively owns all Customer Data and Contractor agrees to return, or at the election of the City, destroy (and confirm in writing the destruction) all Customer Data upon the termination or expiration of the Contract, or earlier if requested to do so in writing by the City.

22.2.2 Privacy Compliance. Contractor shall not disclose Customer Data unless required to do so by written order of a court or other public agency with jurisdiction. Contractor will comply with all privacy laws applicable to it and the City in the handling of the Customer Data.

22.2.3 Safeguards. Contractor will employ administrative, physical, and technical safeguards that are reasonably designed to prevent unauthorized collection, access, disclosure, and use of Customer Data while in its custody ("Safeguards"). The Safeguards Contractor employs must: (1) meet, at a minimum, industry practice; and (2) be reasonably designed to ensure that only Contractor Personnel with a need to know the Customer Data have access to it. Contractor will promptly notify the City of any known breach of any Safeguards, and Contractor and the City will cooperate to investigate and remedy any such breach and any related dispute, inquiry, or claim.

23. CONFIDENTIALITY

23.1 Protection of Confidential Information. Each Party acknowledges that while performing its obligations under the Contract it may have access to the other Party's Confidential Information. With respect to all Confidential Information, the Parties agree that commencing on the Effective Date and continuing during the term of the Contract and for a period of five (5) years after the termination or expiration of the Contract, neither Party will disclose to any third party, and each Party will keep strictly confidential, all Confidential Information of the other. Each Party hereby agrees to protect the Confidential Information of the other Party using no less care than such Party uses to safeguard and protect its own Confidential Information. In no event will the receiving Party fail to use reasonable care to avoid unauthorized use, including disclosure, loss or alteration of the disclosing Party's Confidential Information.

23.2 Information Provided by the City and Created by Contractor. Without limiting the Parties' obligations under this Section 23: all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, either created by or provided to Contractor in connection with the performance of this Contract shall be held confidential by Contractor. Such materials shall not, without the prior written consent of City, be used by Contractor for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

23.3 Permitted Disclosure. The City may disclose Contractor's Confidential Information to the City's affiliates, agents, contractors and legal representatives, if they have a need to know

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

and an obligation to protect the Confidential Information that is at least as restrictive as the Contract. Contractor may disclose the City's Confidential Information to Contractor personnel and legal representatives if they have a need to know and obligation to protect the Confidential Information that is at least as restrictive as the Contract. Neither Party will use the Confidential Information of the other Party except solely as necessary in and during the performance of the Contract, or as expressly licensed hereunder. Each Party will be responsible for any improper use or disclosure of any Confidential Information of the other by such Party's officers, partners, principals, employees, agents or independent contractors (including individuals who become former partners, principals, employee, agents or independent contractors).

23.4 Exceptions. The obligations of this Section will not apply to any Confidential Information for a period longer than it is legally permissible to restrict disclosure of that item of Confidential Information.

23.5 Required Disclosure. Either Party may disclose Confidential Information to the extent required by law, including but not limited to the California Public Records Act (Gov't Code §§ 6250 *et seq.*), or by order of a court or governmental agency with jurisdiction; provided, however, that the recipient of such Confidential Information will give the owner of such Confidential Information prompt written notice prior to disclosure, and will use its reasonable efforts to cooperate with the owner of such Confidential Information, at owner's cost, if the owner wishes to obtain a protective order or otherwise protect the confidentiality of such Confidential Information.

23.6 Third Party Information. Neither Party will disclose to the other Party any confidential information of a third Party without such third party's consent.

23.7 Notification. In the event of any improper disclosure or loss of Confidential Information, the receiving Party will promptly notify the disclosing Party.

23.8 Injunctive Relief. Each Party acknowledges that any breach of any provision of this Section by it, or by its personnel, will cause immediate and irreparable injury to the non-breaching Party, and in the event of such breach, the injured Party will be entitled to seek injunctive relief in addition to any and all other remedies available at law or in equity.

23.9 Return of Confidential Information. Unless a Party is expressly authorized by the Contract to retain the other Party's Confidential Information, such Party will promptly return or destroy, at the other Party's option, the other Party's Confidential Information, and any notes, reports or other information incorporating or derived from such Confidential Information, and all copies thereof, within seven (7) calendar days of the other Party's written request, and will confirm to the other Party that it no longer has in its possession or under its control any Confidential Information in any form, or any copy thereof. Notwithstanding the immediately preceding sentence, each Party may retain Confidential Information of the other for legal and regulatory compliance purposes.

23.10 Public Records Act. The City shall refrain from releasing Contractor's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other

applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall provide written notice to Contractor of its intention to release Proprietary Information.

24. INTELLECTUAL PROPERTY

24.1 Reservation of Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, Contractor reserves all rights, title and interest in and to all of its Intellectual Property.

24.2 Restrictions. The City shall not (i) permit any third party to access Contractor Services except as permitted under the Contract, (ii) create derivative works based on the Work except as expressly permitted under the Contract, (iii) copy, frame or mirror any part or content of the Work, other than copying or framing on the City's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer any Work, or (v) access the Contractor Deliverables and Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Work.

24.3 Customer Data. Subject to the limited rights granted by the City hereunder, Contractor acquires no right, title or interest from the City or its licensors under the Contract in or to Customer Data, including any Intellectual Property Rights therein.

24.4 Suggestions. Contractor shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Deliverables and Services any suggestions, enhancement requests, recommendations or other feedback provided by City.

25. DISPUTE RESOLUTION

25.1 Dispute Resolution Procedure. The Parties will endeavor to resolve any dispute between them regarding the interpretation of this Contract or Contractor's performance using the procedures in this Section prior to pursuing legal remedies.

25.1.1 Notice. Either Party may give the other written notice of any dispute not resolved in the normal course of business. The notice must include substantiating documentation to allow the other Party to adequately review and understand the basis of the claim. The notice of claim must be submitted on or before the date of final payment.

25.1.2 Meet and Confer. Upon delivery of the notice the Parties agree to meet, within ten (10) business days of receipt of the written notice, or such longer period as agreed to in writing by the Parties, for the purpose of resolving the dispute. Each Party will have a representative in attendance with sufficient decision making and settlement authority. The representatives will discuss the dispute and negotiate in good faith to resolve the dispute promptly and without the necessity of any formal proceeding. If either Party intends to have an attorney attend a meeting, it will notify the other Party at least two (2) business days before the meeting to enable the other Party to also be accompanied by an attorney. All negotiations pursuant to this Section are confidential and will be treated as compromise and settlement negotiations for purposes of evidentiary rules.

25.1.3 If the dispute has not been resolved at the conclusion of the meet and confer process set forth in Section 25.1.2, each Party will have the right to commence any legal proceeding as permitted by law.

25.2 Agreements in Writing. No agreement achieved under this dispute resolution process will be binding on either Party unless set forth in a writing executed by both Parties by duly authorized signatories.

25.3 Injunctive Relief. Neither Party will be obligated to follow the procedures set forth in this Section when seeking injunctive relief.

25.4 Duty to Continue Performance. Contractor shall continue to perform the Work during the pendency of dispute resolution under this Section 25, and the City shall continue to satisfy its payment obligations to Contractor.

26. STATE AND FEDERAL FUNDING REQUIREMENTS

26.1 Compliance with Funding Requirements. This Contract is subject to certain requirements based on the funding source utilized by the City to fund the completion of the Work. The requirements for the State and Federal funding programs applicable to this Contract are included in Attachment F, *State and Federal Funding Documents and Requirements*.

27. DISENTANGLEMENT

27.1 Disentanglement Services. In connection with (a) the termination of the this Contract in its entirety for cause or convenience, or (b) the termination of the Project Statement of Work in part or in its entirety for cause or convenience, Contractor will – at the City’s request – perform Disentanglement Services for up to twelve (12) months under an agreed-upon Disentanglement Plan. All Disentanglement Services will be deemed Services for purposes of this Contract. Fees for Disentanglement Services shall be no higher than those the City would have been charged for the Services that have expired or been terminated. If, however, the City requests Disentanglement Services for which no Fee or charging mechanism was established in the applicable Pricing Summary, then the Parties will negotiate a reasonable Fee in good faith for such Disentanglement Services.

27.2 Disentanglement Plan. As soon as reasonably practicable following notice of partial or complete termination of this Contract or of the Project Statement of Work, Contractor and the City will confer and negotiate a Disentanglement Plan in good faith

28. TORT CLAIM PROCEDURES

Following the dispute resolution procedures in Section 25, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Contractor submits its written Claim until the completion of the Meet and Confer process. Except as provided herein, nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

29. TERMINATION

29.1 Termination by the City for Cause.

29.1.1 Conditions. The City may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract in whole or in part if Contractor: (i) files a bankruptcy petition or is adjudged a bankruptcy; (ii) makes a general assignment for the benefit of its creditors; (iii) has a receiver appointed; (iv) fails to make prompt payment to subcontractors or for material or labor; (v) disregards Applicable Laws, other requirements or instructions of the City; or (vi) violates any of the material provisions of the Contract.

29.1.2 Notice. The Notice of Default and Intent to Terminate shall state the reasons for termination. Unless within ten (10) calendar days after the service of such notice – or such other time period as otherwise agreed to by the Parties under a cure plan, Contractor resolves the circumstances giving rise to the Notice of Default to the City's satisfaction, or makes arrangements acceptable to the City for the required corrective action, the City may terminate this Contract. In such case, Contractor shall not be entitled to receive any further payment until the Work has been finished. The City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project Performance Bond. If the City takes over the Work, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to Contractor as may be on the site.

29.2 Termination by the City for Convenience.

29.2.1 Prior Notice. In addition to its right to terminate this Contract for default, the City may terminate the Contract, in whole or in part, at any time upon forty-five (45) calendar days' written notice to Contractor ("Notice of Termination for Convenience"). The Notice of Termination for Convenience shall specify that the termination is for the convenience of the City, the extent of termination, and the effective date of such termination ("Effective Date of Termination for Convenience").

29.2.2 Contractor Obligations upon Notice. Upon receipt of Notice of Termination for Convenience, and except as directed by the City, Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop all Work as specified in the Notice.
2. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Project Statement of Work or Purchase Order.
3. Leave the site and any other property upon which Contractor was working in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

4. Terminate all subcontracts and purchase orders to the extent that they relate to the portions of the Work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the remaining portion of the Work.
6. Submit to the City, within fifteen (15) calendar days from the Notice of Termination for Convenience, all of the documentation called for by the Project Statement of Work to substantiate all costs incurred by Contractor for labor, materials and equipment through the Notice of Termination for Convenience, any documentation substantiating costs incurred by Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause. The Project Statement of Work shall: (i) be submitted to and received by the City no later than thirty (30) calendar days after the Effective Date of Termination for Convenience; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by the City's Termination for Convenience."

29.3 Limitation on Liability.

29.3.1 City Liability. The City's total liability to Contractor by reason of the termination shall be limited to the total (without duplication of any items) of:

1. The reasonable cost to Contractor for all Work performed prior to the Effective Date of Termination for Convenience, including the Work done to secure the Project for termination. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work as allowed by the Project Statement of Work.
2. When, in the City's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Project Statement of Work and excessive actual cost shall be disallowed.
3. Any Work required by the Termination for Convenience that is not included in Project Statement of Work will be negotiated pursuant to the Change Order provisions.
4. Reasonable costs to Contractor of handling material returned to vendors, delivered to the City or otherwise disposed of as directed by the City.
5. A reasonable allowance for Contractor's internal administrative costs in preparing termination claim.
6. Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.

29.3.2 Non-Recoverable Costs. In no event shall the City be liable for unreasonable costs incurred by Contractor or subcontractors after receipt of a Notice of Termination for Convenience. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination

employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting Contractor's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.

29.3.3 No Obligation without Required Documentation. The City shall have no obligation to pay Contractor under this Section unless and until Contractor provides the City with updated and acceptable as-builts and/or other required documentation for Work completed prior to termination as required by the Project Statement of Work.

29.3.4 Deductions: Partial Termination. In arriving at the amount due Contractor under this clause there shall be deducted in whole, or in the appropriate part(s) if the termination is partial:

1. All unliquidated advances or other payments on account previously made to Contractor, including without limitation all payments which are applicable to the terminated portion of the Project Statement of Work,
2. Any claim the City may have against Contractor in connection with the Work or any amounts that may be withheld in accordance with the Project Statement of Work, and
3. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor and not otherwise recovered by or credited to the City.

29.3.5 No Lost Profits. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

29.3.6 Termination for Safety Concerns. Notwithstanding any other provision of this Section, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

29.3.7 Treatment as Termination for Convenience. If the City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

30. GENERAL PROVISIONS

30.1 Entire Agreement. This Contract constitutes the full and complete understanding of the Parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both Parties.

30.2 Captions; Section Numbers. Section and paragraph numbers and captions are provided for convenience of reference and do not constitute a part of this Contract. Any

references to a particular Section of this Contract will be deemed to include reference to any and all subsections thereof.

30.3 Neither Party Deemed Drafter. Despite the possibility that one Party or its representatives may have prepared the initial draft of this Contract or any provision or played a greater role in the preparation of subsequent drafts, the Parties agree that neither of them will be deemed the drafter of this Contract and that, in construing this Contract, no provision hereof will be construed in favor of one Party on the ground that such provision was drafted by the other.

30.4 Order of Precedence. In the event of a conflict between this Contract and the Project Statement of Work, the terms of this Contract will control to the extent necessary to resolve the conflict.

30.5 Notices. Except as otherwise provided, all notices, requests, demands, and other communications to be given under the this Contract shall be in writing and shall be transmitted by one of the following methods: (a) personal delivery; (b) sent by telecopy where receipt is confirmed; (c) sent by courier where receipt is confirmed; (d) sent by registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

City of Davis
23 Russell Boulevard
Davis, CA 95616
Attn: Public Works Director

Delta Engineering Sales, LLC
Box 663
Downingtown, PA 19335
Attn: Bernard Dunham

With a copy to:

Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Attn: Harriet A. Steiner

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed effective on the date actual notice occurred, regardless of the method of service.

30.6 Governing Law. This Contract shall be governed by the laws of the State of California.

30.7 Jurisdiction; Venue. Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agree that any action or suits at law or in equity arising out of or related to the Project shall be maintained in the Superior Court of Yolo County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

30.8 Interpretation. This Contract shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Contract.

30.9 Successors and Assigns. The City and Contractor respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, contracts, and obligations contained in this Contract. Neither Party shall assign this Contract, in whole or in part, without prior written consent of the other Party. .

30.10 Assignment.

30.10.1 Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of the City. Any assignment without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under this Contract in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

30.10.2 As set forth in Public Contract Code section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

30.11 No Third Party Rights. No provision contained in this Contract shall create or give to third parties any claim or right of action against the City, the City's Representative, or Contractor.

30.12 Survival. The provisions of this Contract which by their nature survive termination of the Contract, including without limitation all warranties, indemnities, payment obligations, and the City's right to audit Contractor's books and records, shall remain in full force and effect after termination of this Contract.

30.13 Force Majeure. Neither Party will be responsible for any failure or delay in performing any obligation hereunder if such failure or delay is due to a cause beyond the Party's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts. Notwithstanding the foregoing, Contractor shall have no obligation to deliver Equipment or provide Services to the extent that the City is unable to pay as a result of a force majeure event.

30.14 Authority of Signatories. The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

30.15 Severability of Provisions. If any one or more of the provisions contained in this Contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

30.16 No Waiver. No delay or omission in the exercise of any right or remedy by the non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other Party requiring the Party's consent or approval shall not be deemed to waive or render unnecessary the other Party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Contract.

30.17 The City's Right To Audit. Contractor will maintain complete auditable records of all financial transactions relating to this Agreement for a period of at least 3 years after the termination or expiration of the relevant Project Statement of Work. At any time upon reasonable notice to Contractor and at the City's sole expense, the City may audit or cause to be audited the accuracy of Contractor's invoices and Contractor's subcontractors' invoices. Contractor will provide the City and its authorized agents and representatives access to inspect and copy Contractor's books and records for purposes of such audit during normal business hours; provided, however, that if such audit discloses that an error of five percent (5%) or more regarding invoices during the audited period was made in favor of Contractor or any Contractor subcontractor, Contractor will pay the entire cost of such audit. If any audit discloses an error in the City's favor, Contractor will immediately, but in no event more than 10 days after discovery of an over-billing, reimburse the City for the over-billing.

30.18 Third-Party Claims. The City will provide Contractor with timely notice of any third party claim relating to the Contract for the Project and shall be entitled to recover its reasonable costs incurred in providing such notification. The City shall also retain full authority to compromise or otherwise settle any claim related to the Contract for the Project.

30.19 State License Board Notice. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 32000, Sacramento, California 95832.

30.20 Counterparts. This Contract may be executed by facsimile or scan and in counterparts, which taken together shall form one legal instrument.

[Signature Page Follows]

**SIGNATURE PAGE
TO
MASTER AGREEMENT BETWEEN
CITY OF DAVIS AND DELTA ENGINEERING SALES FOR THE
ADVANCED METERING INFRASTRUCTURE AND METERING REPLACEMENT PROJECT**

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate on the day and year first above written.

CITY OF DAVIS, A Municipal
Corporation of the State of
California

By: _____
Dirk Brazil
City Manager

APPROVED AS TO FORM:

HARRIET A. STEINER
City Attorney

DELTA ENGINEERING SALES,
a Delaware limited liability company

By: _____

Title: _____

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

-33-

82506.01000\29276989.4

ATTACHMENT A
PROJECT STATEMENT OF WORK
[attached behind this cover page]

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

-34-

82506.01000\29276989.4

CITY OF DAVIS **AMI/WATER REPLACEMENT PROJECT** **STATEMENT OF WORK**

Task 1. Project Management

Contractor shall provide a project management team for the overall management of the project. Contractor will identify the full project management team, which may include representatives from subcontractors, which team will be led by Contractor's Project Manager, as identified in the Agreement (the "Project Manager"). The Project Manager is responsible for leading the implementation and installation efforts pursuant to this Agreement, through completion of all installation work and full deployment of the AMI System. This includes managing timeline, cost and scope. The Project Manager shall schedule and lead a Project kick off meeting that will include representatives from the City, Contractor, and subcontractors working on the implementation of the Project. The Project Manager is expected to develop and maintain a detailed project plan and schedule in consultation with the City which is consistent with this Agreement and the expectations of the City, and manage the deliverable responsibilities of the project staff and subcontractors consistent with this Statement of Work and the detailed project plan and schedule.

The Project manager shall be responsible for all construction management during the replacement and implementation of water meters and the installation and deployment of the AMI System. Such construction management activities shall include but not be limited to: overseeing and managing the replacement and installation of the water meters and the Equipment required for the AMI System; developing a health and safety program for the installation work and ensuring proper implementation of such program; conducting biweekly coordination meetings of the City, Contractor and subcontractors engaged in the installation of the water meters and the AMI System, and promptly distributing minutes from such meetings; and providing weekly written project status updates on the project.

During installation of the replacement water meters and AMI system, the Project Manager shall schedule and manage the installations, and regularly report the status of the process to the City. The Project Manager is responsible for City's satisfaction, minimizing project risk and ensuring on-time delivery of the AMI System and water meter replacement. Further, the Project Manager shall develop and implement a written process to promptly and effectively address customer inquiries and complaints. This process will be subject to review and approval by the City. The Project Manager shall continue to hold bi-weekly meetings with the City and appropriate subcontractors until the installation is complete and the AMI System is fully deployed and operational.

The Project Manager is responsible and accountable for the successful execution of all tasks under this Statement of Work. The Project Manager will coordinate Project activities, deliver project status reports, coordinate phase deliverable and identify any requirement gaps. The Project Manager is responsible for understanding issues and risks and driving them to closure.

Task 2. Installation of Advanced Metering Infrastructure System

The scope for this task includes:

- a) Furnish an Advanced Metering Infrastructure (AMI) System consisting of collector units, end

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

points, and all other appurtenances required to deliver a complete AMI system as summarized in the following table:

Item	Description	Quantity	Make/ Model
3a	Endpoints	16,731	Aclara Star 3300 Water MTU
3b	Collector Units	7 ^a	Aclara Synergize RF Network DCU
3b	Network Control Computer	1	
3b	Meter Programmer	1	Panasonic Toughpad FZ-G1

^a Propagation study provided in proposal stated 7 DCUs would be necessary to provide sufficient coverage to meet project requirements. Additional DCUs shall be provide at no additional cost to City if required to meet project requirements.

- b) Installation of AMI System: Contractor shall install all equipment required for the AMI System which, in conjunction with the Software to be installed as set forth herein, shall meet the following standards: The AMI system shall be a complete licensed radio system.
- The radio system shall operate on a dedicated, FCC licensed frequency to prevent erroneous reading errors. The Contractor shall obtain said license on behalf of the City of Davis. The City will bear the direct charge of application fee only.
 - All equipment included in the AMI System shall comply with current FCC requirements - Part 90 of the FCC regulations. The Contractor shall have supporting documentation available upon request to verify compliance.
 - The City will not accept a drive-by system with the expectation to migrate to a fixed network reading solution, nor the installation of technology that has not been field tested for a period less than 5 years.
 - The AMI System constitutes a metering solution that has been available for over 5 years, having at least 20 water utility customer deployments, completely installed and operational.
 - All systems shall either be compatible with or replace meters and AMI system currently installed in the City of Davis.
- c) Collector Units: The Collector Units as described above shall be installed as part of the AMI System, and shall satisfy all of the following requirements:
- Environmental conditions of the meter system network of collectors/repeaters shall be deployed on City owned property located throughout the City. Collectors/repeaters shall operate in temperature extreme ranges of -40 to +185 degrees F.
 - Power Supply - The collector units shall be powered using either AC/battery or solar/battery to retrieve meter readings and relay them to a centralized location.
 - Diagnostic Information - At a minimum, the collector units shall measure and record battery strength, Radio Frequency (RF) signal strength and time and date stamp each inbound transmission. These records will be included with each transmission.

- iv. The collector unit locations shall be determined by the reading solution manufacturer as part of this proposal based on a propagation study performed by the manufacturer. The proposed number of collector units shall provide 100 percent coverage for the service territory without the need for any repeaters or boosters.
 - v. If during installation, the Contractor determines the need for additional collector units, they shall be added at no additional cost to the City.
 - vi. Collector units shall be capable of being mounted on roofs, utility poles, street lights, towers, elevated storage tank, etc., to collect readings from all meters in the coverage area. No special tower construction will be allowed.
 - vii. Collector unit network redundancy shall be incorporated into the collector unit placement process to accelerate the reading process and ensure all meters provide a reading.
 - viii. Installation collector units shall be automatically recognized and installed onto the system network. Collector unit behaviors shall be programmable, including connection time, alarm message handling, alternative connection numbers, etc.
 - ix. The metering reading network shall be capable of adding collector units at any time without need for system reconfiguration.
 - x. All collector unit electronics shall be electrically isolated and protected against static discharge and indirect lightning strikes.
 - xi. After being installed, collector units shall require minimal maintenance over the life of the unit.
 - xii. Collector units shall be easily configured to utilize a variety of WAN technologies to communicate to the head end computer. Collector units shall have optional backhaul communication methods such as cellular, Wi-Fi, ethernet, IP, and fiber optic and shall be easily upgraded from one WAN technology to another.
- d) Endpoints & Field Programming Equipment: The Endpoints and Field Programming Equipment to be installed as part of the AMI System shall meet the following standards:
- i. Warranty - The endpoint devices shall have a full-warranty of at least ten (10) years from date of installation against any defects in materials and workmanship. The endpoint battery shall have full-warranty for ten (10) years from date of delivery. The endpoint battery and electronics shall be warranted for an additional ten (10) years at a prorated replacement cost. The total warranted life of the endpoint shall be twenty (20) years.
 - ii. The endpoint features shall comply with the following:
Housing: The endpoints will be housed in a molded plastic housing, hermetically sealed and resistant to rain, moisture and temperature changes from -40 to +140 degrees F. The enclosure shall house the complete unit, which includes electronics, battery compartment, antenna and wire connections. The meter lids will need to be modified or replace lids as needed to ensure the antenna edges do not protrude above the meter lid and meter lid/antenna edges are flush with the ground surface.

Battery Life: The endpoints shall have a permanently installed non-field replaceable battery with (20 - radio, 10 - cellular) year life cycle expectancy.

Maintenance: The endpoints shall be maintenance free. After initial installation, endpoint will continue to operate at optimal levels for the entire life of the product.

Read Interval: The endpoints shall contain a radio that transmits a brief message containing the endpoint identification number and port number, the meter reading, and tamper flags at programmed intervals. The two-way water endpoints shall be capable of collecting data in intervals of 15 or 30 minutes as well as provide top-of-the-hour, time synchronized hourly reads. The read interval shall be reconfigured over the air from the head end computer.

Transmission: Endpoint shall deliver readings to multiple collectors at regular intervals. MTUs shall send readings from current reading period and reading period immediately previous to the current reading period.

Firmware Updates: All end point transmission devices shall have the capability to receive and process commands from the hosted server system for all firmware updates to eliminate the need to manually perform the update function to each locale. AMI modules shall support group firmware updates to reduce system maintenance time.

Leak Detection: The system shall monitor water consumption through the meter and indicate when there is an abnormal increase in water consumption suggesting a leak within the customer's premise. The software shall also provide meter reading management reports, usage analysis reports (leak detection, tamper detection and backflow conditions), and system management diagnostics.

No Flow Detection: The system (either through reports or alarms from the endpoint) shall indicate when there is an extended period of no flow or a minimum flow through the meter.

High Flow Detection: The system shall provide a report of accounts with abnormally high consumption during any billing period, suggesting a continuous flow condition.

Constant Consumption: The system shall provide a constant consumption report to identify locations which a potential leak had occurred by monitoring for constant usage or continuous flow with consecutive reads.

Time Synchronization: The system shall provide time synchronized meter reads that allow the City to obtain a snapshot of water consumption. All endpoints on the network shall maintain time synchronization within 30 seconds of each other.

Diagnostic Information: Endpoints shall provide diagnostic information, such as battery voltage, and tamper flags with every transmitted reading.

Meter Compatibility/Ports: Endpoints shall be compatible with multiple makes and models of meters and shall be offered as single or dual-port units. The endpoints shall be capable of receiving meter data from various independent meter manufacturers equipped with encoder registers.

Installation: Endpoints shall be easily installed and provide appropriate provisions to avoid installer mistakes in installation, connection to meters, and programming. The endpoints shall be configured with a field programmer that will take the operator through a series of simple steps. Each step shall include error checking and verification, where appropriate. The field programmer shall communicate with the endpoints to confirm proper configuration and wiring. The field programmer shall also have the ability to initiate communication between an endpoint and a collector unit to ensure successful communication

Alarms / Tampering - The system shall contain tamper detection capability of the meter, endpoint or wiring in between and provide an immediate transfer to the head end computer to allow for proper notification and reporting. System shall allow for triggering of e-mail, or electronic message notification to subscribed users. Mandatory tamper detection shall include cut wires and equipment failures (such as meter failure).

- iii. Field Programmer / Handheld Unit. The programmer shall contain its own software for programming, and be provided with easy instructions for operation. Main and back-up batteries shall be readily available from local suppliers. Units shall be provided with any needed communications software, adapters, chargers, or accessories. All software shall be licensed to the City of Davis. The hand-held device shall have the ability to upload data in the unit's memory.
- e) Meter Reading System Software: Contractor shall install, configure and validate the software required for the NCC and the DCU network that are utilized as part of the AMI System.

Billing and Account Interfaces with the NCC will be configured and unit tested in preparation for installation on the System Owner's environment for the validation and testing described in the phase below. STAR Programmer Software integration and configuration will be completed. During this phase, the City will be required to deliver sample integration data from production systems to validate interface configuration.

The Software installed pursuant to this Statement of Work shall meet the following requirements:

- i. The Contractor shall provide integration of an Aquahawk software system with the AMI System. If directed by the City, the AMI vendor shall fully integrate the third party software into their system and contract with the third party to provide a turn-key system to the City. No third party contracts will be executed by the City. The Contractor shall integrate their AMI system with the Aquahawk software system.
- ii. The meter solution manufacturer shall host the head end server and software. The City will not host and will not accept a third-party host.
- iii. The Contractor shall provide sufficient and continuous IT support for system development and work with the City's IT department to set the security clearance, pop-up blockers, and enable mixed content.
- iv. The meter reading solution manufacturer shall support an interface with the City's billing system, Sungard, with the ability to provide the appropriate software to

- automatically transfer appropriate data to the City's CIS and consumer engagement system. The system shall be integrated with the City's billing system directly.
- v. The meter reading solution shall synchronize with Sungard daily. The meter solution manufacturer shall retrieve a synchronization file from a secure FTP site provided by the City or provide a location on an FTP site operated by the manufacturer. The Contractor shall provide a synchronization file to assure communication between the Sungard system and software provided by the Contractor.
 - vi. System shall have back-up capabilities and procedures to ensure that system and consumption data is not corrupted or lost.
 - vii. System diagnostics shall be collected at all levels and transferred on to the vendor's hosted head end computer/server where several types of diagnostic reports shall be produced. Such reports shall indicate problems ranging from battery voltage to failure to recognize a proper communication with the meter. At minimum the report shall contain the following information:
 - Number of endpoint calls.
 - Warning/error messages
 - MTU battery status
 - Number of records received.
 - Number of records transferred.
 - viii. Customer support staff interface – The AMI System shall provide an interface for City customer staff.
 - ix. Consumer Engagement - The AMI System shall include the installation and configuration of the Aquahawk customer portal, a customer engagement web portal which includes:
 - Customer login/authentication
 - Online access and smart phone application to allow the utility customer access to timely consumption information and water exception event messages via web and mobile devices.
 - Web based customer dashboard with:
 - Meter reading data presentment
 - Bill-to-date
 - Bill analysis
 - Analysis module for customers to see how their homes compare to similar homes
 - Customer alerts
 - Proactive water conservation reports
 - A mobile solution for customer account management
 - x. The fixed network software solution shall offer:
 - Rate information
 - Customer information

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

Service point information

Meter data

Tamper data

Event data

- xi. The software solution shall allow the City staff to generate reports and tables within the software with the ability to easily select and compile particular data for printing or exporting via csv format. The software shall allow City staff to search the database to easily locate specific customer information and readings.

- xii. The solution shall be able to store and archive multiple types of data for each individual endpoint including but not restricted to:

Rate information

Customer information

Service point information

Meter data

Tamper data

Event data

Store/archive a minimum 24 months of data. All data shall be easily retrievable.

Accessible by a rich client or Web-browser based interface for the purposes of system administration and diagnostic troubleshooting.

Be designed as a robust and scalable data repository to leverage best practices of data warehousing. The database should support scalability and have a highly flexible data structure to allow new data elements to be created without changes in table structures.

- f) AMI System Installation: The installation of the AMI System shall further be consistent with the following requirements:

- i. Collector Installation:

Contractor shall submit a plan for collector installation based on results of propagation study. Alcara shall perform the installation of all infrastructures required to support the entire service area as a subcontractor to Contractor. Contractor shall be responsible for coordination of access with the property managers with the assistance of the City's Water Division. Work outside of normal City work hours shall require approval by the City and the presence of a City staff person will be required.

- ii. Endpoint Installation:

The installation personnel shall have completed the manufacturers installation and training course provided by Alcara and have attained the manufacturer's certificate of installation from Alcara.

- g) The Contractor shall submit an installation plan for meter reading network infrastructure, meter and endpoint deployment, to the City for review and approval, which plan shall include:
- i. Quality assurance/quality control (QA/QC)
 - 1. Field discrepancies - Provide verification that every meter installed connects to the system. Provide a plan to deal with discrepancies in the system such as but not limited to meter box damage, meter cannot be located, incorrect lid type for reading technology, meter transmits incorrect data. Define your process for identifying failed AMI connections for the purpose of pushing data to the City's meter reading system for manual meter reading. The plan shall describe how these discrepancies will be identified and the Contractor's process to correct the discrepancies.
 - 2. Data discrepancies - The information the City provides will most likely have errors. Describe the plan to identify and address City data errors in order to minimize impacts to the overall project.
 - ii. A description of the process for notifying customers at the time of installation. A notification process shall be in place sufficient to prevent damage to customer at water shutoff and re-startup.
 - iii. Furnishing of handheld computer devices
 - iv. Support and training for staff – Describe training process including when the training will be scheduled and duration of the training. List each separate training session, schedule and length of each training session, and who needs to attend each session.
- h) Warranty management - The Contractor is responsible for installations and warranties of meters and AMI system with an expected reading accuracy of 98.5 percent of all possible system register reads during a 30-day period. This excludes occurrences preventing meter reading such as obstructions due to vehicles parked over meters, tampered meters, and broken wires for example.

Task 3. Sale of Replacement Water Meters

This task consists of the following scope:

[Continued on next page]

a) Contractor shall sell to City 16,824 meters to the City per the following table:

Item	Meter Size	Quantity to be Replaced	Make/Model
4a	3/4" Non-moving Part Meter	12,292	Badger E-Series
4b	1" Non-moving Part Meter	3,610	Badger E-Series
4c	1-1/2" Non-moving Part Meter	384	Badger E-Series
4d	1-1/2" Turbo Meter	87	Badger Recordall Turbo Series
4e	2" Non-Moving Part Meter	144	Badger E-Series
4f	2" Turbo Meter	154	Badger Recordall Turbo Series
4g	2" Compound Meter	20	Badger Recordall Compound Series
4h	3" Turbo Meter	35	Badger Recordall Turbo Series
4i	3" Compound Meter	54	Badger Recordall Compound Series
4j	4" Turbo Meter	13	Badger Recordall Turbo Series
4k	4" Compound Meter	25	Badger Recordall Compound Series
4l	6" Turbo Meter	1	Badger Recordall Turbo Series
4m	6" Compound Meter	1	Badger Recordall Compound Series
4n	8" Turbo Meter	2	Badger Recordall Turbo Series
4o	8" Compound Meter	2	Badger Recordall Compound Series

All meters shall be equipped with an electronic encoder type meter register with a permanent potted wire connection between the Endpoint and the register. Pulse type registers such as Badger RTR or AMCO C700 will not be accepted. Register shall be permanently sealed for pit set registering in cubic feet.

All meters shall have a unique serial number stamped or embossed on the main case. The first two digits of the number shall indicate the year of the manufacture.

Meter casing shall be made of a brass, stainless steel, or copper alloy material. Plastic or polymer bottoms are not acceptable.

The meter register shall have a read resolution of 0.1 cfm (0.75 gpm) for meters 1-inch and smaller, and a read resolution of 1 cfm (7.5 gpm) for meters 1.5-inch and larger.

The meter register shall read in cubic feet per minute (cfm).

Meter and registers shall be capable of directly interfacing with various independent Endpoint Transmission Devices without the need for any on-site register programming.

Meters shall meet current Safe Drinking Water Act lead free standards. Low Lead Bronze ANSI/NSF Standard 61 Certified / Assembly Bill 1953. The meter body, top and bottom covers and other component in contact with water, shall be no more than 0.25% of lead content and conform to California Proposition 65 requirements.

All meters shall meet or exceed all applicable American Water Works Association (AWWA) standards for accuracy and capacity including but not limited to: C700, C701, C702, C707, C712 or C713, for five years from the date of installation.

Meters 2" in size and larger shall be equipped with valves for in-line test provisions. All meter assemblies shall be tested and shall be in compliance with the requirements of the latest revision of the AWWA Standards.

All meters shall be furnished with certified test results attached to each meter or shipment of meters showing that every meter has been tested and compliant with meter accuracy and capacity requirements according to the most recent AWWA standards.

Meters and registers shall be warranted against defect in material and workmanship for a period of twelve months from date of installation identified by the City of Davis.

All meter testing results and compliance affidavit shall be valid after the meter is potted with the Endpoint module.

Waterproof in-line connectors are permissible to facilitate the installation of the Endpoint Transmission Device.

No wire splicing of any kind shall be required to be performed during installation.

Task 2. Water Meter Installation and Replacement

The City's current general metered specifications are included in the City's Standard Specifications located on the City's website. All work shall be completed in accordance with the City Standards. The scope for this task includes:

- a) Replace water meters – Remove and replace 16,824 existing system water meters with meters of the same flow characteristics. A key element of the replacement strategy includes meter compatibility with the selected AMI system. The City will provide personnel to assist contractor with locating meters that the contractor is unable to reasonably locate.
- b) Meter replacement plan – All meters shall be replaced in twelve consecutive months from the start of the installation effort. Contractor shall provide a phasing plan and schedule, including an explanation and justification of the phasing plan. Meters shall be replaced by

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

billing route to minimize disruption of the City's ability to bill customers. City Billing route maps will be provided by the City.

- c) Meter boxes, meter lids – Some meter lids will need to be modified or replaced as needed to ensure the antenna edges are within industry standards of height related to the ground surface, including compliance with Americans with Disabilities Act (ADA), or because the existing meter lid is an inappropriate material. The City does not have an estimate of the number of meter box lids to be replaced. The number of meter box lids requiring modification shall be identified by the Contractor during the pre-installation audit.
- d) Contractor shall provide reports to the City describing nonstandard meter installations, proposed modifications, and estimated time required to complete the proposed modifications. Contractor shall provide a report for each billing route prior to starting work in that billing route. Reports shall include number, location, size, and description of meter box lids to be replaced.
- e) Contractor shall provide verification that the meter reflects the correct meter reading and is the appropriate meter for the location in accordance with approved quality assurance/quality control (QA/QC) process.
- f) Contractor shall provide GPS coordinates of each meter in addition to meter number/unique identifier. This may be done with the use a handheld GPS unit such as the field programmer, but shall not require additional equipment and shall provide accuracy to within 9 feet. An electronic file with meter locations, suitable for importing into the City's GIS system, shall be provided. The following file formats are acceptable to the City, in order of preference:
 - i. ESRI file geodatabase (fgdb)
 - ii. ESRI shapefile
 - iii. Google KML/KMZ
- g) Replacement meter box lids shall be Fiberlite traffic-rated lids, or approved equal.
- h) Fittings used to replace water meter components shall be "no-lead" fittings manufactured by Ford Meter Box Company, or approved equal. Meter component repairs shall be made in conformance to City Standards, in particular, City Standard 203-8.6.
- i) Damage resulting from negligence on the part of the installer - to the service lateral on the customer or City side of the meter, caused by the installation of the water meter or AMI equipment, or the repair of water meter components, shall be repaired by the contractor at no cost to the City. — Damage not resulting from negligence on the part of the installer- City will offer assistance to repair old or leaking water service pipe that may have occurred prior to or during meter change-out activities but is not a result of negligence on the part of the installer. Likely causes for this are deteriorated piping or pre-existing damage to the service line or fittings.
- j) The City's normal work hours are from 7:00 am to 6:00 pm, Monday through Friday. The City will not allow work in residential areas before 8:00 am.
- k) Any concrete removed shall be replaced in accordance with the requirements of the City of Davis Public Works Department Standard Specifications, January 1996 Edition, Addenda through October 2009. In general, concrete shall be removed by saw-cutting in neat straight lines and shall be replaced from joint to joint.
- l) Existing meter adapters may be reused if in good condition.
- m) The Contractor shall replace all rubber gaskets exposed during meter installation.

- n) The City will test the accuracy of ten percent of meters prior to installation at their in-house meter testing facility. The Contractor shall provide access to meter storage to allow City to obtain meters for testing. Meters will be chosen at random by City.

Task 5: Water Meter Installation Modification

Water meter installation modifications shall be performed on a time and materials bases. Nonstandard meter installations and meters that will need to be repaired shall be identified in reports provided to the City prior to work in a given billing route as required in Task 4.c.

Schedule

The Contractor shall complete the project in an 18-month period, with installation activities occurring in a continuous 12-month period. The Contractor shall perform the following tasks:

1. Perform audit of existing meter boxes and notify City of any locations that may required additional input from the City.
2. Verify propagation study and select locations of DCUs with City approval.
3. Install DCU and NCC, and prepare AMI system to receive data from endpoints.
4. Replace meters and install endpoints and City-owned and Davis Joint Unified School District locations.
5. Verify that AMI system accurately reads meters installed as part of Item 4.
6. Replace meters and install endpoints in remainder by City. Meter replacement shall be performed by billing route as described previously in this Scope of Work.
7. During the construction phase, the Contractor shall produce and mail post cards to residents two weeks prior to meter installation and place door hangers one day prior to installation.
8. Aquahawk customer portal will be setup and tested in parallel to meter installation.

ATTACHMENT B
CONTRACT PRICING

ATTACHMENT B—CONTRACT PRICING					
Item	Description	Quantity	Units	Unit price	Total price, \$
1	Project Management	1	LS	\$ 207,085.50	\$ 207,085.50
2a	Water Meter Replacement	16,731	EA	\$ 80.64	\$ 1,349,187.84
	5/8" X 3/4" & 3/4 X 3/4" + MTU	12,232	EA	\$ 55.00	\$ 672,760.00
	1" Meter + MTU	3,579	EA	\$ 55.00	\$ 196,845.00
	1-1/2" Meter + MTU	469	EA	\$ 55.00	\$ 25,795.00
	2" Meter + MTU	314	EA	\$ 357.50	\$ 112,255.00
	3" Meter + MTU	90	EA	\$ 467.50	\$ 42,075.00
	4" Meter + MTU	40	EA	\$ 577.50	\$ 23,100.00
	6" Meter + MTU	3	EA	\$ 907.50	\$ 2,722.50
	8" Meter + MTU	4	EA	\$ 1,100.00	\$ 4,400.00
	Retrofit MTU (32 E-Series Meters)	0	EA	\$ 24.75	\$ -
	Meter Lid Replacement	5,000	EA	\$ 7.00	\$ 35,000.00
	GPS Sub Metering Accuracy to 3 ft.	16,731	EA	\$.00	\$ 0.00
	Meter Box Audit	16,731	EA	\$ 14.00	\$ 234,234.00
2b	Water Meter Box Lid Replacement	5000	EA	\$ 26.46	\$ 132,300.00
	FL30 13-3/4" X 23-1/4" X 2"	500	EA	\$ 58.30	\$ 29,148.53
	FL36 17-5/8" X 30-7/16" X 2"	500	EA	\$ 92.21	\$ 46,107.08
	Carson 1220 13-1/4 x 19-5/8" 2 2"	3,000	EA	\$ 13.33	\$ 40,003.95
	Carson 132 13-5/8" x 23-1/8" x 2"	1,000	EA	\$ 17.03	\$ 17,034.50
3a	Fixed Network AMI System Endpoints	16,371	EA	\$ 104.16	\$ 1,705,203.36

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

3b	Fixed Network AMI System	1	LS	\$ 96,944.75	\$ 96,944.75	(f)
3c	Hosting Services	1	YR	\$ 68,181.40	\$ 68,181.40	
	Aclara Hosting Services	1	EA	\$ 45,136.00	\$ 45,136.00	
	AcquaHawk CE Hosting Services	1	EA	\$ 23,045.40	\$ 23,045.40	
	5/8 x 3/4" Non-moving Part Meter	0	EA	\$ 140.24	\$ -	
4a	3/4" Non-moving Part Meter	12,292	EA	\$ 157.24	\$ 1,932,794.08	
4b	1" Non-moving Part Meter	3,610	EA	\$ 185.59	\$ 669,979.90	
4c	1 1/2" Non-moving Part Meter	384	EA	\$ 440.70	\$ 169,228.80	
4d	1 1/2" Turbo Meter	87	EA	\$ 612.86	\$ 53,318.82	
4e	2" Non-moving Part Meter	144	EA	\$ 593.17	\$ 85,416.48	
4f	2" Turbo Meter	154	EA	\$ 692.83	\$ 106,695.82	
4g	2" Compound Meter	20	EA	\$ 1,570.05	\$ 31,401.00	
4h	3" Turbo Meter	35	EA	\$ 814.56	\$ 28,509.60	
4i	3" Compound Meter	54	EA	\$ 1,892.29	\$ 102,183.66	
4j	4" Turbo Meter	13	EA	\$ 1,196.48	\$ 15,554.24	
4k	4" Compound Meter	25	EA	\$ 3,002.25	\$ 75,056.25	
4l	6" Turbo Meter	1	EA	\$ 2,850.67	\$ 2,850.67	
4m	6" Compound Meter	1	EA	\$ 4,362.84	\$ 4,362.84	
4n	8" Turbo Meter	1	EA	\$ 3,168.15	\$ 3,168.15	
4o	8" Compound Meter	1	EA	\$ 6,391.79	\$ 6,391.79	
Total Cost					\$ 6,845,814.95	(d)
20-year Life Cycle Costs - with Water Meters						
20-year Life Cycle Costs - without Water Meters						

a) The City is uncertain of the number of water meter box lids that need to be replaced. All lids that need to be replaced shall be replaced at the unit cost for Item 2b provided in this table. The Proposer shall assume 5,000 lids will be replaced for pricing purposes only.

b) Meter lid replacement costing

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

- c) *RFP called for Sub-metering GPS coordinates. This process requires additional equipment with meter location accuracy within 3 feet of meter box. In standard residential areas, sub metering GPS coordinates are not required. Note, standard center of lot GPS coordinates are provided at no cost.*
- d) *8.50% Sales Tax Included on taxable items*
- e) *Costing based on preliminary DCU Plan. Actual DCU configurations may be a mixture of various mounting styles. A detailed propagation study using utility asset locations and site survey is needed to finalize the quantities and type. Price does not include installation on water towers, roof tops, or other custom sites. Pricing and arrangements for non-standard installations will be handled individually. Preliminary propagation study utilized standard street light DCU mounting location. Variations from street light DCU installation will incur additional installation charges.*
- f) *Lump sum items shall be paid each billing cycle in proportion to the percentage of work completed during that billing cycle. The total amount paid by the City for lump sum items shall not exceed the listed total price for the item without prior written agreement from the City.*

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

ATTACHMENT C
RESERVED

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

-50-

82506.01000\29276989.4

ATTACHMENT D
EQUIPMENT WARRANTIES
[Attached behind this Cover Page]

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

-51-

82506.01000\29276989.4

STAR® MTU Warranty

Basic Warranty

Aclara Technologies LLC warrants to the original PURCHASER of a STAR® Utility Meter Transmission Unit (MTU) that the MTU shall perform in accordance with the specifications in effect at the time of original product shipment and shall be free from defects in material and workmanship for a period often (10) years from the date of original product shipment (the "full warranty period").

Any STAR® Utility MTU manufactured by Aclara Technologies LLC that, within the full warranty period: (i) fails to perform in accordance with the specifications in effect at the time of original product shipment or (ii) fails as a result of a defect in material or workmanship, when returned to Aclara Technologies LLC, freight prepaid, will be repaired or replaced at the option of Aclara Technologies LLC without charge to the PURCHASER. A STAR® Utility MTU which has been repaired or replaced by Aclara Technologies LLC will be returned to the PURCHASER by Aclara Technologies LLC, freight prepaid. All costs associated with the removal and/or reinstallation of a defective STAR® Utility MTU shall be the responsibility of the PURCHASER. Aclara Technologies LLC warrants replacement MTUs for the longer of (i) the remaining term of the full warranty period applicable to the STAR® Utility MTU repaired or replaced or (ii) one year from the date the repaired STAR® Utility MTU or its replacement is returned to PURCHASER. Aclara Technologies LLC reserves the right to supply factory refurbished equipment, new equipment, or a newer model that provides equivalent or better performance.

Extended Warranty

Subject to the limitations set forth below, Aclara Technologies LLC, will replace any STAR® Utility MTU that, after expiration of the full warranty period but before the expiration of the twentieth (20th) full year after the date of original product shipment (the "extended warranty period"): (i) fails to perform in accordance with the specifications in effect at the time of original product shipment or (ii) fails as a result of a defect in material or workmanship. The cost of replacement will be prorated in accordance with the following table based on the number years of service before failure:

Years of Service	Replacement Cost Percentage
11	55%
12	60%
13	65%
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20	100%

The cost of replacement will be calculated by multiplying the applicable replacement cost percentage by the STAR® Utility MTU price in effect at the time of replacement. The defective MTU must be returned to Aclara Technologies LLC by the PURCHASER, freight prepaid; Aclara Technologies LLC will pay the freight charges for the return of the replacement to the PURCHASER.

The information contained herein is proprietary and confidential to Aclara Technologies LLC and shall not be released or disclosed to any third party without prior written approval.



**Aclara STAR Warranties
Aclara Technologies LLC**

All costs associated with the removal and/or reinstallation of a defective STAR® Utility MTU shall be the responsibility of the PURCHASER. Aclara Technologies LLC warrants MTUs replaced pursuant to the Extended Warranty for ten (10) years (in accordance with the terms of the Basic Warranty) from the date the replacement is returned to the PURCHASER. Aclara Technologies LLC reserves the right to supply factory refurbished equipment, new equipment, or a newer model that provides equivalent or better performance.

The STAR® Utility MTU warranties do not cover repairs or replacements required as a result of: misuse, mishandling, improper storage, accident, modification, improper operation, installation errors, meter failures, theft, vandalism, repair by unauthorized personnel, or battery life for MTUs that are configured and operated for more than two (2) to four (4) transmissions per day.

Aclara Technologies LLC makes no warranty whatsoever with respect to the minimum communication distance or reliability of the radio propagation path of STAR® Utility MTUs.

Each MTU includes software which is proprietary to Aclara Technologies LLC and which is protected by United States Copyright Laws with which the PURCHASER must comply. PURCHASER has the right to utilize the software in the MTU with the MTU, but PURCHASER may not disassemble, decompile, or modify the software. The software is confidential and the property of Aclara Technologies LLC and shall not be disclosed to others.

THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

THE LIABILITY OF ACLARA TECHNOLOGIES LLC SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IN NO EVENT SHALL ACLARA TECHNOLOGIES LLC BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, RESULTING FROM PRODUCT INSTALLATION, USE, REMOVAL OR REINSTALLATION. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND IN NO EVENT SHALL THE LIABILITY OF ACLARA TECHNOLOGIES LLC EXCEED THE PRICE OF THE PRODUCT ON WHICH SUCH LIABILITY IS BASED. THE LIMITATION OF REMEDIES SET FORTH HEREIN IS IN RECOGNITION OF THE DIFFICULTIES OF PROOF OF LOSS AND THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE MEASURING DAMAGES AND OBTAINING AN ADEQUATE REMEDY.

The information contained herein is proprietary and confidential to Aclara Technologies LLC and shall not be released or disclosed to any third party without prior written approval.



STAR® Utility DCU Warranty

Aclara Technologies LLC warrants to the original PURCHASER of a STAR® Utility Data Collection Unit (DCU) that the DCU shall perform in accordance with the specifications in effect at the time of original product shipment and shall be free from defects in material and workmanship for a period of five (5) years from the date of original product installation.

Any STAR® Utility DCU manufactured by Aclara Technologies LLC that, within the warranty period: (i) fails to perform in accordance with the specifications in effect at the time of original product shipment or (ii) fails as a result of a defect in material or workmanship, will be repaired or replaced at the option of Aclara Technologies LLC without charge to the PURCHASER. PURCHASER may either;

- 1) Request return authorization from Aclara Technologies LLC, and return defective DCU for repair. Aclara Technologies LLC will be responsible for lowest cost inbound and outbound freight when using shipping method of Aclara Technologies LLC's choice. Should PURCHASER request alternative shipping method, PURCHASER will be responsible for all excess freight charges. All costs associated with the removal and/or reinstallation of a defective STAR® Utility DCU shall be the responsibility of the PURCHASER, or

- 2) Request on site repair by Aclara Technologies LLC, provided PURCHASER pays all reasonable Aclara Technologies LLC travel expenses. PURCHASER must assure reasonable access to the equipment, and shall be responsible for additional costs incurred should Aclara Technologies LLC be prevented access at the scheduled time.

Aclara Technologies LLC warrants replacement DCU's for the longer of (i) the remaining term of the full warranty period applicable to the STAR® Utility DCU repaired or replaced or (ii) six (6) months from the date the repaired STAR® Utility DCU or its replacement is returned to PURCHASER. Aclara Technologies LLC reserves the right to supply factory refurbished equipment, new equipment, or a newer model that provides equivalent or better performance.

The STAR® Utility DCU warranty does not cover repairs or replacements required as a result of: misuse, mishandling, improper storage, accident, modification, improper operation, installation errors, theft, vandalism, acts of god or repair by unauthorized personnel.

Aclara Technologies LLC makes no warranty whatsoever with respect to the minimum communication distance or reliability of the radio propagation path or required density of STAR® Utility DCUs.

Each DCU includes software which is proprietary to Aclara Technologies LLC and which is protected by United States Copyright Laws with which the PURCHASER must comply. PURCHASER has the right to utilize the software in the DCU with the DCU, but PURCHASER may not disassemble, decompile, or modify the software. The software is confidential and the property of Aclara Technologies LLC and shall not be disclosed to others.

THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

THE LIABILITY OF ACLARA TECHNOLOGIES LLC SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IN NO EVENT SHALL ACLARA TECHNOLOGIES LLC BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO

The information contained herein is proprietary and confidential to Aclara Technologies LLC and shall not be released or disclosed to any third party without prior written approval.



**Aclara STAR Warranties
Aclara Technologies LLC**

SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, RESULTING FROM PRODUCT INSTALLATION, USE, REMOVAL OR REINSTALLATION. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND IN NO EVENT SHALL THE LIABILITY OF ACLARA TECHNOLOGIES LLC EXCEED THE PRICE OF THE PRODUCT ON WHICH SUCH LIABILITY IS BASED. THE LIMITATION OF REMEDIES SET FORTH HEREIN IS IN RECOGNITION OF THE DIFFICULTIES OF PROOF OF LOSS AND THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE MEASURING DAMAGES AND OBTAINING AN ADEQUATE REMEDY.

THE WARRANTIES CONTAINED HEREIN MAY NOT BE ALTERED, AMENDED, OR MODIFIED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACLARA TECHNOLOGIES LLC

The information contained herein is proprietary and confidential to Aclara Technologies LLC and shall not be released or disclosed to any third party without prior written approval.

5



STAR® Utility NCC Warranty

Aclara Technologies LLC warrants to the original PURCHASER of a STAR® Utility Network Control Computer (NCC) that Aclara Technologies LLC will provide a computer, which in its best judgment is sufficient to run the NCC Software. The Computer to be supplied will be manufactured and assembled by a nationally recognized computer manufacturer to comply with minimum specifications established by Aclara Technologies LLC, but will not be assembled by or manufactured by Aclara Technologies LLC. Aclara Technologies LLC agrees to assign all of its rights and interests in the warranties, if any, provided by the manufacturer of said computer, to the extent that this assignment is permitted by such manufacturer, to the PURCHASER. Aclara Technologies LLC will arrange for a three-year on-site repair and service agreement at no additional cost to PURCHASER. PURCHASER'S only remedy is to look to the warranty provided by such manufacturer and/or benefits provided by the service agreement with respect to the repair and correction of defects and/or failures in the computer and its components.

Aclara Technologies LLC makes no warranty or representation, either express or implied for products or software supplied by Aclara Technologies LLC but manufactured or licensed by third parties. The warranties for products manufactured or licensed by third parties are limited to those provided by and in effect for the respective manufacturer or licensor.

The NCC Software and Documentation will meet the specifications therefore in effect on the effective date sale. If the NCC Software or Documentation fails to meet this warranty and PURCHASER gives written notice thereof, within one (1) year from date of initial sale, Aclara Technologies LLC shall correct the failure, provided that PURCHASER gives detailed information regarding such failure. Aclara Technologies LLC shall not be liable for the NCC Software and Documentation warranty provisions if modifications are made to the NCC Software by someone other than Aclara Technologies LLC or its authorized representatives

THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

THE LIABILITY OF ACLARA TECHNOLOGIES LLC SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IN NO EVENT SHALL ACLARA TECHNOLOGIES LLC BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, ARISING OUT OF OR RELATED TO THE INSTALLATION, USE, REMOVAL OR REINSTALLATION OF THE NCC PRODUCT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY THEREOF OR FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY FAILURE OF THE NCC SOFTWARE OR DOCUMENTATION. CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS AGREEMENT SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, LOSS OF USE, INCOME OR PROFIT, LOSS OF DATA, OR LOSSES SUSTAINED AS A RESULT OF INJURY TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND IN NO EVENT SHALL THE LIABILITY OF ACLARA TECHNOLOGIES LLC EXCEED THE PRICE OF THE PRODUCT ON WHICH SUCH LIABILITY IS BASED. THE LIMITATION OF REMEDIES SET FORTH HEREIN IS IN RECOGNITION OF THE DIFFICULTIES OF PROOF OF LOSS AND THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE MEASURING DAMAGES AND OBTAINING AN ADEQUATE REMEDY.

THE WARRANTIES CONTAINED HEREIN MAY NOT BE ALTERED, AMENDED, OR MODIFIED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACLARA TECHNOLOGIES LLC

The information contained herein is proprietary and confidential to Aclara Technologies LLC and shall not be released or disclosed to any third party without prior written approval.

6



STAR® Utility MTU Programmer Warranty

Aclara Technologies LLC warrants to the original PURCHASER of a STAR® Utility MTU Programmer (PROGRAMMER) that the PROGRAMMER shall perform in accordance with the specifications in effect at the time of original product shipment and shall be free from defects in material and workmanship for a period of one (1) year from the date of original product shipment.

Any STAR® Utility MTU Programmer manufactured by Aclara Technologies LLC that, within the warranty period: (i) fails to perform in accordance with the specifications in effect at the time of original product shipment or (ii) fails as a result of a defect in material or workmanship, when returned to Aclara Technologies LLC, freight prepaid, will be repaired or replaced at the option of Aclara Technologies LLC without charge to the PURCHASER. A STAR® Utility MTU Programmer which has been repaired or replaced by Aclara Technologies LLC will be returned to the PURCHASER by Aclara Technologies LLC, freight prepaid. Aclara Technologies LLC warrants replacement PROGRAMMERS for the longer of (i) the remaining term of the warranty period applicable to the STAR® Utility PROGRAMMER repaired or replaced or (ii) Ninety (90) days from the date the repaired STAR® Utility PROGRAMMER or its replacement is returned to PURCHASER. Aclara Technologies LLC reserves the right to supply factory refurbished equipment, new equipment, or a newer model that provides equivalent or better performance.

The STAR® Utility MTU Programmer warranty does not cover repairs or replacements required as a result of: misuse, mishandling, improper storage, accident, modification, improper operation, installation errors, theft, vandalism, acts of god or repair by unauthorized personnel.

Each MTU Programmer includes software which is proprietary to Aclara Technologies LLC and which is protected by United States Copyright Laws with which the PURCHASER must comply. PURCHASER has the right to utilize the software in the MTU Programmer with the MTU Programmer, but PURCHASER may not disassemble, decompile, or modify the software. The software is confidential and the property of Aclara Technologies LLC and shall not be disclosed to others.

THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

THE LIABILITY OF ACLARA TECHNOLOGIES LLC SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IN NO EVENT SHALL ACLARA TECHNOLOGIES LLC BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, RESULTING FROM PRODUCT INSTALLATION, USE, REMOVAL OR REINSTALLATION. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND IN NO EVENT SHALL THE LIABILITY OF ACLARA TECHNOLOGIES LLC EXCEED THE PRICE OF THE PRODUCT ON WHICH SUCH LIABILITY IS BASED. THE LIMITATION OF REMEDIES SET FORTH HEREIN IS IN RECOGNITION OF THE DIFFICULTIES OF PROOF OF LOSS AND THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE MEASURING DAMAGES AND OBTAINING AN ADEQUATE REMEDY.

THE WARRANTIES CONTAINED HEREIN MAY NOT BE ALTERED, AMENDED, OR MODIFIED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACLARA TECHNOLOGIES LLC

The information contained herein is proprietary and confidential to Aclara Technologies LLC and shall not be released or disclosed to any third party without prior written approval.



SOFTWARE WARRANTY

In connection with this proposal, Seller makes the following warranties:

Seller warrants that with respect to the Software licensed by Seller to Buyer that:

1) With respect to Third Party Licensed Software: a. Any applicable Third Party license fees have been paid; b. Buyer's use thereof shall be at no additional cost to Buyer; c. Buyer's use thereof shall only be subject to the terms of the Software License Agreement; **Seller expressly disclaims any other warranties with respect to Third Party Licensed Software and shall have no warranty obligations with respect to such Software.** 2) With respect to Seller Licensed Software and any updates or upgrades thereto provided to Buyer: a. Seller is the owner of the Aclara Licensed Software and has the right and authority to license the Aclara Licensed Software to Licensee; b. Buyer's use of the Aclara Licensed Software shall only be subject to the terms of the Software License Agreement; c. The Aclara Licensed Software will operate substantially in accordance with the Documentation licensed by Seller pursuant to the terms of the Software License Agreement. **In the event a breach of the foregoing warranties occurs prior to twelve months from installation of the Aclara Licensed Software, Aclara shall, at its sole cost and expense, perform such work as is necessary to promptly remedy the breach.**

Except as specifically set forth herein, no warranty under any provision of this proposal is made with respect to software items that have not been created or manufactured by the Seller or its Contract Manufacturers, such being subject only to the warranties made by their respective creators or manufacturers. Seller shall not be responsible or liability for unauthorized modifications, alterations, misapplications, or repairs made to the software by Buyer Personnel or persons other than Seller Personnel or for damage thereto caused by negligence, accidents or use by Buyer Personnel or persons other than Seller Personnel in violation of any provision of this Proposal.

Except as expressly set out herein, all conditions and warranties express or implied, statutory or otherwise (including but not limited to any concerning fitness for a particular purpose) are hereby excluded to the extent permitted by law.

The information contained herein is proprietary and confidential to Aclara Technologies LLC and shall not be released or disclosed to any third party without prior written approval.





Badger Meter

E-Series® Ultrasonic Meter

**Cold Water Lead-Free Meters,
5/8", 5/8" x 3/4", 3/4", 1"**

PRODUCTS

This warranty shall apply to all Badger Meter E-Series® Ultrasonic lead-free meters (stainless steel or engineered polymer), sizes 5/8", 5/8" x 3/4", 3/4", and 1", when used to measure potable water and the internal register/encoder and battery used with these meters (collectively "Product"), sold on or after April 1, 2013. This warranty is not transferable and is extended only to utilities, municipalities, other commercial users and authorized distributors, hereafter referred to as "Customer" and does NOT apply to consumers or any person or entity who is not an original customer of Badger Meter or its authorized distributors.

MATERIALS AND WORKMANSHIP

Badger Meter, Inc. ("Badger Meter") warrants Product to be free from defects in materials and workmanship appearing within the earlier of the following time frames.

Lead-Free Housings

Twenty (20) years and six (6) months after shipment from Badger Meter.

Electronics, Battery, Transducers, and Register/Encoder Supplied with the Meters Listed Herein

Twenty (20) years and six (6) months, prorated, after shipment from Badger Meter.

This warranty is prorated as follows: the first ten (10) years of the warranty and at prorated price discounts during the last ten (10) years of the warranty. Badger Meter will apply these prorated price discounts to the Product list prices in effect at the time of Product return and according to the following prorated price discount schedule: Years 11 through 12 — 75% discount; Years 13 through 15 — 50% discount; Year 16 — 40% discount; Year 17 — 30% discount; Year 18 — 20% discount; and Years 19 through 20 — 10% discount.

Specifically, Badger Meter will repair or replace, at its discretion, a non-performing Product at no cost during the first ten (10) years of the warranty and at prorated price discounts during the last ten (10) years of the warranty. Badger Meter will apply these prorated price discounts to the Product list prices in effect at the time of Product return and according to the following prorated price discount schedule:

- Years 11 through 12—75% discount;
- Years 13 through 15—50% discount;
- Year 16—40% discount;
- Year 17—30% discount;
- Year 18—20% discount; and
- Years 19 through 20—10% discount.

METER ACCURACY

The meter product will meet or exceed meter accuracy of $\pm 1.5\%$ between the gallons per minute (gpm) "minimum flow rate" to "maximum flow rate" for twenty (20) years from date of shipment:

5/8" and 5/8" x 3/4" Meter

0.1 gpm to 25 gpm

3/4" Meter

0.1 gpm to 32 gpm

1" Meter

0.4 gpm to 55 gpm

EXTENDED LOW-FLOW METER ACCURACY

Badger Meter further warrants the meter product to meet or exceed extended low-flow accuracy of $\pm 3\%$ from the following "extended low-flow rates" to the "minimum flow rate" for twenty (20) years from date of shipment:

5/8" and 5/8" x 3/4" Meter

0.05 gpm up to 0.1 gpm

3/4" Meter

0.05 gpm up to 0.1 gpm

1" Meter

0.25 gpm up to 0.4 gpm

PRODUCT RETURNS

Any Product proved to the satisfaction of Badger Meter to have failed the foregoing warranties will, at the option of Badger Meter, be repaired or replaced without charge to the Customer. The Badger Meter obligation hereunder shall be limited to such repair and replacement and shall be conditioned upon Badger Meter receiving written notice of any alleged defect within ten (10) days after its discovery. This exclusive remedy shall not be deemed to have failed its essential purpose so long as Badger Meter is willing and able to replace defective products or issue a credit to purchaser within a reasonable time of proof to Badger Meter that a defect is involved. Product returns must be shipped by the Customer prepaid F.O.B. to the nearest Badger Meter factory or distribution center. The Customer shall be responsible for all direct and indirect costs associated with removing the original Product and reinstalling the repaired or replacement Product.

LIMITS OF LIABILITY

This warranty shall not apply to Product repaired or altered by parties other than Badger Meter. The foregoing warranty applies only to the extent that the Product is installed, serviced and operated strictly in accordance with AWWA Standard C700 and AWWA M6 Manual, as applicable. The warranty shall not apply and shall be void with respect to Product exposed to conditions other than those detailed in the Badger Meter Product technical literature and Installation and Operation Manuals (IOMs), or



Badger Meter

E-Series® Ultrasonic Meter

Cold Water Stainless Steel Lead-Free Meters, 1-1/2" and 2"

PRODUCTS

This warranty shall apply to all Badger Meter E-Series® Ultrasonic lead-free meters, sizes 1-1/2" and 2", when used to measure potable water and the internal register/encoder and battery used with these meters (collectively "Product"), sold on or after December 1, 2013. This warranty is not transferable and is extended only to utilities, municipalities, other commercial users and authorized distributors, hereafter referred to as "Customer" and does NOT apply to consumers or any person or entity who is not an original customer of Badger Meter or its authorized distributors.

MATERIALS AND WORKMANSHIP

Badger Meter, Inc. ("Badger Meter") warrants Product to be free from defects in materials and workmanship appearing within the following time frames.

Lead-Free Housings

Five (5) years and six (6) months after shipment from Badger Meter.

Electronics, Battery, Transducers, and Register/Encoder Supplied with the Meters Listed Herein

Five (5) years and six (6) months after shipment from Badger Meter. The battery is warrantied for an additional five (5) years beyond the initial five (5) years.

METER ACCURACY

The meter product will meet or exceed meter accuracy of $\pm 1.5\%$ between the gallons per minute (gpm) "minimum flow rate" to "maximum flow rate" for five (5) years from date of shipment:

1-1/2" Meter

1.25 gpm to 100 gpm

2" Meter

1.5 gpm to 160 gpm

EXTENDED LOW-FLOW METER ACCURACY

Badger Meter further warrants the meter product to meet or exceed extended low-flow accuracy of $\pm 3\%$ from the following "extended low-flow rates" to the "minimum flow rate" for five (5) years from date of shipment:

1-1/2" Meter

0.4 gpm up to 1.25 gpm

2" Meter

0.5 gpm up to 1.50 gpm

PRODUCT RETURNS

Any Product proved to the satisfaction of Badger Meter to have failed the foregoing warranties will, at the option of Badger Meter, be repaired or replaced without charge to the Customer. The Badger Meter obligation hereunder shall be limited to such repair and replacement and shall be conditioned upon Badger Meter receiving written notice of any alleged defect within ten (10) days after its discovery. This exclusive remedy shall not be deemed to have failed its essential purpose so long as Badger Meter is willing and able to replace defective products or issue a credit to purchaser within a reasonable time of proof to Badger Meter that a defect is involved. Product returns must be shipped by the Customer prepaid F.O.B. to the nearest Badger Meter factory or distribution center. The Customer shall be responsible for all direct and indirect costs associated with removing the original Product and reinstalling the repaired or replacement Product.

LIMITS OF LIABILITY

This warranty shall not apply to Product repaired or altered by parties other than Badger Meter. The foregoing warranty applies only to the extent that the Product is installed, serviced and operated strictly in accordance with AWWA Standard C700 and AWWA M6 Manual, as applicable. The warranty shall not apply and shall be void with respect to Product exposed to conditions other than those detailed in the Badger Meter Product technical literature, or which have been subject to vandalism, negligence, accident, acts of God, alteration, improper installation, operation or repair, or other circumstances which are beyond the reasonable control of Badger Meter. With respect to Product not manufactured by Badger Meter, the warranty obligations of Badger Meter shall in all respects conform and be limited to the warranty extended to Badger Meter by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of Title).

Any description of Product, whether in writing or made orally by Badger Meter or its agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, or similar materials used in connection with any Customer's order are for the sole purpose of identifying Product and shall not be construed as an express warranty. Any suggestions by Badger Meter or its agents regarding use, application or suitability of Product shall not be construed as an express warranty unless confirmed to be such in writing by Badger Meter.

which have been subject to vandalism, negligence, accident, acts of God, alteration, improper installation, operation or repair, or other circumstances which are beyond the reasonable control of Badger Meter. With respect to Product not manufactured by Badger Meter, the warranty obligations of Badger Meter shall in all respects conform and be limited to the warranty extended to Badger Meter by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of Title).

Any description of Product, whether in writing or made orally by Badger Meter or its agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, or similar materials used in connection with any Customer's order are for the sole purpose of identifying Product and shall not be construed as an express warranty. Any suggestions by Badger Meter or its agents regarding use, application or suitability of Product shall not be construed as an express warranty unless confirmed to be such in writing by Badger Meter.

Exclusion of Consequential Damages and Disclaimer of Other Liability

Badger Meter liability with respect to breaches of the foregoing warranty shall be limited as stated therein. Badger Meter liability shall in no event exceed the contract price. BADGER METER SHALL NOT BE SUBJECT TO AND DISCLAIM: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY BADGER METER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

E-Series is a registered trademark of Badger Meter, Inc. Other trademarks appearing in this document are the property of their respective entities.

Due to continuous research, product improvements and enhancements, Badger Meter reserves the right to change product or system specifications without notice, except to the extent an outstanding contractual obligation exists. © 2013 Badger Meter, Inc. All rights reserved.

www.badgermeter.com

The Americas | Badger Meter | 4545 West Grown Deer Rd | PO Box 245036 | Milwaukee, WI 53224-9536 | 800-876-3837 | 414-355-0400
Mexico | Badger Meter de las Americas, S.A. de C.V. | Pedro Luis Ogazón N°32 | Esq. Angelina N°24 | Colonia Guadalupe Inn | CP 01050 | México, DF | México | +52-55-5662-0882
Europe, Middle East and Africa | Badger Meter Europa GmbH | Nürtinger Str 76 | 72639 Neuffen | Germany | +49-7025-9208-0
Czech Republic | Badger Meter Czech Republic s.r.o. | Matfíkova 2082/26 | 621 00 Brno, Czech Republic | +420-5-41420411
Slovakia | Badger Meter Slovakia s.r.o. | Raciánska 109/B | 821 02 Bratislava, Slovakia | +421-2-44 63 83 01
Asia Pacific | Badger Meter | 80 Marine Parade Rd | 21-04 Parkway Parade | Singapore 449269 | +65-63464836
China | Badger Meter | 7-1202 | 99 Haigzhong Road | Minhang District | Shanghai | China 201101 | +86-21-5763 5412

Legacy Document Number: ESM-W-01



Badger Meter

Recordall® Turbo Series Meters

PRODUCTS COVERED

This warranty shall apply to all Recordall® Turbo Series Meters, sizes 1-1/2"...20", and the local registers used with these meters (collectively "Product") sold on or after July 1, 2013. This warranty is extended only to utilities, municipalities, other commercial users and authorized Badger Meter, Inc. distributors, hereafter referred to as "Customer" and does NOT apply to consumers or any person or entity who is not an original customer of Badger Meter or its authorized distributors.

MATERIALS AND WORKMANSHIP

Badger Meter warrants Product to be free from defects in materials and workmanship appearing within the following time frames:

Bronze Housing

One (1) year and six (6) months after shipment from Badger Meter.

Local Registers Supplied with the Meters Listed Herein

Five (5) years and six (6) months after shipment from Badger Meter.

METER ACCURACY

The meter Product will meet or exceed accuracy standards of AWWA Standard C701 for one (1) year and six (6) months after shipment from Badger Meter. AWWA does not provide a standard for 1-1/2" turbo meters. However, the typical operating range for the 1-1/2" turbo meter meets the accuracy requirements of this standard.

PRODUCT RETURNS

Any Product proved to the satisfaction of Badger Meter to have failed the foregoing warranties will, at the option of Badger Meter, be repaired or replaced without charge to the Customer. The obligation hereunder of Badger Meter shall be limited to such repair and replacement and shall be conditioned upon Badger Meter receiving written notice of any alleged defect within ten (10) days after its discovery. This exclusive remedy shall not be deemed to have failed its essential purpose so long as Badger Meter is willing and able to replace defective products or issue a credit to purchaser within a reasonable time of proof to Badger Meter that a defect is involved. Product returns must be shipped by the Customer prepaid F.O.B. to the nearest Badger Meter factory or distribution center. The Customer shall be responsible for all direct and indirect costs associated with removing original product and reinstalling the repaired or replacement Product.

LIMITS OF LIABILITY

This warranty shall not apply to Product repaired or altered by any party other than Badger Meter. The foregoing warranty applies only to the extent that the Product is installed, serviced and operated strictly in accordance with AWWA Standard C701 and AWWA M6 Manual. The warranty shall not apply and shall be void with respect to Product exposed to conditions other than those detailed in Badger Meter Product technical literature, or which have been subject to vandalism, negligence, accident, acts of God, improper installation, operation or repair, alteration, or other circumstances which are beyond the reasonable control of Badger Meter. With respect to Product not manufactured by Badger Meter, the warranty obligations of Badger Meter shall in all respects conform and be limited to the warranty extended to Badger Meter by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of title).

Any description of the Product, whether in writing or made orally by Badger Meter or Badger Meter agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with any Customer's order are for the sole purpose of identifying the Product and shall not be construed as an express warranty. Any suggestions by Badger Meter or agents of Badger Meter regarding use, application, or suitability of the Product shall not be construed as an express warranty unless confirmed to be such in writing by Badger Meter.

Exclusion of Consequential Damages and Disclaimer of Other Liability. The liability of Badger Meter with respect to breaches of the foregoing warranty shall be limited as stated herein. The liability of Badger Meter shall in no event exceed the contract price. **BADGER METER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY BADGER METER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, AND CONTINGENT DAMAGES WHATSOEVER.**

PRODUCT RETURNS

Any Product proved to the satisfaction of Badger Meter to have failed the foregoing warranties will, at the option of Badger Meter, be repaired or replaced without charge to the Customer. The obligation hereunder of Badger Meter shall be limited to such repair and replacement and shall be conditioned upon Badger Meter receiving written notice of any alleged defect within ten (10) days after its discovery. This exclusive remedy shall not be deemed to have failed its essential purpose so long as Badger Meter is willing and able to replace defective products or issue a credit to purchaser within a reasonable time of proof to Badger Meter that a defect is involved. Product returns must be shipped by the Customer prepaid F.O.B. to the nearest Badger Meter factory or distribution center. The Customer shall be responsible for all direct and indirect costs associated with removing original product and reinstalling the repaired or replacement Product.

LIMITS OF LIABILITY

This warranty shall not apply to Product repaired or altered by any party other than Badger Meter. The foregoing warranty applies only to the extent that the Product is installed, serviced and operated strictly in accordance with AWWA Standard C700 and AWWA M6 Manual. The warranty shall not apply and shall be void with respect to Product exposed to conditions other than those detailed in Badger Meter Product technical literature and Installation and Operation Manuals (IOMs), or which have been subject to vandalism, negligence, accident, acts of God, improper installation, operation or repair, alteration, or other circumstances which are beyond the reasonable control of Badger Meter. With respect to Product not manufactured by Badger Meter, the warranty obligations of Badger Meter shall in all respects conform and be limited to the warranty extended to Badger Meter by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of title).

Any description of the Product, whether in writing or made orally by Badger Meter or Badger Meter agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with any Customer's order are for the sole purpose of identifying the Product and shall not be construed as an express warranty. Any suggestions by Badger Meter or Badger Meter agents regarding use, application, or suitability of the Product shall not be construed as an express warranty unless confirmed to be such in writing by Badger Meter.

Exclusion of Consequential Damages and Disclaimer of Other Liability. The liability of Badger Meter with respect to breaches of the foregoing warranty shall be limited as stated herein. The liability of Badger Meter shall in no event exceed the contract price. **BADGER METER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY BADGER METER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, AND CONTINGENT DAMAGES WHATSOEVER.**

Recordall is a registered trademark of Badger Meter, Inc. Other trademarks appearing in this document are the property of their respective entities. Due to continuous research, product improvements and enhancements, Badger Meter reserves the right to change product or system specifications without notice, except to the extent an outstanding contractual obligation exists. © 2014 Badger Meter, Inc. All rights reserved.

www.badgermeter.com

The Americas | Badger Meter | 4545 West Brown Deer Rd | PO Box 245036 | Milwaukee, WI 53224-9536 | 800-876-3837 | 414-355-0400
Mexico | Badger Meter de las Americas, S.A. de C.V. | Pedro Luis Ogazón N°32 | Esq. Angelina N°24 | Colonia Guadalupe Inn | CP 01050 | Mexico, DF | Mexico | +52-55-5662-0882
Europe, Middle East and Africa | Badger Meter Europa GmbH | Nurlinger Str 76 | 72639 Neuffen | Germany | +49-7025-9208-0
Czech Republic | Badger Meter Czech Republic s.r.o. | Malákovská 2082/26 | 621 00 Brno, Czech Republic | +420-5-41420411
Slovakia | Badger Meter Slovakia s.r.o. | Racúnska 109/8 | 831 02 Bratislava, Slovakia | +421-2-44 63 83 01
Asia Pacific | Badger Meter | 80 Marine Parade Rd | #21-04 Parkway Parade | Singapore 449269 | +65-63464836
China | Badger Meter | 7-1202 | 99 Hangzhong Road | Minhang District | Shanghai | China 201101 | +86-21-5763 5412

Legacy Document Number: RD-W-4-AWWA-EN



Badger Meter

Recordall® Compound Series Meters Sizes 2"...6"

PRODUCTS COVERED

This warranty shall apply to all Recordall® Compound Series Meters, sizes 2"...6", and the local registers used with these meters (collectively "Product") sold on or after July 1, 2013. This warranty is extended only to utilities, municipalities, other commercial users and authorized Badger Meter, Inc. distributors, hereafter referred to as "Customer" and does NOT apply to consumers or any person or entity who is not an original customer of Badger Meter or its authorized distributors.

MATERIALS AND WORKMANSHIP

Badger Meter warrants Product to be free from defects in materials and workmanship appearing within the following time frames:

Bronze Housings

One (1) year and six (6) months after shipment from Badger Meter.

Local Registers for Low Flow Registration (Disc Measuring Element) Supplied with the Meters Listed Herein

Twenty-five (25) years and six (6) months after shipment from Badger Meter.

Local Registers for High Flow Registration (Turbo Measuring Element) Supplied with the Meters Listed Herein

Five (5) years and six (6) months after shipment from Badger Meter.

METER ACCURACY

The meter Product will meet or exceed accuracy standards of AWWA Standard C702 for one (1) year and six (6) months after shipment from Badger Meter.

PRODUCT RETURNS

Any Product proved to the satisfaction of Badger Meter to have failed the foregoing warranties will, at the option of Badger Meter, be repaired or replaced without charge to the Customer. The obligation hereunder of Badger Meter shall be limited to such repair and replacement and shall be conditioned upon Badger Meter receiving written notice of any alleged defect within ten (10) days after its discovery. This exclusive remedy shall not be deemed to have failed its essential purpose so long as Badger Meter is willing and able to replace defective products or issue a credit to purchaser within a reasonable time of proof to Badger Meter that a defect is involved. Product returns must be shipped by the Customer prepaid F.O.B. to the nearest Badger Meter factory or distribution center. The Customer shall be responsible for all direct and indirect costs associated with removing original product and reinstalling the repaired or replacement Product.

LIMITS OF LIABILITY

This warranty shall not apply to Product repaired or altered by any party other than Badger Meter. The foregoing warranty applies only to the extent that the Product is installed, serviced and operated strictly in accordance with AWWA Standard C702 and AWWA M6 Manual. The warranty shall not apply and shall be void with respect to Product exposed to conditions other than those detailed in Badger Meter Product technical literature, or which have been subject to vandalism, negligence, accident, acts of God, improper installation, operation or repair, alteration, or other circumstances which are beyond the reasonable control of Badger Meter. With respect to Product not manufactured by Badger Meter, the warranty obligations of Badger Meter shall in all respects conform and be limited to the warranty extended to Badger Meter by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of title).

Any description of the Product, whether in writing or made orally by Badger Meter or Badger Meter agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with any Customer's order are for the sole purpose of identifying the Product and shall not be construed as an express warranty. Any suggestions by Badger Meter or agents of Badger Meter regarding use, application, or suitability of the Product shall not be construed as an express warranty unless confirmed to be such in writing by Badger Meter.

Exclusion of Consequential Damages and Disclaimer of Other Liability. The liability of Badger Meter with respect to breaches of the foregoing warranty shall be limited as stated herein. The liability of Badger Meter shall in no event exceed the contract price. **BADGER METER SHALL NOT BE SUBJECT TO AND DISCLAIM: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY BADGER METER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, AND CONTINGENT DAMAGES WHATSOEVER.**

RCS-WR-00239-EN-02 (July 2013)

Badger Meter Warranty

Recordall is a registered trademark of Badger Meter, Inc. Other trademarks appearing in this document are the property of their respective entities. Due to continuous research, product improvements and enhancements, Badger Meter reserves the right to change product or system specifications without notice, except to the extent an outstanding contractual obligation exists. © 2013 Badger Meter, Inc. All rights reserved.

www.badgermeter.com

The Americas | Badger Meter | 4545 West Brown Deer Rd | PO Box 245036 | Milwaukee, WI 53224-9536 | 800-876-3837 | 414-355-0400
México | Badger Meter de las Américas, S.A. de C.V. | Pedro Luis Ogazón N°32 | Esq. Angeline N°24 | Colonia Guadalupe Inn | CP 01050 | México, DF | México | +52-55-5662-0882
Europe, Middle East and Africa | Badger Meter Europa GmbH | Nurlinger Str 76 | 72639 Neuffen | Germany | +49-7025-9208-0
Czech Republic | Badger Meter Czech Republic s.r.o. | Malíkova 2082/26 | 621 00 Brno, Czech Republic | +420-5-41420411
Slovakia | Badger Meter Slovakia s.r.o. | Raciánska 109/8 | 831 02 Bratislava, Slovakia | +421-2-44 63 83 01
Asia Pacific | Badger Meter | 80 Marine Parade Rd | 21-04 Parkway Parade | Singapore 449269 | +65-63464836
China | Badger Meter | Rm 501, N° 11 Longyue Apartment | N° 180 Longjin Rd, Jiuling Songjiang District | Shanghai, China | 201615 | +86-21-5763 5412

Legacy Document #: RTS-W-1-EN



Badger Meter | Recordall® Combo Meters

PRODUCTS COVERED

This warranty shall apply to all Recordall® Combo Meters, size 8", and the registers and encoders used with these meters (collectively "Product") sold on or after November 15, 2012. This warranty is extended only to utilities, municipalities, other commercial users and authorized Badger Meter, Inc. distributors, hereafter referred to as "Customer" and does NOT apply to consumers or any person or entity who is not an original customer of Badger Meter or its authorized distributors.

MATERIALS AND WORKMANSHIP

Badger Meter warrants Product to be free from defects in materials and workmanship appearing within one (1) year and six (6) months after shipment from Badger Meter.

Housings

One (1) year and six (6) months after shipment from Badger Meter.

Local Registers for Disc Meter Supplied with the Meters Listed Herein

Twenty-five (25) years and six (6) months after shipment from Badger Meter.

Local Registers for 8" Turbo Series Meters Supplied with the Meters Listed Herein

Five (5) years and six (6) months after shipment from Badger Meter.

METER ACCURACY

The meter Product will meet or exceed accuracy standards of AWWA Standard C702 for one (1) year and six (6) months after shipment from Badger Meter.

PRODUCT RETURNS

Any Product proved to the satisfaction of Badger Meter to have failed the foregoing warranties will, at the option of Badger Meter, be repaired or replaced without charge to the Customer. The obligation hereunder of Badger Meter shall be limited to such repair and replacement and shall be conditioned upon Badger Meter receiving written notice of any alleged defect within ten (10) days after its discovery. This exclusive remedy shall not be deemed to have failed its essential purpose so long as Badger Meter is willing and able to replace defective products or issue a credit to purchaser within a reasonable time of proof to Badger Meter that a defect is involved. Product returns must be shipped by the Customer prepaid F.O.B. to the nearest Badger Meter factory or distribution center. The Customer shall be responsible for all direct and indirect costs associated with removing original product and reinstalling the repaired or replacement Product.

LIMITS OF LIABILITY

This warranty shall not apply to Product repaired or altered by any party other than Badger Meter. The foregoing warranty applies only to the extent that the Product is installed, serviced and operated strictly in accordance with AWWA Standard C702 and AWWA M6 Manual. The warranty shall not apply and shall be void with respect to Product exposed to conditions other than those detailed in Badger Meter Product technical literature and Installation and Operation Manuals (IOMs), or which have been subject to vandalism, negligence, accident, acts of God, improper installation, operation or repair, alteration, or other circumstances which are beyond the reasonable control of Badger Meter. With respect to Product not manufactured by Badger Meter, the warranty obligations of Badger Meter shall in all respects conform and be limited to the warranty extended to Badger Meter by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of title).

Any description of the Product, whether in writing or made orally by Badger Meter or Badger Meter agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with any Customer's order are for the sole purpose of identifying the Product and shall not be construed as an express warranty. Any suggestions by Badger Meter or agents of Badger Meter regarding use, application, or suitability of the Product shall not be construed as an express warranty unless confirmed to be such in writing by Badger Meter.

Exclusion of Consequential Damages and Disclaimer of Other Liability. The liability of Badger Meter with respect to breaches of the foregoing warranty shall be limited as stated herein. The liability of Badger Meter shall in no event exceed the contract price. **BADGER METER SHALL NOT BE SUBJECT TO AND DISCLAIM: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY BADGER METER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, AND CONTINGENT DAMAGES WHATSOEVER.**

Recordall is a registered trademark of Badger Meter, Inc. Other trademarks appearing in this document are the property of their respective entities.

Due to continuous research, product improvements and enhancements, Badger Meter reserves the right to change product or system specifications without notice, except to the extent an outstanding contractual obligation exists. © 2013 Badger Meter, Inc. All rights reserved.

www.badgermeter.com

The Americas | Badger Meter | 4545 West Brown Deer Rd | PO Box 245036 | Milwaukee, WI 53224-9536 | 800-876-3837 | 414-355-0400

México | Badger Meter de los Americas, S.A. de C.V. | Pedro Luis Ogazón N°32 | Esq. Angelina N°24 | Colonia Guadalupe Inn | CP 01050 | México, DF | México | +52-55-5662-0882

Europe, Middle East and Africa | Badger Meter Europa GmbH | Nurlinger Str 76 | 72639 Neuffen | Germany | +49-7025-9708-0

Czech Republic | Badger Meter Czech Republic s.r.o. | Mahikova 2082/26 | 621 00 Brno, Czech Republic | +420-5-41420411

Slovakia | Badger Meter Slovakia s.r.o. | Raciánka 109/8 | 831 02 Bratislava, Slovakia | +421-2-44 63 83 01

Asia Pacific | Badger Meter | 80 Marine Parade Rd | 21-04 Parkway Parade | Singapore 449269 | +65-63464836

China | Badger Meter | Rm 501, N° 11 Longyue Apartment | N° 180 Longjin Rd, Jiuting Songjiang District | Shanghai, China | 201615 | +86-21-5763 5412

Legacy Document #: RCS-W-1-EN

ATTACHMENT E

STATE AND FEDERAL FUNDING DOCUMENTS AND REQUIREMENTS

CLEAN WATER STATE REVOLVING FUND DOCUMENTS AND REQUIREMENTS

- *Installment Sale Agreement, Exhibit E – Federal Conditions & Cross-Cutters, attached behind this page.*
- *Installment Sale Agreement, Exhibit G – Davis Bacon Requirements, attached behind this page.*
- *Guidelines for Meeting the California State Revolving Fund (CASRF) Programs (Clean Water and Drinking Water SRF) Disadvantaged Business Enterprise (DBE) Requirements, attached behind this page.*
- *Certification of Compliance With Federal Laws and Authorities, attached behind this page.*
 - *The terms “Applicant” and “Municipality,” as used in this document, shall be replaced with and understood to mean “Contractor.”*

ADVANCED METERING INFRASTRUCTURE AND
METER REPLACEMENT AGREEMENT

-52-

82506.01000\29276989.4

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

A. Federal Award Conditions

1. American Iron and Steel. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
2. Wage Rate Requirements (Davis-Bacon). The Recipient shall include in full the language provided in Exhibit G of this Agreement in all contracts and subcontracts.
3. Signage Requirements. The Recipient shall comply with the USEPA's Guidelines for Enhancing Public Awareness of SRF Assistance Agreements, dated June 3, 2015, as otherwise specified in this Agreement.
4. Public or Media Events. The Recipient shall notify the State Water Board and the EPA contact as provided in the notice provisions of this Agreement of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
5. EPA General Terms and Conditions (USEPA GTCs). The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>, including but not limited to the following:
 - a. DUNS. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
 - b. Executive Compensation. The Recipient shall report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year, as set forth in the USEPA GTCs.
 - c. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Recipient shall comply with Subpart C of 2 CFR Part 180 and shall ensure that its contracts include compliance. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. The Recipient shall certify that it and its principals, and shall obtain certifications from its contractors that they and their principals:

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 2. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
 4. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
 5. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
- d. Conflict of Interest. Within 10 days, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with section 4.0 of with USEPA's Revised Interim Financial Assistance Conflict of Interest Policy at http://www.epa.gov/ogd/epa_revised_interim_financial_assistance_coi_policy_5_22_15.htm . A conflict of interest may result in disallowance of costs.
- e. Copyright. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- f. Credit. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:
- i. "This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document."
- g. Electronic and Information Technology Accessibility. The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

- h. **Trafficking in Persons.** The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds in the amount of \$101,065,000. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement and full payment will be due immediately, if a Recipient or subrecipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.
- B. **Super Cross-Cutters - Civil Rights Obligations.** The Recipient must comply with the following federal non-discrimination requirements:
 - a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (EPH XC HB)
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (EPH XC HB)
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination. (EPH XC HB)
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex. (EPH XC HB)
 - e. 40 CFR Part 7, as it relates to the foregoing (EPH XC HB)
- C. **WRRDA Conditions**
 - a. **Architectural and engineering contracts.** Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that such any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
 - b. **Fiscal sustainability.** The Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.
- D. **Cross-Cutters**
 - 1. **Executive Order No. 11246.** The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

2. Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. The Recipient shall comply with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. (IUP)

EXHIBIT E — FEDERAL CONDITIONS & CROSS-CUTTERS

3. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers listed on the Excluded Parties Listing System: <http://epls.arnet.gov/>.
4. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
5. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, EO 13202, as amended by EO 13208. The Recipient must ensure that bid specifications, project agreements, and other controlling documents for construction contracts do not require or prohibit agreements with labor organizations. Any construction manager must not otherwise discriminate against bidders, offerors, contractors, or subcontractors for entering into, or refusing to enter into, agreements with labor organizations.
6. Debarment and Suspension Executive Order No. 12549 (1986). The Recipient certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Project. Contractors on the Project must provide a similar certification prior to the award of a contract and subcontractors on the project must provide the general contractor with the certification prior to the award of any subcontract.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

The Recipient shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section 5.

Requirements Under The Consolidated Appropriations Act, 2014 (P.L. 113-76)

For Recipients That Are Governmental Entities:

If a Recipient has questions regarding when David Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board.

The Recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2014 Consolidated Appropriation Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If the Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with the State Water Board before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) Recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - (i) While the solicitation remains open, the Recipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The Recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipients may request a finding from the State Water Board that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State Water Board will provide a report of its findings to the Recipient.
 - (ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State Water Board, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the Recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a

EXHIBIT G – DAVIS-BACON REQUIREMENTS

solicitation, the Recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

- (c) Recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
 - (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.
3. Contract and Subcontract provisions.
- (a) The Recipient shall insure that the Recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2014 Consolidated Appropriations Act, the following clauses:
 - (1) Minimum wages.
 - (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional

EXHIBIT G – DAVIS-BACON REQUIREMENTS

classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

- (ii)(A) The Recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the

EXHIBIT G – DAVIS-BACON REQUIREMENTS

contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) **Withholding.** The Recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) **Payrolls and basic records.**
 - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
 - (ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to

EXHIBIT G – DAVIS-BACON REQUIREMENTS

the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347Instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient(s).

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval,

EXHIBIT G – DAVIS-BACON REQUIREMENTS

evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

(10) Certification of eligibility.

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

- (a) **Contract Work Hours and Safety Standards Act.** The Recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
 - (3) **Withholding for unpaid wages and liquidated damages.** The Recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.
 - (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the USEPA, the Department of Labor, and the State Water Board, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
5. Compliance Verification
- (a) The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.8(a)(6), all interviews must be conducted in confidence. The Recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
 - (b) The Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
 - (c) The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the Recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
 - (d) The Recipient shall periodically review contractors and subcontractors use of apprentices and

City of Davis
Agreement No.: D15-01007
Project No.: C-06-8019-110

EXHIBIT G – DAVIS-BACON REQUIREMENTS

trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

- (e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

California State Water Resources Control Board
Division of Financial Assistance (Division)
1001 I Street • Sacramento, California 95814 • (916) 341-5700 FAX (916) 341-5707
Mailing Address: P. O. Box 944212 • Sacramento, California • 94244-2120
Internet Address: <http://www.waterboards.ca.gov>

Guidelines for Meeting the California State Revolving Fund (CASRF) Programs
(Clean Water and Drinking Water SRF)
Disadvantaged Business Enterprise (DBE) Requirements
(Revised April 24, 2015)

The DBE Program is an outreach, education, and objectives program designed to increase the participation of DBEs in the CWSRF/DWSRF Programs.

How to Achieve the Purpose of the Program

Recipients of CWSRF/DWSRF financing that are subject to the DBE requirements (recipients) are required to seek, and are encouraged to use, DBEs for their procurement needs. Recipients should award a "fair share" of sub-agreements to DBEs. This applies to all sub-agreements for equipment, supplies, construction, and services.

The key functional components of the DBE Program are as follows.

- Fair Share Objectives
- DBE Certification
- Six Good Faith Efforts
- Contract Administration Requirements
- DBE Reporting

Disadvantaged Business Enterprise's are:

- entities owned and/or controlled by socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
- a Minority Business Enterprise (MBE) are entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.
- a Women Business Enterprise (WBE) are entities that are at least 51% owned and/or controlled by women.
- a Small Business Enterprise (SBE);
- a Small Business in a Rural Area (SBRA);
- a Labor Surplus Area Firm (LSAF); or
- an Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

Certifying DBE Firms:

Under the DBE Program, entities can no longer self-certify and contractors and sub-contractors must be certified at bid opening. Contractors and sub-contractors must provide to the CASRF recipient proof of DBE certification. Certifications will be accepted from the following:

- The US Environmental Protection Agency (USEPA)
- The Small Business Administration (SBA);
- The Department of Transportation's State implemented DBE Certification Program (with U.S. citizenship);
- Tribal, State and Local governments;
- Independent private organization certifications.

If an entity holds one of these certifications, it is considered acceptable for establishing status under the DBE Program.

Six Good Faith Efforts (GFE)

All CWSRF/DWSRF financing recipients are required to complete and ensure that the prime contractor complies with the GFE below to ensure that DBEs have the opportunity to compete for financial assistance dollars.

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practical through outreach and recruitment activities. For Tribal, State and Local Government Recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs. Posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid opening date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a group of DBEs when a contract is too large for one firm to handle individually.
5. Use the services and assistance of the SBA and/or Minority Business Development Agency (MBDA) of the US Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the above steps.

The forms listed in the table below and attached to these guidelines; must be completed and submitted with the GFE:

FORM NUMBER	FORM NAME	REQUIREMENT	PROVIDED BY	COMPLETED BY	SUBMITTED TO
EPA 6100-2	DBE Sub-Contractor Participation Form	As Needed to Report Issues	Recipient	Sub-Contractor	EPA DBE Coordinator
EPA 6100-3	DBE Sub-Contractor Performance Form	Include with Bid or Proposal Package	Prime Contractor	Sub-Contractor	SWRCB by Recipient
EPA 6100-4	DBE Sub-Contractor Utilization Form	Include with Bid or Proposal Package	Recipient	Prime Contractor	SWRCB by Recipient

The completed forms must be submitted with each Bid or Proposal. The recipient shall review the bidder's documents closely to determine that the GFE was performed prior to bid or proposal opening date. Failure to complete the GFE and to substantiate completion of the GFE before the bid opening date could jeopardize CWSRF/DWSRF financing for the project. The following situations and circumstances require action as indicated:

1. If the apparent successful low bidder was rejected, a complete explanation must be provided;
2. Failure of the apparent low bidder to perform the GFE prior to bid opening constitutes a non-responsive bid. The construction contract may then be awarded to the next low, responsive, and responsible bidder that meets the requirements or the Recipient may re-advertise the project.
3. If there is a bid dispute, all disputes shall be settled prior to submission of the Final Budget Approval Form.

Administration Requirements

- A recipient of CWSRF/DWSRF financing must require entities receiving funds to create and maintain a Bidders List if the recipient of the financing agreement is subject to, or chooses to follow, competitive bidding requirements;
- The Bidders list must include all firms that bid or quote on prime contracts, or bid or quote on subcontracts, including both DBEs and non-DBEs.

- Information retained on the Bidder's List must include the following:
 1. Entity's name with point of contact;
 2. Entity's mailing address and telephone number;
 3. The project description on which the entity bid or quoted and when;
 4. Amount of bid/quote; and
 5. Entity's status as a DBE or non-DBE.
- The Bidders List must be kept until the recipient is no longer receiving funding under the agreement.
- The recipient shall include Bidders List as part of the Final Budget Approval Form.
- A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Recipient.
- A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor by the prime contractor.
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six GFEs if soliciting a replacement subcontractor.
- A recipient must require its prime contractor to employ the six GFEs even if the prime contractor has achieved its fair share objectives.

Reporting Requirements

For the duration of the construction contract(s), the recipient is required to submit to the State Water Resources Control Board DBE reports annually by October 10 of each fiscal year on the attached Utilization Report form (UR-334). Failure to provide this information as stipulated in the financial agreement language may be cause for withholding disbursements.

CONTACT FOR MORE INFORMATION

SWRCB – CASRF Barbara August (916) 341-6952 barbara.august@waterboards.ca.gov

US-EPA Region 9 – Joe Ochab (415) 972-3761 ochab.joe@epa.gov.

Revised October 13, 2015



United States
Environmental Protection
Agency

OMB Control No: 2090-0030
Approved: 8/13/2013
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)

Approved: 8/13/2013
Approval Expires: 8/31/2015

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

Please use the space below to report any concerns regarding the above EPA-funded project:

[illegible]

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Performance Form

This form is intended to capture the DBE1 subcontractor's2 description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor

DBE Certified By: ☐ DOT ☐ SBA

☐ Other: _____

Meets/ exceeds EPA certification standards?

☐ YES ☐ No ☐ Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



United States
Environmental Protection
Agency

OMB Control No: 2090-0030
Approved: S/13/2013
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and record keeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



Environmental Protection
Agency
United States

OMB Approved: 8/31/2013
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors		..Q. YES	IE2_ NO
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
Approved: B/13/2013
Approval Expires: 8/31/2015

Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

The public reporting and record keeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**STATE WATER RESOURCES CONTROL BOARD – DIVISION OF FINANCIAL ASSISTANCE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
CALIFORNIA STATE REVOLVING FUNDS (CASRF)
FORM UR-334**

1. Grant/Finance Agreement Number:		2. Annual Reporting Period 10/1/ through 09/30/		3. Purchase Period of Financing Agreement:	
4. Total Payments Paid to Prime Contractor or Sub-Contractors During Current Reporting Period: \$					
5. Recipients Name and Address:				6. Recipient's Contact Person and Phone Number:	
7. List All DBE Payments Paid by Recipient or Prime Contractor During Current Reporting Period:					
Payment or Purchase Paid by Recipient or Prime Contractor	Amount Paid to Any DBE Contractor or Sub-Contractor For Service Provided to Recipient		Date of Payment (MM/DD/YY)	Procurement Type Code** (see below)	Name and Address of DBE Contractor of Sub-Contractor or Vendor
	MBE	WBE			
8. Initial here if no DBE contractors or sub-contractors paid during current reporting period:					
9. Initial here if all procurements for this contract are completed:					
10. Comments:					
11. Signature and Title of Recipient's Authorized Representative				12. Date	

Return to:
 Barbara August
 Division of Financial Assistance
 SWRCB
 PO Box 944212
 Sacramento, CA 94244-2120

Barbara.August@waterboards.ca.gov
 Phone: (916) 341-6952
 Fax: (916) 327-7469

Procurement Type:

- 1. Construction
- 2. Supplies
- 3. Services (includes business services; professional services; repair services and personnel services)
- 4. Equipment

December 2014

**STATE WATER RESOURCES CONTROL BOARD - DIVISION OF FINANCIAL ASSISTANCE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
CALIFORNIA STATE REVOLVING FUNDS
INSTRUCTIONS FOR COMPLETING FORM UR-334**

- Box 1** Grant or Financing Agreement Number.
- Box 2** Annual reporting period.
- Box 3** Enter the dates between which you made procurements under this financing agreement or grant.
- Box 4** Enter the total amount of payments paid to the contractor or sub-contractors during this reporting period.
- Box 5** Enter Recipient's Name and Address.
- Box 6** Enter Recipient's Contact Name and Phone Number.
- Box 7** Enter details for the DBE purchases only and be sure to limit them to the current period. 1) Use either an "R" or a "C" to represent "Recipient" or "Contractor." 2) Enter a dollar total for DBE and total the two columns at the bottom of the section. 3) Provide the payment date. 4) Enter a product type choice from those at the bottom of the page. 5) List the vendor name and address in the right-hand column
- Box 8** Initial here if no DBE contractors or sub-contractors were paid during this reporting period.
- Box 9** Initial this box only if all purchases under this financing agreement or grant have been completed during this reporting period or a previous period. If you initial this box, we will no longer send you a survey.
- Box 10** This box is for explanatory information or questions.
- Box 11** Provide an authorized representative signature.
- Box 12** Enter the date form completed.

December 2014

**Certification of Compliance
With Federal Laws and Authorities**

The Applicant certifies that it is familiar with, understands, and will comply with the following federal laws applicable to recipients of CWSRF funding. The Applicant further certifies that it will consult with its own attorney in making the above certification. The Applicant understands that these conditions, or conditions like them, will be incorporated into the final financing agreement.

Environmental Authorities

1. Archeological and Historical Preservation Act of 1974, Pub. L. 86-523, as amended, Pub. L. 93-291 16 USC § 469a-1.
2. Clean Air Act, Pub. L. 84-159, as amended.
3. Coastal Barrier Resources Act, Pub. L. 97-348, 96 Stat. 1653; 16 USC § 3501 et seq.
4. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 USC § 1451 et seq.
5. Endangered Species Act, Pub. L. 93-205, as amended; 16 USC § 1531 et seq.
6. Environmental Justice, Executive Order 12898.
7. Floodplain Management, Executive Order, 11988 as amended by Executive Order 12148.
8. Protection of Wetlands, Executive Order 11990, as amended by Executive Order No. 12608.
9. Farmland Protection Policy Act, Pub. L. 97-98; 7 USC § 4201 et seq.
10. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.
11. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 80 Stat. 917 (1966) 16 USC § 470 et seq.
12. Safe Drinking Water Act, Pub. L. 93-523, as amended; 42 USC § 300f et seq.
13. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 82 Stat. 913; 16 USC § 1271 et seq.
14. Essential Fish Habitat Consultation. Pub. L. 94-265, as amended, 16 USC § 1801 et seq.
15. Recycled Materials. Executive Order 13101; Section 6002 Resource Conservation and Recovery Act – 42 USC § 6962.

Economic and Miscellaneous Authorities

1. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372/ 42 USC § 3331 et seq.
2. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368; 40 CFR Part 31.
3. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655
4. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Excluded Parties List System can be found at <http://epls.gov> . The Recipient represents and warrants that it has included a term or conditions requiring compliance with this provision in all of its contracts and subcontracts. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement.

Page 1 of 2

5. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, EO 13202, as amended by EO 13208.

6. Hotel and Motel Fire Safety Act of 1990 (PL 101-391, as amended). Recipients may search <http://www.usfa.dhs.gov/applications/hotel/>.

7. Records and financial reporting (40 CFR Part 31).

8. Copyright. 40 CFR Part 31.

9. Prevailing Wage Law, Davis-Bacon Act of 1931 (as amended).

Social Policy Authorities

1. Age Discrimination Act of 1975, Pub. L. 94-135; 42 USC § 6102.

2. Race Discrimination: Title VI of the Civil Rights Act of 1964, Pub. L. 88-352.1; 42 USC § 2000d, 40 CFR Part 7.

3. Sex Discrimination: Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act); 33 USC § 1251, 40 CFR Part 7.

4. Disability Discrimination: Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250); 29 USC § 794, 40 CFR Part 7.

5. Equal Employment Opportunity, Executive Order 11246.

6. Disadvantaged Business Enterprise, Executive Orders 11625, 12138, and 12432; 40 CFR Part 33.

7. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

8. Anti-Lobbying Provisions (40 CFR Part 34). Borrower agrees to submit certification and disclosure forms as requested by the State Water Resources Control Board or the USEPA. In accordance with the Byrd Anti-Lobbying Amendment, any Recipient who makes a prohibited expenditure under 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. The Recipient shall ensure that no Project Funds provided by the State Water Board under this assistance agreement are used to engage in lobbying of the federal government or in litigation against the United States unless authorized under existing law. The Recipient shall abide by its respective 2 CFR 200, 225, or 230, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

9. Anti-Litigation Provisions (2 CFR 220, 225, or 230).

10. Trafficking Victims Protection Act of 2000.

11. ACORN Prohibition. None of the Project Funds used in this Agreement may be used for contracts or subcontracts to ACORN.

CERTIFICATION

I certify that _____

(Municipality)

has, or will, comply with the above list of federal laws and authorities.

Name and Signature of Authorized
Representative or Designee

Date

ACLARA SOFTWARE LICENSE AGREEMENT

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

Aclara Technologies LLC, an Ohio Limited Liability Company
945 Hornet Drive
Hazelwood, MO 63042
(Referred to herein as "Aclara")

And City of Davis
1717 Fifth Street
Davis, CA 95616
(Referred to herein as "Licensee")

Individually, Aclara® and Licensee may be referred to as "Party" and collectively as "Parties".

Whereas, Aclara has developed certain proprietary equipment and software which together constitute the Aclara® Technology System which performs automatic meter reading and collects metering data utilized by providers of electricity, gas and water to consumers;

Whereas, Licensee has agreed with Delta Engineering ("hereinafter referred to as "Distributor") under the terms of which Licensee will acquire from Distributor certain of the equipment constituting the Aclara Technology System and will perform certain services in connection therewith; and

Whereas, Licensee desires to license from Aclara, and Aclara desires to license to Licensee certain computer software and obtain from Aclara certain software maintenance and support services as more fully described below:

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

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

1. **Definitions.** The following words and phrases shall have the following meanings for the purposes of this Software License Agreement:
 - A. "Aclara Licensed Software" means the software described on Attachment A as "Aclara Software".
 - B. "Aclara Technology System" means the system comprised, in part, of: 1) the Designated Equipment purchased by Licensee from Distributor, and 2) the Licensed Software licensed to Licensee hereunder.
 - C. "Confidential Information" means the proprietary, confidential, trade secret or nonpublic information of a Party that is disclosed in printed, written, graphic, photographic or other tangible form, verbally, electronically or by observation to the other Party, and with respect to Aclara, includes without limitation, Aclara Licensed Software and Documentation.
 - D. "Delivery" shall mean the remote installation of the Software on the Licensee-provided Designated Equipment, or, if applicable, upon the Delivery of the Designated Equipment provided by Aclara on which the Software is installed.
 - E. "Designated Equipment" means the computer equipment of Licensee in which Aclara pre-installs or remotely installs (after purchase) the Licensed Software and such additional equipment and back-up equipment as Licensee may from time to time designate in writing, and which in all cases must meet the Designated Equipment Specifications.

- F. “Designated Equipment Specifications” means Aclara’s functional and technical requirements for the Designated Equipment which must be met by Licensee as a condition of the license granted herein.
- G. “Documentation” means basic, descriptive, training and instructive materials pertinent to the Licensed Software.
- H. “Hosted Solution(s)” means the Software, systems and servers which reside at the Aclara facility and which are available for license as part of the Aclara Licensed Software offerings set forth in Attachment A. An Annual Service Provider (“ASP”) Fee for the Hosted Solution may apply as set forth in Attachment A.
- I. “Licensed Software” means the Aclara Licensed Software and the Third Party Licensed Software.
- J. “Licensing Parameters” means Central Processing Units (CPUs), Processors (including Sockets and/or Cores), Seats, Interfaces and End Points connected to the system (Meters, LCTs, CSTs, DSIs, MTUs, DCUs, etc.) and permitted number of Maximum Utilities (unless a Multi-Utility license) as set forth on Attachment A.
- K. “Maintenance Fees” means the annual fees due and payable by Licensee for Maintenance Services, as set forth in Attachment A.
- L. “Maintenance Services” means support and maintenance of the Aclara Licensed Software which is offered to Licensee under a separate Maintenance Agreement.
- M. “Multi-Utility” means, as set forth in Attachment A, a license under the Licensing Parameters of which the Licensee is allowed to read meters for another utility.
- N. “Non-Hosted Solution(s)” means the Software, systems and servers which reside at the Licensee’s facility and which are available for license as part of the Aclara Licensed Software offerings set forth in Attachment A.
- O. “Object Code” means the instructions or statements comprising the Licensed Software expressed in machine-readable language, being the machine level representations that actually cause the computer to execute instructions and operations.
- P. “Peripheral Programs” mean computer programs which do not include any logic or code of the Licensed Software and which use the output of the Licensed Software as input to another computer program.
- Q. “Software License Agreement” means this document and Attachment A, attached hereto and made a part hereof, and any amendments, modifications or supplements thereto or attachments incorporated therein.
- R. “Software Release” means a release of licensed or available Software that includes Software Updates or Software Upgrades. Software Releases may also be developed to address updates of Third-Party Licensed Software and hardware.
- S. “Software Update” means a modification or addition that, when made or added to the Software or Third Party Licensed Software, establishes material conformity of the Software or the Third Party Licensed Software to its respective specification, i.e. bug fixes and/or enhancement to existing function.
- T. “Software Upgrade” means a modification or addition to Licensed Software that is beyond the scope of the definition of Software Updates; and that may be offered to Licensee for licensed use and maintenance. If Licensee requests Aclara to add a Software Upgrade of the Software licensed

under this Software License Agreement such Software Upgrade shall be incorporated by written Amendment.

- U. “Source Code” means a set of instructions expressed in human readable language from which the Object Code is derived.
- V. “Third Party Licensed Software” means those software applications that have not been created or manufactured by Aclara as more particularly described on the Attachment A as “Third Party Software—Included in this Software License Agreement.”

2. License Grants and Permitted Use.

- A. License to Licensed Software. Subject to the terms and conditions set forth herein, as of the date of Delivery, Aclara grants to Licensee, and Licensee accepts, a fully paid, non-exclusive, non-transferable, non-sub licensable, revocable license to use only that Licensed Software in Object Code format for which Licensee has purchased licenses as specified in Attachment A. Third Party Licensed Software is sublicensed by Aclara to Licensee pursuant to sublicensing agreements with the respective third parties identified on Attachment A.
- B. License to Documentation. Subject to the terms and conditions set forth herein, as of the date of Delivery, Aclara hereby grants to Licensee, and Licensee accepts, a fully paid, non-exclusive, non-transferable, non-sub licensable, revocable license to use the Documentation solely in connection with its use of the Licensed Software.
- C. Hosted Solution. Aclara may offer its Hosted Solution as part of the Aclara Licensed Software offerings set forth in Attachment A. A Hosted Solution Fee may apply as set forth in Attachment A.
- D. Permitted Uses of Licensed Software and Documentation. Licensee may use the Licensed Software only on the Designated Equipment, solely in connection with use of Licensee’s Aclara Technology System, and strictly within the scope of the Documentation and applicable Licensing Parameters as set forth in Attachment A. Licensee may run a reasonable number of copies of the Licensed Software for use in the Designated Equipment and for back-up and archival purposes only. All such copies shall include any copyright notices appearing in the Licensed Software. Licensee may copy and modify the Documentation to coordinate the Documentation with Licensee’s own internal training and working procedures, but Licensee may not distribute any Documentation outside of its business enterprise or for commercial purposes. Aclara shall have no liability or obligation to Licensee with respect to any such modified Documentation and any additional costs incurred by Aclara in the integration of maintenance changes caused by such modifications shall be reimbursed to Aclara by Licensee.

3. Restrictions on Use. Licensee’s use of the Licensed Software and Documentation is restricted and limited as follows:

- A. Licensing Parameters. Licensee’s use of the Licensed Software is restricted to the Licensing Parameters applicable to Licensee as set forth in Attachment A. Use of the Licensed Software in excess of Licensee’s Licensing Parameters is subject to the express written consent of Aclara. If Licensee exceeds the Licensing Parameters, irrespective of Aclara’s consent, Licensee must pay all additional License Fees arising from additional licenses and any Multi-Utility licenses (if applicable).
- B. Aclara Technology System.
 - 1) Single Utility License. Unless Licensee is purchasing a Multi-Utility license pursuant to Attachment A, the Licensed Software is licensed to Licensee for use solely in Licensee’s own utility business and solely in connection with Licensee’s use of Licensee’s Aclara Technology System.

- 2) Multi-Utility License. If Licensee has a Multi-Utility license, as set forth in Attachment A, Licensee's use of the Licensed Software and Documentation is restricted to (i) Licensee's internal use solely in connection with Licensee's use of Licensee's Aclara Technology System and to (ii) Licensee's use in providing meter reading services to its customer/utilities utilizing Licensee's Aclara Technology System. The customer/utilities to which the Licensee may provide such services are limited to those identified in Attachment A. It is the obligation of Licensee to update such list no less frequently than annually.
- C. Additional Restrictions. Licensee is strictly prohibited from: (a) altering, decompiling, disassembling, decrypting, or reverse engineering the Licensed Software or otherwise reducing the Licensed Software to Source Code format; (b) copying the Licensed Software or Documentation except as permitted herein; (c) creating or attempting to create a derivative work from the Licensed Software; (d) storing or transmitting material that contains software viruses or other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of the Aclara Technology System; (e) renting, leasing, granting a security interest in, or otherwise transferring or attempting to transfer any rights in or to the Licensed Software, making the Licensed Software available to third parties, or allowing the use of the Licensed Software for the benefit of any third party, whether on a service bureau or time sharing basis or otherwise; (f) disclosing, providing, or otherwise making available trade secrets or other Confidential Information contained within the Licensed Software and/or Documentation in any form to any third party without the prior written consent of Aclara; and/or (g) removing or defacing any legends, restrictions, product identification, copyright, trademark or other proprietary notices from the Licensed Software or Documentation. Aclara shall have the right to seek all available damages in law and in equity in the event of a breach of this Section 3 and such right shall survive termination of this Software License Agreement.
- D. Compliance with Laws. When using the Licensed Software and Documentation, Licensee must at all times comply with all applicable laws and regulations of the United States and the States, Country and localities in which the Licensed Software and Documentation is used.
- E. Use on Designated Equipment. Licensee's use of the Licensed Software is restricted to use on the Designated Equipment. Should Licensee desire to transfer the operation of the Licensed Software to a computer other than the Designated Equipment, Licensee shall notify Aclara upon such transfer. Such computer must meet the Designated Equipment Specifications provided by Aclara to Licensee for applicable Designated Equipment. Upon such notification, such computer shall become the Designated Equipment. Under no circumstances may the Licensed Software be used for production purposes on other than the Designated Equipment.
- F. Temporary Use. Without notice to Aclara, Licensee may temporarily transfer the operation of the Licensed Software to a backup computer if the Designated Equipment is inoperative due to malfunction, or during the performance of preventive maintenance, engineering changes or changes in features or model until the Designated Equipment is restored to operative status and processing of the data already entered into the back up computer is completed.
4. Audits.
 - A. Right to Audit. Upon thirty (30) calendar days' prior written notice, Aclara may, at Aclara's expense, audit Licensee's use of the Licensed Software to confirm that (a) Licensee is using the Licensed Software in accordance with the terms and conditions of this Agreement and all applicable laws and regulations, (b) the quantity of Licensed Software and manner of deployment and use is consistent with Licensee's Licensing Parameters, the (c) License Fees calculated and invoiced to Licensee are consistent with such deployment and use, and (d) all License Fees properly due and owing have been invoiced and paid by Licensee. Audits shall be conducted by Aclara or its agent during Licensee's normal business hours. Licensee agrees to cooperate with all audit activities and provide Aclara with reasonable assistance and access to all books, records and information relevant to the audit. Audits shall be limited to once every twelve (12) month period for so long as Licensee continues to own and operate the Aclara Technology System, except if additional audits are required by law or if Aclara reasonably believes that a breach of this Agreement has occurred.

- B. Licensee Books and Records. Licensee shall maintain written and/or electronic records of all of Licensee's Designated Equipment and Licensed Software deployments and of its payments of License Fees and Maintenance Fees (if any) (collectively, "**Books and Records**"). Licensee shall provide all necessary copies of such Books and Records in written and electronic format to Aclara upon request and during an audit. Each audit conducted shall be treated as a confidential undertaking by Aclara, and all findings discovered under an audit are deemed the Confidential Information of both Parties subject to the terms of Section 12 hereof.
- C. Effects of Audit. If an audit reveals that Licensee has underpaid any License Fees or Maintenance Fees, Aclara may invoice Licensee for any such underpaid amounts, and Licensee shall remit payment net thirty (30) days from date of invoice. If the aggregate underpaid License Fees or any Maintenance Fees exceed fifteen percent (15%) of the aggregate License Fees (or Maintenance Fees if applicable) owed to Aclara, Licensee shall pay Aclara's or its agent's reasonable costs of conducting the audit. If an audit discovers any other breach of this Agreement, Aclara may invoke its rights of termination and all other remedies available to it under this Agreement, in law and in equity.
5. License Fee. Upon Delivery of the Licensed Software, Aclara shall issue an invoice for the License Fee set forth on Attachment A. Such invoice shall be due and payable, without discount, within 30 days of issuance. The License Fee is exclusive of all taxes imposed by any governmental agency based on Licensee's use or possession of the Licensed Software, including, but not limited to, state or local sales, use and personal property taxes, all of which shall be Licensee's sole responsibility.
6. Ownership of Licensed Software and Documentation. Aclara is the owner of the Aclara Licensed Software and Documentation. The Third Party Licensed Software is owned by the third parties named on Attachment A as set forth opposite their respective product.
7. Warranties. In connection with the Licensed Software and any services provided hereunder, Aclara makes the following warranties:
- A. Licensed Software. With respect to Aclara Licensed Software and any updates or upgrades thereto provided to Licensee:
- 1) Aclara is the owner of the Aclara Licensed Software and has the right and authority to license the Aclara Licensed Software to Licensee;
 - 2) With respect to Third Party Licensed Software, Aclara has the right to license such Third Party Licensed Software to Licensee and has paid all applicable fees with respect to such right; and
 - 3) The Aclara Licensed Software will operate substantially in accordance with the Documentation licensed by Aclara pursuant to the terms of this Software License Agreement when used in accordance with the terms of such Documentation and the Licensing Parameters.
- B. Remedies. If Licensee believes a breach of the foregoing warranties has occurred within twelve (12) months from Delivery of the Aclara Licensed Software, Licensee shall promptly notify Aclara, and Aclara shall investigate the warranty breach. If Aclara is able to replicate the error and confirm that a warranty breach (not subject to exclusion) has occurred during the foregoing period, Aclara shall, at its cost, perform such work as is necessary to remedy the breach as soon as commercially practicable. If Aclara breaches the warranties set forth in Section 7A(i) or (ii) and a claim is brought against Licensee as a result thereof, the indemnification set forth in Section 13 will apply as Licensee's remedy. If Aclara is unable to cure a warranty breach within a reasonable period of time, Licensee may terminate this Agreement for cause. The foregoing are Licensee's sole and exclusive remedies for breach of the warranties set forth herein.
- C. Disclaimers.

- 1) Except as expressly provided herein, Aclara expressly disclaims all express and implied warranties and any liability with respect to any Third Party Licensed Software. Licensee acknowledges and agrees that any Third Party Licensed Software provided by Aclara is subject only to the warranties made by the creator, manufacturer or licensor of such Third Party Licensed Software.
- 2) The warranties provided herein shall be deemed null and void, and Aclara shall be forever released from any obligations under these warranties or any liability to Licensee for any damages incurred by Licensee or claims of any kind arising from (i) Licensee's violation of any of its obligations or use restrictions set forth herein, (ii) any unauthorized use of or modifications, alterations, misapplications, or repairs made to all or any portion of the Aclara Technology System by Licensee or persons other than Aclara Personnel, (iii) Licensee's negligence, willful misconduct, or accidents, or (iv) normal wear and tear.

THE WARRANTIES SET FORTH IN THIS SOFTWARE LICENSE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. Term and Termination.

- A. Term. This Software License Agreement shall commence upon the Effective Date and, unless sooner terminated as provided herein, shall remain in effect so long as Licensee continues to own and operate the Aclara Technology System. The licenses granted hereunder shall commence on Delivery.
- B. Automatic Termination. This Software License Agreement and the licenses granted hereunder shall automatically and immediately terminate upon the date that Licensee ceases owning and operating the Aclara Technology System for any reason.
- C. Termination for Cause. Aclara may terminate this Software License Agreement and the licenses granted hereunder:
 - 1) for any material breach or default by Licensee upon notice in writing to Licensee, specifying the breach or default by Licensee, and Licensee's failure to cure such breach or default within 30 days from the date of its receipt of such notice;
 - 2) upon Licensee's ceasing to do business;
 - 3) upon the dissolution of Licensee;
 - 4) upon the filing of any petition for declaration of bankruptcy or insolvency by or against Licensee which is not withdrawn or dismissed within 30 days; or
 - 5) upon the appointment of a receiver for Licensee.
- D. Termination for Convenience. Licensee may terminate this Software License Agreement without cause at any time upon 30 days' notice in writing to Aclara.
- E. Effects of Termination. Upon the cessation of use of the Licensed Software by Licensee or upon the termination of this Software License Agreement as herein provided, Licensee shall promptly return to Aclara all copies of the Licensed Software and Documentation or destroy same and provide to Aclara a certificate of destruction in form and content satisfactory to Aclara and executed by an officer of Licensee. Each Party shall likewise return to the other Party all copies of the other Party's Confidential Information in accordance with Section 12E hereof.

9. Peripheral Programs. In order to make efficient use of the data generated by the Licensed Software, Licensee shall have the right to develop one or more Peripheral Programs. Aclara shall have no rights to or obligations with respect to Peripheral Programs.
10. Aclara Maintenance Agreement. Aclara offers Maintenance Services to Licensees under a separate Maintenance Agreement, as may be updated from time to time and available to Licensee upon request. Maintenance Fees and Maintenance are calculated in accordance with Aclara's standard rates then in effect subject to the Licensing Parameters as set forth on Attachment A and the level of service selected by Licensee, as set forth on the Maintenance Agreement, Schedule J.
11. Third Party Beneficiaries. With respect to the owners or licensors of Third Party Licensed Software, such owners or licensors are third party beneficiaries of this Software License Agreement.
12. Confidentiality. Each Party may obtain access to the other Party's Confidential Information during the Term hereof. For purposes of this Section 12, the term "Discloser" means the Party who has, through any of the forgoing means, intentionally or unintentionally, provided its Confidential Information to the other Party; and the term "Recipient" means the Party receiving or obtaining access to the Discloser's Confidential Information.
 - A. Scope of Protection and Use. Each Party shall treat the other Party's Confidential Information in manner similar to the manner it treats its own similar information, and in no event with less than reasonable care. Neither Party shall disclose the other Party's Confidential Information to any third party or use the other Party's Confidential Information for any purpose other than in the performance of this Software License Agreement. Recipient shall hold the Confidential Information in confidence and only disclose the Confidential Information to its officers, employees, consultants, counsel, affiliates, independent contractors, or agents (collectively "**Representatives**") who (i) need the Confidential Information to assist the Recipient with performing its obligations or exercising its rights under this Software License Agreement, (ii) have executed a nondisclosure or confidentiality agreement with Recipient containing terms at least as protective as the terms in this Software License Agreement and such agreement applies to Discloser's Confidential Information, and (iii) have been instructed that the information they are receiving is the Discloser's Confidential Information that must be protected in accordance with this Software License Agreement and the terms of the Representative's nondisclosure agreement.
 - B. Exceptions. Except for any portion of Aclara's Confidential Information that is a trade secret and which shall be deemed Confidential Information for so long as it is a trade secret Confidential Information excludes information that:
 - 1) is or becomes part of the public domain without violation of this Software License Agreement by Recipient;
 - 2) is already in Recipient's possession free of any restriction on use or disclosure;
 - 3) becomes available to Recipient from a third party provided that Recipient was free from restriction on the disclosure of the information; or
 - 4) has been independently developed by Recipient.
 - C. Permitted Disclosure. If Recipient is required by legal proceeding discovery request "open record" or equivalent request pursuant to the California Public Records Act (Cal. Gov't Code sec. 6250 et seq.) or similar law, investigative demand, subpoena, court or government order to disclose Confidential Information, Recipient may disclose such Confidential Information provided that:
 - 1) the disclosure is limited to the extent and purpose legally required; and
 - 2) prior to any disclosure and if permitted by applicable law, Recipient shall immediately notify Discloser in writing of the existence, terms, and conditions of the required disclosure and,

at Discloser's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

- D. Recipient Liability. Recipient shall be responsible for any violation of this Software License Agreement by its Representatives and liable for any damages to Discloser arising from any such violation. Recipient shall use reasonable efforts to restrain its Representatives (including Representatives who, subsequent to the date of this Software License Agreement, become former Representatives) from unauthorized use or disclosure of the Confidential Information.
 - E. Ownership Rights. All Confidential Information shall, between Discloser and Recipient, remain the property of Discloser. Upon termination of this Software License Agreement for any reason, Recipient shall promptly return all Disclosed Information of Discloser and destroy, and provide written certification to Discloser of such destruction, all other materials embodying the Disclosed Information of Discloser.
 - F. Independent Developments. Recipient may at any time independently develop information similar to, or products and services that compete with products or services identified in, the Disclosed Information, provided that Discloser's Confidential Information is not used in any such development.
 - G. Injunctive Relief. The Parties stipulate that a breach of this Section 12 by Recipient will cause immediate and irreparable harm and significant injury to Discloser, for which there is no adequate remedy at law and that Discloser shall be entitled, in addition to any other rights and remedies it may have, to injunctive relief, specific performance and other equitable remedies to restrain any threatened, continuing, or further breach of this Section 12. Recipient shall immediately advise Discloser of any discovered breach by Recipient or its Representatives of this Software License Agreement and shall reasonably cooperate, at Recipient's expense, with Discloser in retrieving the disclosed Confidential Information and restricting any continuing breach.
13. Indemnity.
- A. By Aclara. Aclara shall defend Licensee from and against any third party actions, allegations, suits or claims ("**Claims**") to the extent alleging that the most current version of the Aclara Licensed Software, when used by Licensee strictly in accordance with the terms of this Software License Agreement, infringes a third party's United States patent, copyright, trademark, or trade secret, and Aclara shall indemnify and hold harmless Licensee from all damages, costs and liabilities awarded to such third party by legal judgment or settlement resulting from such Claims. The foregoing indemnity obligation is subject to the following: (i) Licensee promptly notifies Aclara in writing of such Claims; (ii) Licensee fully cooperates with Aclara in assisting in the defense or settlement of such Claims; and (iii) Aclara has the sole right to conduct the defense of such Claims or to settle such Claims.
 - B. Exceptions. Notwithstanding the foregoing, Aclara shall not be liable for or obligated to indemnify Licensee for any Claims based on or arising from the following "**Exceptions**": (i) Licensee's misuse or unauthorized modification of the Aclara Licensed Software, (ii) Licensee's failure to use corrections or enhancements or to run the most recent version of the Aclara Licensed Software, if any such actions would have prevented the Claims, (iii) use of the Aclara Licensed Software in combination with any computer programs or applications, operating system, material, service or information not provided or authorized in writing by Aclara for such use, or (d) any use of the Aclara Licensed Software for the benefit of any third party other than Licensee.
 - C. Enjoinment. In the event any the Aclara Licensed Software that is subject to any Claims is held in such suit to be infringing or misappropriating or its use by Licensee is enjoined or limited in any manner, or Aclara believes that such holding or enjoining is likely, Aclara shall at its expense: (a) procure for Licensee the right to continue use of Aclara Licensed Software, or (b) replace or modify the same with an equivalent non-infringing product with functionality substantially similar to the product it is replacing. THE REMEDIES IN SECTIONS 13A AND 13C ARE LICENSEE'S SOLE

AND EXCLUSIVE REMEDIES AND ACLARA'S SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

- D. By Licensee. Licensee shall defend Aclara from and against any Claims to the extent arising from Licensee's actions or inactions that cause the Exceptions set forth above to occur, and Licensee shall indemnify and hold harmless Aclara from all damages, costs and liabilities awarded to such third party by legal judgment or settlement resulting from such Claims. The foregoing indemnity obligation is subject to the following: (i) Aclara promptly notifies Licensee in writing of such Claims; (ii) Aclara fully cooperates with Licensee in assisting in the defense or settlement of such Claims; and (iii) Licensee has the sole right to conduct the defense of such Claims or to settle such Claims.
14. Limitation of Liability and Damages. Notwithstanding anything contained herein to the contrary, the total aggregate liability of Aclara to Licensee for any and all liability arising out of or in connection with the performance of this Software License Agreement shall be limited to the aggregate sum of payments made by Licensee to Aclara under this Software License Agreement. **IN NO CASE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES OR FOR THE LOSS OF BENEFIT, PROFIT, REVENUE, OR DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
15. Uniform Computer Information Transactions Act. The Uniform Computer Information Transactions Act (the "Act"), including any law that incorporates substantially all of the provisions of the Act, however titled, shall not apply to this Software License Agreement.
16. Assignment. Neither Party may assign its rights or obligations under this Software License Agreement without the prior written consent of the other Party, provided however, that Aclara may assign this Software License Agreement to an Affiliate, or to entity acquiring all or substantially all of the assets of Aclara if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Aclara is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Aclara shall provide the other Party with prompt written notice of such assignment. As used herein, "Affiliate" means a company which either owns or controls Aclara or which Aclara owns or controls directly or indirectly, or is under common control directly or indirectly with Aclara through a common parent company.
17. Notices. Any notices required or permitted hereunder shall be in Electronic mail or in writing and shall be deemed to be given sent by United States registered or certified mail, postage prepaid, to the respective Parties at the addresses shown below. Notices so given shall be deemed received three business days from the date of deposit in the U. S. Mails.
- If to Aclara:
Aclara Technologies LLC
Attn: Legal Department
945 Hornet Drive
St. Louis, MO 63042
- If to Licensee:
City of Davis
Attn: Diane Phillips
1717 Fifth Street
Davis, CA 95616
18. Injunctive Relief. Licensee agrees that notwithstanding anything contained herein to the contrary, in the event of a breach by Licensee of the terms of this Software License Agreement, or if Aclara has reasonable reason to believe that such a breach is imminent, Aclara shall have the unequivocal right to seek and obtain timely injunctive relief against Licensee in order to protect Aclara's rights in and to the Licensed Software.
19. Governing Law. This Software License Agreement shall be governed by the laws of the State of California, United States of America.

IN WITNESS WHEREOF, the Parties have executed this Software License Agreement as of the Effective Date.

Aclara Technologies LLC

City of Davis

By: _____

By: _____

Name: Kurt R. Bruenning

Name: _____

Title: CFO

Title: _____

Date: _____

Date: _____

Approved as to form:

Harriet A. Steiner
City Attorney

Attachment A

SOFTWARE AND FEES

This Attachment A is attached to and incorporated in that certain Software License Agreement by and between Aclara Technologies LLC and the Licensee thereto. This Attachment A lists and includes the following:

- I. Aclara Licensed Software
 - Computer Equipment Description
 - Model Type
 - Quantity
 - Licensing Parameters
- II. Third Party Software – NOT INCLUDED IN LICENSE FROM ACLARA
 - Computer Equipment Description
 - Model Type
 - Quantity
 - Licensing Parameters (n/a)
- III. Third Party Software – INCLUDED IN LICENSE FROM ACLARA
 - Item number
 - Vendor/supplier
 - Software Description
 - Licensing Parameters
- IV. License Fees and Included Components
 - List of Software (E.g. iiDEAS, STAR Programmer, etc.)
 - One-time fee per component
- V. Incremental License Fees ABOVE Maximum Licensing Parameters
 - Parameter Descriptions
 - Corresponding fees
- VI. Annual Maintenance Fees
 - Maintenance-only for Non-Hosted Solution
 - Hosted Solution (Annual Service Provider) Fee
- VII. Additional Fees for Customization Work

ATTACHMENT A
ACLARA SOFTWARE LICENSE AGREEMENT
LISTING OF ACLARA LICENSED SOFTWARE, THIRD PARTY LICENSED SOFTWARE,
LICENSING PARAMETERS, THIRD PARTY SOFTWARE NOT LICENSED, AND LICENSE FEES

I. <u>ACLARA SOFTWARE</u>				
<u>Vendor-Supplier</u>	<u>Computer Equipment Description</u>	<u>Model Type</u>	<u>Qty Licensed</u>	<u>Licensing Parameters</u> <u>Parameter</u>
Aclara	STAR NCC Software	INTEL Processor NCC-SW-17K	1	Computer ¹
Aclara	STAR Programmer Software	Handheld Device/Laptop	10 ⁴	Maximum Endpoints ²
				Maximum Utilities ³
				Handheld Device and/or Laptop ⁵

II. THIRD PARTY SOFTWARE ---NOT INCLUDED IN THIS SOFTWARE LICENSE AGREEMENT

<u>Vendor-Supplier</u>	<u>Computer Equipment Description</u>	<u>Model Type</u>	<u>Qty</u>	<u>Licensing Parameters</u> <u>Parameter</u>	<u>Qty</u>
Microsoft	Windows Operating System	INTEL	1	Not specified by Aclara	NA
Microsoft	SQL Server	INTEL	1	Not specified by Aclara	NA

Third Party Licensed Software, as specified above, is furnished and pre-loaded on the STAR NCC Server hardware at the time of purchase. Licensing of the Third Party Licensed Software shall be directly with the identified vendor/supplier under the terms and conditions of the vendor's/supplier's applicable software license agreement.

III. THIRD PARTY SOFTWARE – INCLUDED IN THIS SOFTWARE LICENSE AGREEMENT

<u>Item No.</u>	<u>Vendor-Supplier</u>	<u>Software Description</u>	<u>Qty</u>	<u>Licensing Parameters</u>	<u>Product Owner</u>
-----------------	------------------------	-----------------------------	------------	-----------------------------	----------------------

LICENSE FEES

¹ Software is licensed to be installed on one computer for regular use.

² STAR Maximum Endpoint counts STAR MTUs. If the Licensee exceeds the parameter of maximum endpoints stated above, an additional charge per endpoint will be due from the Licensee.

³ This Licensed Software is licensed to Licensee for use in Licensee's own utility business. Use of the Licensed Software to provide AMI-related services to other utilities/entities (i.e. "Multi-Utility") is strictly prohibited unless otherwise noted and provided for herein.

⁴ Ten (10) copies of STAR Programmer Software have been licensed under Tier 1.

⁵ Each Licensed Software copy is delivered for use on one Hand Held Programmer or Laptop.

IV. COMPONENTS INCLUDED IN THIS LICENSE AND ASSOCIATED FEES:

<u>Item No.</u>	<u>Component Descriptions</u>	<u>One Time Fee</u> Price included in ASP Fee.
IV.A	STAR NCC Software	\$ 3,250.00
IV.B	STAR Programmer Software (Tier 1, 1-10 units)	

V. INCREMENTAL LICENSE FEES ABOVE “MAXIMUM LICENSING PARAMETERS”:¹⁻³

<u>Item No.</u>	<u>Parameter Descriptions</u>	<u>One Time Fee Add-On</u> \$0.40 per Endpoint
V.A	Hosted STAR NCC Software Endpoints	\$ Provided upon Request.
V.B	Non-Hosted STAR - Multi-utility license--Allows Licensee to read meters for one additional utility (Optional) ³	\$ Dependent on Tier ⁶
V.C	STAR Programmer Software (for Handheld Units or Laptops)	

VI. ANNUAL MAINTENANCE FEES:

<u>Item No.</u>	<u>Level of Services Fees</u>
VI.A	Non-Hosted Base Level is 20% of cumulative one time License Fees ⁷
VI.B	Non-Hosted Premier Level is 30% of cumulative one time License Fees ⁸
VI.C	ASP Fee for Hosted Solution – Please refer to Aclara Maintenance Agreement.

Non-Hosted Maintenance Agreement annual Maintenance Fees are a percentage of Cumulative⁹ Non-Hosted License Fees based on Customer Selected Level of Services. Hosted Maintenance Agreement Fee is incorporated into the ASP Fee. Annual Non-Hosted Maintenance Fees and annual Hosted Solution Maintenance Fees are provided for a term of 12 months and are automatically renewable for 12 month Renewal Periods, subject to an annual adjustment. Please see Aclara Maintenance Agreement for complete pricing, terms and conditions and details of Services Levels and Hosted Solution Fees.

VII. ADDITIONAL DATA EXPORT CUSTOMIZATION FORMAT:¹⁰

<u>Item No.</u>	<u>Additional Data Export Customization Fees</u>
VII.A	STAR System. Aclara will provide a firm, fixed price quotation for any additional formats once data is made available. Maximum Not-to-Exceed amount is dependent upon Licensee's requirements.

⁶ Handheld Programmer Software License Fee is based on Tier Quantities: Tier 1 (1-10 units) \$3,250; Tier 2 (11-25 units) As Quoted; Tier 3 (26+) As Quoted
⁷ The minimum Non-Hosted STAR Maintenance Fee for Base Level is \$2,000.

⁸ The minimum Non-Hosted STAR Maintenance Fee for Premier Level is \$3,000.

⁹ Non-Hosted License Fees are the summation of all license fees in sections III and IV, including incremental fees for any additional Endpoints, but does not include fees, if any, for additional data export customization (section VII).

¹⁰ License Fee includes one data export format to permit data to be imported into utility's billing system. Price will be based upon Licensee's requirements when requesting additional export formats.

MAINTENANCE AGREEMENT

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

Aclara Technologies LLC, an Ohio Limited Liability Company
945 Hornet Drive
Hazelwood, Missouri 63042
(Referred to herein as "Aclara")

And City of Davis
1717 Fifth Street
Davis, CA 95616
(Referred to herein as "Customer")

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

Whereas, the parties have agreed to enter into a Software License Agreement under which Customer will license from Aclara, and Aclara will license to Customer certain computer software; and

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

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

1. Definitions. For the purposes of this Agreement, the following definitions shall apply:
 - A. "Aclara Holidays" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve.
 - B. "Aclara Technology System" (or "System") means the system comprised of, in part 1) the Hardware purchased from Aclara by Customer, and 2) the Software licensed by Aclara to Customer under the terms of the Software License Agreement.
 - C. "Additional Services" means services offered by Aclara for improvements and/or enhancements to the Customer's System that are not covered by this Agreement, but may be offered and provided at the rates set forth on Schedule B hereto.
 - D. "Classroom Training" means training offered by Aclara at its facility.
 - E. "Customer Portal" means an electronic gateway to a secure entry point via Aclara's website at www.Aclara.com that allows Aclara customers to log in to an area where they can view and download information or request assistance regarding Issues with the System.
 - F. "On-Site Maintenance Services" means Aclara providing Maintenance Services at the Customer's facility at the then current rates stated in Schedule B, Time and Material Rates, attached hereto.
 - G. "Custom Enhancement" means any improvement, modification or addition that, when made or added to the Software or Third Party Licensed Software, changes its utility,

efficiency, functional capability or application. Custom Enhancements are not included as part of this Agreement.

- H. "Customer Site Training" means Aclara providing its training at the Customer's facility at the then current terms and pricing published on the Aclara Customer Portal. The training may be customized to meet the Customer's needs.
- I. "Delivery" means, in the case of Software provided hereunder (and as applicable), (i) the remote installation of the Software by Aclara on the Customer-provided Designated Equipment; or (ii) delivery of the Designated Equipment provided by Aclara on which the Software is installed; or (iii) the loading of the software to an FTP site for Customer's availability to download. "Delivery" means, in the case of Services provided hereunder, the periodic performance of such Services as described herein.
- J. "Error" means any failure of Software to conform in all material respects to the requirements of this Agreement or Aclara's published specifications. Any nonconformity resulting from Customer's misuse, improper use, alteration or damage of the Software, the combination of the Software with any hardware or software not supplied by or authorized by Aclara, or any other condition beyond the control of Aclara, shall not be considered an Error.
- K. "Error Correction" means either a modification or addition that, when made or added to the Software, brings the Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity
- L. "E-Learning" means on-line training offered by Aclara via the Internet.
- M. "Hardware" means the equipment supplied by Aclara which may include the Substation Communication Equipment (SCE), Remote Communications Equipment (RCE), Test Equipment, Meter Transmission Unit (MTU), Data Collection Unit (DCU) and MTU programmer.
- N. "Hosted Solution(s)" means the Software, systems and servers which reside at the Aclara facility. An Annual Service Provider ("ASP") Fee for the Hosted Solution may apply as set forth in Schedule J.
- O. "Issue" means a problem with the System identified by the Customer, which requires a response by Aclara to resolve.
- P. "Maintenance Services" means activities to investigate, resolve Issues and correct product bugs arising from the use of the Software in a manner consistent with the published specifications and functional requirements defined during implementation.
- Q. "Non-Hosted Solution(s)" means the Software, systems and servers which reside at the Licensee's facility.
- R. "Patch" means a version of the Software that provides an Error Correction to address an urgent need that is outside the schedule of regularly released Software Revisions or Software Versions.
- S. "Renewal Period" means each of one or more consecutive twelve (12) month periods following the Initial twelve (12) month Term of this Agreement.
- T. "Severity Level" means a designation of the effect of an Issue on the

**Aclara-City of
Davis**

Customer's use of the System. The Severity of an Issue is initially defined by the Customer and confirmed by Aclara. Until the Issue has been resolved, the Severity Level may be raised or lowered based on Aclara analysis of impact to business. The four Severity Levels are:

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

- U. "Software" means the software and firmware provided by Aclara, and listed in the Software License Agreement. All Software, Software Revisions and Software Versions provided by Aclara shall be subject to the terms and conditions of the Software License Agreement entered into by and between Aclara and Customer, including any amendments thereto.
- V. "Software Version" means the base or core version of the Software that contains significant new features and significant fixes and is available to the Customer. Software Versions may occur as the Software architecture changes or as new technologies are developed. Software Versions are not provided or included as part of this Agreement.
- W. "Software Revision" means an update to the released version of the Software code which consists of minor enhancements to existing features and code corrections. Software Revisions are provided and included as a part of this Agreement.
- X. "Supplemental Services" means the services set forth on Schedule C hereto, and offered at the prices set forth on Schedule C hereto.
- Y. "Target Response" refers to the period of time between a Customer's initial contact with Aclara to report an issue (by phone, email or through the Customer Portal, thereby creating a ticket which has been assigned a number for tracking purposes) and Aclara's initial contact back to Customer to begin investigation of the reported Issue.
- Z. "Third Party Licensed Software" shall have the meaning as it is defined in the Software License Agreement.
- AA. "Training Services" means all training provided by Aclara to the Customer, including but not limited to Classroom Training, E-Learning Training and Customer-Site Training.

**Aclara-City of
Davis**

2. Term of Agreement. Subject to the termination provisions set forth below, this Agreement shall become effective as of the Effective Date. Maintenance Services shall begin upon Delivery of the Licensed Software; and shall continue in full force and effect for an initial term of one (1) year ("Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for successive Renewal Periods, unless sooner terminated by either Aclara or Customer as provided for in this Agreement.
3. Scope
 - A. Software Maintenance. The Software maintained under this Agreement shall be the Software set forth in the Software License Agreement. Any additional Software for which a license is obtained by the Customer from Aclara shall be automatically incorporated into this Agreement and the pricing for Maintenance Services adjusted accordingly.
 - B. Hardware Maintenance. Under this Agreement, Aclara provides assistance to Customer by remote diagnosis and troubleshooting of those items identified in Section 1.M. above, which have been purchased by Customer from Aclara. In addition, Supplemental Maintenance Services for such Hardware may be available when offered in Schedule C during the term of the Agreement.
 - C. Levels of Maintenance Services. Two (2) Levels of Maintenance are available to the Non-Hosted Customer under this Agreement. Each level is identified and described in Schedule A, Levels of Maintenance Services attached hereto and made a part hereof. Customer may, at its option, change the Level of Maintenance for any subsequent Renewal Period, provided Customer gives Aclara written notice of the requested change no less than thirty (30) days prior to the end of the Initial Term or then current Renewal Period.
 - D. Maintenance Services Provided. Aclara shall provide Maintenance Services for the Customer as designated in Schedule J, Level of Maintenance Services Selected. The following are included as part of this Agreement:
 - 1) Aclara Software Revisions and Patches. Aclara shall provide Software Revisions and Patches to the Customer as they become available. In support of such Software Revisions and Patches, Aclara shall provide updated user technical documentation reflecting the Software Revisions and Patches as soon as reasonably practicable after the Software Revisions and Patches have been released. Updated user technical documentation that corrects Errors or other minor discrepancies will be provided to Customers when available.
 - 2) Third Party Software Revisions. At the option of Aclara, periodic Software Revisions of the Third Party Licensed Software will be provided by Aclara without further charge provided the following conditions are met: (i) the Software Revision corrects a malfunction in the Third Party Software that affects the operation of the Software; and (ii) the Software Revision has, in the opinion of Aclara, corrected malfunctions identified in the Aclara Technology System and has not created any additional malfunctions; and (iii) the Software Revision is available to Aclara. Customer is responsible for obtaining and installing the Software Revision if the Third Party Software was not licensed to Customer by or through Aclara. Software Revisions to Third Party Licensed Software provided by Aclara are specifically limited to the Third Party Software identified and set forth in the Software License Agreement. Any associated Hardware or Hardware modifications required to support revisions of Third Party Software are not included under the terms of this Agreement.

- E. Response to Issues. Aclara will provide verbal or written responses to Issues identified by the Customer in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times as defined in Schedule A, Level of Maintenance Services.
- F. Service Limitations. The Maintenance Services defined in this Agreement are applicable only to the Aclara Technology System, excluding third party equipment, and Third Party Software identified in the Software License Agreement. The following limitations apply to Maintenance Services under this Agreement.
- 1) New Software Versions are not included as a part of this Maintenance Agreement. Such Software Versions will be offered to Customer for additional fees and costs.
 - 2) Services requested by Customer for assistance with installation or implementation of Software Revisions and Patches are not included in this Maintenance Agreement, but are offered to the Customer on a time and materials basis at the rates stated in Schedule B hereto.
 - 3) System administration, database maintenance and recovery, server malfunctions, database backup processes, management and training services, repair of Hardware under warranty or master station computer equipment repair are not included as part of this Agreement.
 - 4) Maintenance services shall be limited to the latest Software Revision, and the two previous Software Revisions provided to the Customer and currently maintained by Aclara in accordance with Section 4.E below. All code changes, Enhancements or fixes will be incorporated into the latest Software Revision or a future Software Revision. Aclara has no obligation to make code changes, Enhancements or fixes to previous Software Revisions.
 - 5) Maintenance Services do not include costs incurred by Aclara while investigating problems that are the result of Customer's negligence, misuse, or unauthorized application, alteration, or modification of the Software, Hardware, or interfaces to the equipment configuration, which shall be invoiced to Customer on a time-and-material basis at Aclara's then current published rates. The current rates are set forth on Schedule B hereto.
 - 6) Services offered outside of Maintenance Services as noted in Schedule C, Supplemental Services attached hereto are not included in this Agreement. Such additional services are available and may be provided upon Customer's request at the fixed price established on Schedule C, and if no fixed price is established, in accordance with the terms and rates provided in Schedule B hereto.
 - 7) During Renewal Periods, certain follow-up training is provided as outlined in Schedule A, Levels of Maintenance Services. Additional training is available and may be purchased. Please contact Aclara Customer Support at 1-800-892-9008 for training requirements and fees.
 - 8) Aclara shall consider and evaluate the development of Custom Enhancements for the specific use of Customer and shall respond to Customer's requests for Custom Enhancements or other additional services pertaining to the Software. Such Custom Enhancements or additional services shall be subject to a separate

charge in accordance with Aclara's then in effect rates. The current rates are listed on Schedule B hereto.

- 9) Maintenance Services do not include any problem arising from the use of components manufactured or authorized by anyone other than Aclara as an interface or peripheral to the Software.
- 10) Maintenance Services do not include any problem resulting from the combination of the Software with such other programming or equipment unless such combination has been approved by Aclara.
- 11) Maintenance Services do not include any problem caused by changes to other software (including releases and patches), interfaces or systems connected to the Software including but not limited to changes of operating systems database servers, web servers, and communications software.
- 12) Maintenance Services do not include changes in workflow, practices, procedures, or processes that differ from the Software approved specifications.
- 13) Customer specific testing and reimplementation of Custom Enhancements are not part of this Maintenance Agreement

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

4. Customer Responsibilities

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

B. Notification of Issues

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

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

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

- 2) Premier Level. Selection of the Premier level of services provides technical support for Severity 1 and 2 issues, 24 hours per day; seven (7) days per week; 365 days per year. All Severity 1 and 2 notifications submitted between the hours of 6:00 p.m. and 6:30 a.m. Central Time (Monday through Friday, Weekends and Aclara Holidays) must be submitted through the Aclara Customer Portal. If Customer cannot readily access the Aclara Customer Portal, Customer may contact Aclara at the "800" number listed above. Premier Level Customers will receive priority treatment over Base Level Customer when resources are allocated to competing, same-priority issues.
 - 3) Base Level. Selection of the Base level of services ensures tickets will be processed on the next business day within the normal business hours (6:30 a.m. and 6:00 p.m. Central Time) noted on Schedule A, Levels of Maintenance Service. If an emergency arises, Aclara does offer support for Issues arising during other than normal business hours at the Time and Material Rates set forth in Schedule B hereto.
- C. Technical Staff. Customer shall be responsible for maintaining sufficient suitably trained technical staff to operate and maintain the System on a day-to-day basis, including backing up the Software and report handling. Aclara training for designated contacts shall be made available to Customer.
 - D. Support for Problem Investigation. Customer shall support all reasonable requests by Aclara as may be required in problem investigation and resolution. For troubleshooting purposes, Aclara may need remote system access to Customer's system.
 - E. Maintain Current Software Revision. Customer shall install new revisions of defined Software in the production environment within six (6) months of receipt of the Software Revision. Customer shall maintain the required version of the Third Party Licensed Software, if applicable, specified by Aclara for each released Software Revision provided. Aclara Error Corrections will be provided on Aclara's latest release of the Software Revision.
 - F. Additional Requirements. Customer is responsible for procuring, installing and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and obtain Maintenance Services from Aclara.
 - G. Designation of Point of Contact. Customer shall assign an individual or individuals to serve as the designated contact(s) for all communication with Aclara during Issue investigation and resolution.
 - H. Discovery of Errors. Upon discovery of an Error, Customer agrees, if requested by Aclara, to submit to Aclara a listing of output and any other data that Aclara may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.
 - I. Test Environment. Customer should maintain a test copy of the Program and a separate test data base (other than Customer's production database) and shall test all new Software Revisions, Patches, Custom Enhancements, hotfixes and Error Corrections before integrating them into system productions.
 - J. Technical Infrastructure Management. Customer shall manage hardware, software, network, storage, database, and peripheral devices for optimal operating performance and availability as required by end users.

- K. Proactive Monitoring. Customer shall regularly monitor the hardware, software and infrastructure that support the Software application. Customer shall define system (OS/Oracle) level event logging, notification and escalation procedures, and detect and react to events. Customer shall regularly monitor event logs, server logs, and other debug information generated by the application to proactively identify problems.
 - L. Acceptance. On or before thirty (30) business days after Aclara's release of a new Custom Enhancement, hotfix or Error Correction that Aclara issues in response to an Error Report, Customer shall test and notify Aclara if there are any problems that need further resolution, or if Customer accepts the solution, Customer shall send such notification to Aclara's e-mail support address. If Aclara receives neither a request for further assistance nor an acceptance of the solution, the solution will be deemed accepted by Customer, and Aclara will have no further obligation to maintain the Software in its earlier form or version. Problems arising from the aforementioned items requiring further resolution will be included as part of this Agreement.
 - M. Routine System Management. Customer shall monitor the system logs and database and perform routine system and database management to ensure proper system operation.
5. Payment and Charges
- A. Basis of Support Service Fee. Pricing for Maintenance Services is calculated based on the cumulative Software License Fee paid by the Customer. The cumulative Fee is identified in the Aclara Software License Agreement as amended during the term of this Agreement. Pricing for each Support Level during the Initial Term is detailed in Schedule J, Level of Maintenance Services Selected hereto.
 - B. Billing Rate. The charge for the Service Level selected by the Customer and defined herein shall be at the annual Fee as identified in Schedule J, Level of Maintenance Services Selected hereof during the Initial Term of this Agreement. The annual Fee shall not be subject to adjustment during the Initial Term. Thereafter, during any subsequent Renewal Period, the Fee shall be subject to adjustment [not to exceed five percent (5%)] at the commencement of each Renewal Period. Customer will receive a Renewal Letter in the form of Attachment 1, providing 30 days notice of the adjusted Fee as set forth above. Said Renewal Letter and the terms contained therein shall be made a part of this Agreement.
 - C. Currency and Taxes. Prices and charges stated herein are in U.S. dollars and are exclusive of Import Duties, Tariffs, Provincial, Federal, State, Municipal or other Government Excise, Sales, Use or like Taxes, all of which shall be Customer's responsibility.
 - D. Suspension of Services due to Unpaid Invoices. In the event that any of the Charges remain unpaid for more than thirty (30) days after becoming due for payment, Aclara shall be entitled to withdraw the Maintenance Services.
 - E. Billing Frequency. Charges for the services provided under this Agreement shall be invoiced annually in advance. Payment of all such invoices shall be due and payable within thirty (30) days of the date of invoice.
 - F. Partial Services. Aclara reserves the right to invoice the Customer for any partial month services which may result from the Effective Date or date of termination of this Agreement, at a prorated charge.

**Aclara-City of
Davis**

- G. Reinstatement Fee. In the event that Customer terminates or elects not to renew this Agreement and subsequently wishes to reinstate it, in addition to paying Aclara's then current fees and charges, Customer shall also pay Aclara, a reinstatement charge. The reinstatement charge shall include a lump sum equal to the total fees and charges which would have been paid for the period of lapse had the lapse not occurred; provided, however that if the lapse period is three (3) years or longer, Aclara shall have the option at its sole discretion to refuse to reinstate said Agreement
6. Termination
- A. This Agreement may be terminated by either party at any time by not less than thirty (30) days prior written notice.
- B. Aclara shall have the right to terminate this Agreement at any time in the event of Customer's bankruptcy, insolvency, or any continuing non-payment for services in excess of thirty (30) days.
- C. If either party shall at any time commit any breach of any covenant or agreement herein contained, and shall fail to remedy any such breach within thirty (30) days after the other party provides written notice specifying in reasonable detail such breach, the other party may, at its option, terminate this Agreement by prior notice in writing to such effect.
- D. Aclara shall have the right to terminate or refuse Maintenance Services if, in Aclara's opinion, conditions at the equipment location represents a hazard to the safety or health of Aclara's personnel.
7. Warranties
- A. With respect to Services to be performed by Aclara under this Agreement, Aclara warrants that it will use reasonable care and skill in the provision of the Services. The Services shall be performed in a professional, competent and timely manner by Aclara Personnel appropriately qualified and trained to perform such Services. In the event of a breach of the foregoing warranty relating to Services occurs within twelve months from the date of the providing of such Services, Aclara shall, at its sole cost and expense, re-perform such Services. Re-performance of such Services shall be Aclara's sole liability and Customer's sole remedy for a breach of warranty.
- B. Except as expressly set out herein, all conditions and warranties, express or implied, statutory or otherwise (including but not limited to any concerning merchantability or fitness for a particular purpose) are hereby excluded to the extent permitted by law.
8. Limitation of Liability and Damages. The Parties have agreed to limit Aclara's total aggregate liability and exclude the recovery of certain types of damages. Notwithstanding anything contained herein to the contrary, the total aggregate liability of Aclara to the Customer for any and all liability arising out of or in connection with the performance of this Maintenance Agreement shall be limited to the then current annual Maintenance Services Fee paid by Customer to Aclara under this Agreement. IN NO CASE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, OR FOR THE LOSS OF BENEFIT, PROFIT, REVENUE OR DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This provision shall survive termination of this Agreement.
9. Excusable Delays. Neither Party shall be liable to the other for failure or delay in performance of a required obligation if such failure or delay is caused by delays in shipment, delivery or taking

**Aclara-City of
Davis**

receipt of any items sold hereunder, or loss or damage thereto, acts of God, acts of the other Party, acts of civil, regulatory or military authority, U.S. Governmental restrictions or embargoes, war, terrorism, riot, fires, strikes, flood, epidemics, quarantine, restrictions, default or delay by supplier, breakdown in manufacturing facilities, machinery or equipment, delays in transportation or difficulties in obtaining necessary materials, labor or manufacturing facilities due to such causes, or any other cause beyond a Party's reasonable control. In the event of such occurrence, performance shall be suspended to the extent made necessary by such forces, and the time for performance shall be extended by a period equal to the time of delay. Upon the occurrence of such an event the Party whose performance is adversely affected shall promptly notify the other Party of the nature and extent of the occurrence and the anticipated period of delay in performance. Any Party so adversely affected shall use all Commercially Reasonable Efforts to minimize the extent of the delay in performance. No event of Force Majeure shall apply to any obligation by either Party to pay money.

10. Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, provided however, that Aclara may assign this Agreement to an Affiliate, or to an entity acquiring all or substantially all of the assets of Aclara if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Aclara is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Aclara shall provide the other Party with prompt written notice of such assignment. As used herein, "Affiliate" means a company which either owns or controls Aclara or which Aclara owns or controls directly or indirectly, or is under common control directly or indirectly with Aclara through a common parent company.
11. Waiver. No waiver of any term of this Agreement by either party shall be deemed to be a further or continuing waiver of any other term of this Agreement.
12. Governing Law. This Agreement shall be governed by the laws of the State of California, U.S.A.
13. Severability. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable, in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
14. Notices. Any notices required or permitted hereunder shall be in writing and shall be deemed to be sent by United States registered or certified mail, postage prepaid, to the respective Parties at the addresses shown below. Notices so given shall be deemed received three business days from the date of deposit in the U.S. mails.

If to Aclara:

Aclara Technologies LLC
Attn: Legal Department
945 Hornet Drive
Hazelwood, MO 63042

If to Customer:

City of Davis
Attn: Diane Phillips
1717 Fifth Street
Davis, CA 95616

**Aclara-City of
Davis**

15. Confidentiality The Parties understand that they may exchange information which they deem to be confidential. To that end, the Mutual Non-Disclosure obligations of the Parties as set forth in Section 12 of the Software License Agreement are incorporated herein by reference.
16. Entire Agreement. This Agreement, including Attachment 1 and Schedules A, B, C, D, E, F, G, H, I, and J hereof, contains the entire agreement between the parties hereto relating to the subject matter hereof and may not be changed or modified in any manner, orally or otherwise, except by a written amendment signed by a duly authorized officer of each of the parties hereto.

**Aclara-City of
Davis**

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

Aclara Technologies LLC

City of Davis

By: _____

By: _____

Name: Kurt R. Bruenning

Name: _____

Title: CFO

Title: _____

Date: _____

Date: _____

Approved as to form:

Harriet A. Steiner
City Attorney

Aclara-City of
Davis

**ATTACHMENT 1
SAMPLE RENEWAL LETTER**

DATE

Customer
Customer Address
City, State, Zip Code

Subject: 2017 Renewal of Aclara **Base or Premier** Maintenance Agreement

Dear **Contact Name**,

Customer Company Name's Aclara Maintenance Agreement (**Base or Premier Level**) will automatically renew on **April 1, 2017** for an additional twelve months through **March 31, 2018** ("Renewal Period"). In accordance with Clause 5, of the agreement, the adjusted maintenance fee is **\$** . You will be invoiced for the new maintenance fee annually in advance and should receive the invoice within the first month of the Renewal Period.

If a purchase order (PO) number is required on the Aclara invoice, please provide the PO or PO number to **AclaraOrders@aclara.com**.

For your consideration, the Premier Level of maintenance services identified on the attached Maintenance Agreement, Schedule A, Levels of Maintenance Services is offered at **\$3,544**. The Premier Level of services includes 24 X 7 Technical Support, a shorter Target Response Time and an unlimited number of training classes on site at Aclara or through Aclara Web based E-Learning Classes. If you would like to upgrade your maintenance services to the Premier Level, please contact me within the next fifteen (15) business days at {phone contact} or {email address}.

Aclara continues to offer Supplemental Services for Aclara technology systems that are identified on the attached Maintenance Agreement Schedule C, Supplemental Services Offered. Tier pricing has remained the same and the Tier pricing for your system is as follows:

- ☐ STAR System Monitoring Tier **2** 2017 Pricing - **\$**
- ☐ STAR DCU Maintenance Tier **1** 2017 Pricing - **\$**

If you selected one or both of the supplemental services previously, there is a check in the appropriate box. If selected, you will be invoiced for the supplemental services as separate line items along with the Maintenance Fee for the total amount of **\$** . If you wish to change your services for {CALENDAR YEAR, i.e 2015}, please notify me within the next fifteen (15) business days by email.

This Renewal Letter is hereby incorporated into the Maintenance Agreement as set forth in Section 5(B) of the Maintenance Agreement. Except as noted above, the Aclara Maintenance Agreement and all of the terms, conditions and provisions thereof shall remain in full force and effect.

If you have any questions, please do not hesitate to contact me at {phone contact} or {email address}

Kind regards,

Sr. Contract Administrator
Enclosures: Schedules A and C
cc: Aclara Account Manager

Maintenance Agmt – 07/2015

Page **13** of **27**

SCHEDULE A LEVELS OF MAINTENANCE SERVICES

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

SCHEDULE B TIME AND MATERIAL RATES

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

Rates:

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

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

2. Rate Adjustments.

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

3. Service Charges.

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

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

- B. If Aclara is requested to travel to the Customer's site to provide Services, the costs and expenses associated with such travel will be borne by Customer and invoiced as set forth below.

¹Rates exclude any applicable taxes and the like.

**Aclara-City of
Davis**

- 1) Travel Expenses: Unless otherwise mutually agreed, Aclara's travel expenses for On-Site Services shall include, but are not limited to airfare, lodging, meals, automobile rental, fuel, parking and associated administration fees, and will be charged to Customer on an actual basis.
- 2) Portal to Portal Invoices: Travel time for On-Site Maintenance Services will be invoiced to Customer on a portal-to-portal basis at Aclara's On-Call Hourly Rates.

4. On-Call Maintenance Service

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

5. Pre-Purchased Support Hours

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

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

SCHEDULE C SUPPLEMENTAL SERVICES OFFERED

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

STAR

STAR System Monitoring Service

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

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

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

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

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

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

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

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

STAR® DCU Maintenance Service

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

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

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

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

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

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

SCHEDULE D
HOSTED MAINTENANCE SERVICES
APPLICABLE TO
STAR TECHNOLOGY SYSTEM

1. Hosting

- A. Aclara will host the **Private Label Site(s) or STAR Technology System** in a secure, 24/7 environment according to the terms established below and the terms of the Maintenance Agreement to which this Schedule D is attached.
- B. Aclara will use commercially reasonable efforts to provide a high level of site uptime. It is our goal to provide at least 98% uptime. This means a total of no more than approximately 15 hours of unscheduled down time within a month. This goal excludes scheduled maintenance and upgrades, failure caused by the Internet or Licensee software, events of force majeure, or downtime caused by any other factor beyond Aclara's reasonable control.
- C. Aclara will refund up to a percentage (see table below) of the total Hosting Fee for the month if up time performance, with the exclusions noted above, is not met based upon the following table. This table applies to the prime time period only. Downtime is defined as the site being unavailable for customer or staff use.

Average Uptime for the Month	Refund of monthly fee
97% or better	0%
95% – 96.99%	5%
Below 95%	10 %

- D. Aclara will use commercially reasonable efforts to prevent more than 1 hour of continuous down time during prime time (defined as 8AM to 12 AM EST) every day; and to prevent more than 6 hours of continuous down time during non-prime time (defined as the hours between 12:01 AM to 7:59 AM (EST), with the same exclusions as noted above.
- E. Generally, Aclara performs all scheduled system maintenance and upgrades during non-prime time or off-peak hours. Aclara will provide Licensee with as much advanced notice of scheduled downtime as reasonably possible.
- F. During any period of downtime of the Private Label Site(s) or any components of more than 30 minutes in duration, Aclara will provide notice to users by posting a web page that indicates that the site is temporarily unavailable due to routine maintenance and to please come back later.
- G. Aclara will provide e-mail notice to appropriate Licensee staff if there will be more than thirty (30) minutes down time of the Private Label Site(s) or any components. Notice will include at least a brief description of the reason for the down time and an estimate of the time when Licensee can expect the site to be up and available.
- H. Aclara will provide Licensee access to a client portal that will be used to report issues and review maintenance and upgrade schedule. Licensee agrees to make good faith efforts to notify Aclara in advance whenever unusually heavy traffic is expected because of promotions or other factors.
- I. Aclara will use commercially reasonable efforts to respond within thirty (30) minutes during prime time hours or within six (6) hours during non-prime time hours to any issue categorized as Severity 1 (as defined herein) that is posted by Licensee through the reporting tool.

**Aclara-City of
Davis**

- J. Aclara will store customer data on mirrored drives and arrange for daily backup daily all customer data, with backup tapes moved to offsite storage regularly.
- K. Aclara will use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the applications are deployed are attached to backup power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Aclara at its deployment location.
- L. Aclara agrees to maintain firewall protection and redundant, high speed Internet connections for the Private Label Site(s).

2. Maintenance and Support

A. Standard Maintenance Services

Maintenance includes all new versions, error corrections, enhancements and improvements to the Program functionality licensed to Licensee, as the same are released to Aclara's Licensees generally. Aclara will provide updates to the application in accordance with the standard release cycle and will provide release notes to Licensees in advance of the release. At Licensee's request, Aclara will provide technical assistance in identifying and resolving issues with the Program's failure to conform to its specifications.

B. Ongoing Support Services

1) Rate Updates

- a. Licensee will provide rates to Aclara in the Aclara-provided template as soon as new rate information is available.
- b. Aclara will update rates once they are received and will move the changes to the production environment within one week.
- c. New rates and structural changes to rates required after the initial release will be setup at an additional cost

- 2) Aclara will provide up to 4 hours of configuration, content changes and/or reporting requests on a monthly basis at no additional charge. If the Licensee requires more than 4 hours in a given month, the additional changes can be completed on a time and materials basis. Hours will not roll over from month to month. Configuration and content changes are subject to the constraints and timing of the Aclara product release cycles. Off-cycle releases can be arranged at an additional cost.

- 3) In the event that the Licensee sends invalid data to Aclara in the data integration, Aclara will notify the Licensee and the Licensee will adjust their data transfer process to correct the issue.

- 4) Aclara will do updates to ZIP codes once per year.

5) Reporting

- a. Aclara will provide monthly usage statistics to the Licensee throughout the term of the agreement. Monthly usage statistics will be posted to the Aclara client portal for review by the Licensee.
- b. Aclara will provide monthly extracts of the profile data collected via the web site in a CSV format. Aclara will provide the data schema corresponding to this extract as part of the implementation. Data extracts will be posted to an Aclara-provided FTP site.

- c. More frequent reports and/or ad hoc reports can be provided at an additional cost.
- 6) Ongoing Release Testing
 - a. Aclara Service Level Agreement (SLA) applies to the production environment only. SLA on the test environment can be provided at an additional cost.
 - b. Aclara provides Licensees access to one test site and one production site.
 - c. Aclara supports links back to two Licensee-hosted environments. Once the Licensee is live, Aclara will link to the production site to the Licensee production environment. The Aclara test environment can continue to link back to one Licensee test environment. In the event that the Licensee needs to change the links on either of these environments, this can be done on a time and materials basis.

SCHEDULE E

RESERVED

SCHEDULE F

RESERVED

SCHEDULE G

RESERVED

SCHEDULE H

RESERVED

SCHEDULE I

RESERVED

SCHEDULE J
LEVEL OF MAINTENANCE SERVICES SELECTED

Customer: City of Davis
Address: 1717 Fifth Street, Davis, CA 95616

1. **Billing frequency is annually in advance.**
2. ☐ **If a Purchase Order number is required on Aclara invoices, please check here.**
 - A. ASP Fee (Annual First Term Price shown)
☒ Annual ASP Fee \$ 41,600.00
 - B. Non-Hosted Software
☒ STAR Programmer Software- Base \$ 650.00
 - C. Supplemental Services
☐ STAR® System Monitoring Service, Tier 2² \$ 6,000.00
☐ STAR® DCU Maintenance Service, Tier 1³ \$ 3,500.00

3. Customer Designated Contact Information:

Designated Main Renewal Contact Information

Name _____
Title _____
Address _____
Address _____
Telephone _____
Fax _____
Cellular Phone _____
Email Address _____

Designated Contact Information

Name _____
Title _____
Address _____
Address _____
Telephone _____
Fax _____
Cellular Phone _____
Email Address _____

Designated Contact Information

Name _____
Title _____
Address _____
Address _____
Telephone _____
Fax _____
Cellular Phone _____
Email Address _____

Designated Contact Information

Name _____
Title _____
Address _____
Address _____
Telephone _____
Fax _____
Cellular Phone _____
Email Address _____

² STAR System Monitoring Tier Pricing is based on the total number of MPOS installed in the Customer's STAR System.
³ STAR DCU Maintenance Pricing is based on the total number of installed DCUs that are out-of-warranty and may be subject to change (downward or upward).

Maintenance Agmt – 07/2015

Page 27 of 27



**AQUAHAWK
"SOFTWARE-AS-A-SERVICE" MANAGED SERVICES AGREEMENT**

This agreement ("Agreement") is entered into, to be effective as of **November 7, 2016** ("Effective Date"), by and between **City of Davis**, located at 1717 5th Street, Davis, CA 95616 ("Customer"), and **American Conservation & Billing Solutions, Inc. (AmCoBi)** located at P.O. Box 51356, Colorado Springs, CO, 80949 ("Service Provider").

RECITALS

WHEREAS, Customer requires hosted third-party "software-as-a-service" (the "Services," as further described herein) with respect to certain of its information technology needs;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, based on Service Provider's knowledge and experience relating to such Services, Customer has selected Service Provider to manage and provide the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and that the security and availability of Customer's data ("Customer Data," as further described herein) are critical to the operation of Customer's business; and,

WHEREAS, Service Provider has agreed to provide the Services to Customer, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services.

1.1 Purpose; Term. This Agreement sets forth the terms and conditions under which Service Provider agrees to license certain hosted "software-as-a-service" and provide all other services, data import / export, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for Customer's productive use of such software (the "Services"), as further set forth on Exhibit A (sequentially numbered) attached hereto. The Agreement and each Exhibit A shall remain in effect unless terminated as provided herein.

1.1.1 Authorized Users. Unless otherwise limited on an Exhibit A, Customer and any of its employees, agents, contractors, or suppliers of services that have a need to use the Services for the benefit of Customer shall have the right to operate and use the same. As a part of the Service, Service Provider shall be responsible for all user identification and password change management.

1.2 Control of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of Customer.

1.3 Time of Service Provider Performance of Services. For the term of the applicable Exhibit A, as the same may be amended, Service Provider shall provide the Services during the applicable Service Windows and in accordance with the applicable Service Levels, each as described in an Exhibit A, time being of the essence.

1.4 Backup and Recovery of Customer Data. As a part of the Services, Service Provider is responsible for maintaining a backup of Customer Data, for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in an Exhibit A, Service Provider shall maintain a contemporaneous backup of Customer Data that can be recovered within forty eight (48) hours at any point in time. Additionally, Service Provider shall store a backup of Customer Data in an off-site "hardened" facility no less than weekly, maintaining the security of Customer Data, the security requirements of which are further described herein.



- 1.5 Non-exclusivity. Nothing herein shall be deemed to preclude Customer from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Service Provider hereunder.
 - 1.6 Change Control Procedure. Customer may, upon written notice, request increases or decreases to the scope of the Services under an Exhibit A. If Customer requests an increase in the scope, Customer shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify Customer whether or not the change has an associated cost impact. If Customer approves, Customer shall issue a change control, which will be executed by the Service Provider. Customer shall have the right to decrease the scope of services and the fee for an Exhibit A will be reduced accordingly.
2. Term and Termination.
- 2.1 Term. Unless this Agreement or an Exhibit A is terminated earlier in accordance with the terms set forth in this Section, the term of an Exhibit A (the "Initial Term") shall commence on the Effective Date and continue for twelve (12) months thereafter. Following the Initial Term, an Exhibit A shall automatically renew for successive one-year terms (each, a "Renewal Term") until such time as Customer provides Service Provider with written notice of termination; provided, however, that: (a) such notice be given no fewer than thirty (30) calendar days prior to the last day of the then-current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term. "Term" shall collectively mean and include the Agreement terms represented by the Initial Term and the Renewal Term.
 - 2.2 Termination for Cause. If either party materially breaches any of its duties or obligations hereunder, including two periods of successive failure of Service Provider to meet a Service Level, and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, then the non-breaching party may terminate this Agreement or an Exhibit A for cause as of a date specified in such notice.
 - 2.3 Payments Upon Termination. Upon the expiration or termination of this Agreement or an Exhibit A for any reason, Customer shall pay to Service Provider all undisputed amounts due and payable hereunder.
 - 2.4 Return of Materials. Upon expiration or earlier termination of this Agreement or an Exhibit A, each party shall: (a) promptly return to the other party, or certify the destruction of any of the following of the other party held in connection with the performance of this Agreement or the Services: (i) all Confidential Information; and, (ii) any other data, programs, and materials; and, (b) return to the other party, or permit the other party to remove, any properties of the other party then situated on such party's premises. In the case of Customer Data, Service Provider shall, immediately upon termination of this Agreement or an Exhibit A, shall provide Customer with a final export of the Customer Data and shall certify the destruction of any Customer Data within the possession of Service Provider. The parties agree to work in good faith to execute the foregoing in a timely and efficient manner. This Section shall survive the termination of this Agreement.
3. Termination Assistance Services. Provided that this Agreement or an Exhibit A has not been terminated by Service Provider due to Customer's failure to pay any undisputed amount due Service Provider, Service Provider will provide to Customer and / or to the supplier selected by Customer (such supplier shall be known as the "Successor Service Provider"), at Customer's sole cost and expense, assistance reasonably requested by Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to Customer or to Successor Service Provider (such assistance shall be known as the "Termination Assistance Services) during the ninety (90) calendar day period prior to, and / or following, the expiration or termination of this Agreement or an Exhibit A, in whole or in part (such period shall be known as the "Termination Assistance Period"). Provided that Service Provider and Customer agree as to price and scope of Service Provider's provisioning of Termination Assistance Services, such Termination Assistance Services may include:
- 3.1 Developing a plan for the orderly transition of the terminated or expired Services from Service Provider to Customer or the Successor Service Provider;
 - 3.2 Providing reasonable training to Customer staff or the Successor Service Provider in the performance of the Services then being performed by Service Provider;
 - 3.3 Using commercially reasonable efforts to assist Customer, at Customer's sole cost and expense, in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services;



- 3.4 Using commercially reasonable efforts to make available to Customer, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the Services; and,
 - 3.5 Such other activities upon which the parties may agree.
 - 3.6 The provisions of this Section shall survive the termination of this Agreement.
4. Services Levels.
- 4.1 Service Levels Reviews. Service Provider and Customer will meet as often as shall be reasonably requested by Customer, but no more than monthly, to review the performance of Service Provider as it relates to the Service Levels further described in Exhibit A.
 - 4.2 Failure to Meet Service Levels. As further described in Exhibit A, in the event Service Provider does not meet any of the requisite Service Levels, Service Provider shall: (a) reduce the applicable monthly invoice to Customer by the amount of the applicable Performance Credits as a credit, and not as liquidated damages; and, (b) use its best efforts to ensure that any unmet Service Level is subsequently met. Notwithstanding the foregoing, Service Provider will use commercially reasonable efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.
5. Fees and Expenses. Customer shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A, subject to the terms and conditions contained therein. Any sum due Service Provider for Services performed for which payment is not otherwise specified shall be due and payable thirty (30) days after receipt by Customer of an invoice from Service Provider
- 5.1 Billing Procedures. Unless otherwise provided for under an Exhibit A, Service Provider shall bill to Customer the sums due pursuant to an Exhibit A by Service Provider's invoice, which shall contain: (a) Customer purchase order number, if any, and invoice number; (b) description of Services rendered; (c) the Services fee or portion thereof that is due; (d) taxes, if any; and, (e) total amount due. Service Provider shall forward invoices in hardcopy format to: **Ms. Diane Phillips, City of Davis, 1717 5th St., Davis, CA 95616.**
 - 5.2 Credits. Any amounts due from Service Provider may be applied by Customer against any fees due to Service Provider. Any such amounts that are not so applied shall be paid to Customer by Service Provider within thirty (30) days following Customer's request.
 - 5.3 Taxes. Service Provider represents and warrants that it is a corporation for purposes of federal, state, and local employment taxes. Service Provider agrees that Customer is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.
6. Customer Resources and Service Provider Resources. In accordance with the terms set forth in Exhibit A, each party shall provide certain resources (Customer Resources and Service Provider Resources, as the case may be) to the other party as Customer and Service Provider may mutually deem necessary to perform the Services.
- 6.1 Service Provider Resources. In addition to any Service Provider Resources described in an Exhibit A, the Service Provider shall, at a minimum, provide all of the resources necessary to ensure that the Services continue uninterrupted, considering the applicable Service Windows and Service Levels, that Customer Data is secure to the standards and satisfaction of Customer, and provide for a reasonable response time for Customer's users of the Services. Where Service Provider fails to provide such minimal Service Provider Resources, Customer shall have the right to terminate this Agreement or the applicable Exhibit A, with thirty days (30) written notice, in whole or in part, without liability.
7. Representations and Warranties.
- 7.1 Mutual Representations and Warranties. Each of Customer and Service Provider represent and warrant that:
 - 7.1.1 Customer is a municipal corporation and Service Provider is a business, duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
 - 7.1.2 It has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
 - 7.1.3 This Agreement, when executed and delivered, shall be a valid and binding obligation of it enforceable in accordance with its terms;



- 7.1.4 The execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;
 - 7.1.5 It shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,
 - 7.1.6 There is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.
- 7.2 By Service Provider. Service Provider represents and warrants that:
- 7.2.1 Service Provider is possessed of extensive knowledge with respect to the Services;
 - 7.2.2 Service Provider knows the particular purpose for which the Services are required;
 - 7.2.3 The Services to be performed under this Agreement shall be performed in a competent and professional manner and in accordance with the highest professional standards;
 - 7.2.4 Service Provider has the experience and is qualified to perform the tasks involved with providing the Services in an efficient and timely manner. Service Provider acknowledges that Customer is relying on Service Provider's representation of its experience and expertise, and that any substantial misrepresentation may result in damage to Customer;
 - 7.2.5 Service Provider will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, the "Virus") are introduced into Customer's computer and network environment while performing the Services,
 - 7.2.6 The Services and any other work performed by Service Provider hereunder shall be its own work, and shall not infringe upon any United States or foreign copyright, patent, Trade Secret, or other proprietary right, or misappropriate any Trade Secret, of any third party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement.
8. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.
- 8.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such entity; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing entity and marked "confidential" or with words of similar meaning; (c) with respect to information and documentation of Customer, whether marked "Confidential" or not, consists of Customer information and documentation included within any of the following categories: (i) policyholder, payroll account, agent, customer, supplier, or contractor lists; (ii) policyholder, payroll account, agent, customer, supplier, or contractor information; (iii) information regarding business plans (strategic and tactical) and operations (including performance); (iv) information regarding administrative, financial, or marketing activities; (v) pricing information; (vi) personnel information; (vii) products and/or services offerings (including specifications and designs); or, (viii) processes (e.g., technical, logistical, and engineering); or, (d) any Confidential Information derived from information of a party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving entity without an obligation of confidentiality; (b) developed independently by the receiving entity, as demonstrated by the receiving entity, without violating the disclosing entity's proprietary rights; (c) obtained from a source other than the disclosing entity without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through or on behalf of, the receiving entity).
- 8.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in



connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep such information confidential.

- 8.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 8.4 Remedies for Breach of Obligation of Confidentiality. Service Provider acknowledges that breach of Service Provider's obligation of confidentiality may give rise to irreparable injury to Customer and the customers of Customer, which damage may be inadequately compensable in the form of monetary damages. Accordingly, Customer may seek termination with thirty (30) days written notice, without penalty to Customer, of this Agreement in whole or in part.
- 8.5 "Notwithstanding the foregoing, in the event that the Customer request under the California Public Records Act (Gov't Code sec. 6250 et seq.) or a court or other governmental authority of competent jurisdiction issues an order, subpoena or other lawful process requiring the disclosure of by the Customer of any Confidential Information, the Customer shall notify Service Provider immediately upon receipt thereof to facilitate Service Provider's efforts to prevent such disclosure, or otherwise preserve the proprietary or confidential nature of the Confidential Information. If Service Provider chooses not to prevent the disclosure within the time required pursuant to the California Public Records Act or the applicable process, or is unsuccessful in preventing the disclosure or otherwise preserving the proprietary or confidential nature of such Confidential Information, then Customer shall not be in violation of this Agreement if it complies with such California Public Records Act request or an order of such court or governmental authority to disclose such Confidential Information."
- 8.6 The provisions of this Section shall survive the termination of this Agreement.

9. Proprietary Rights.

- 9.1 Pre-existing Materials. Customer acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials") and that same shall remain the sole and exclusive property of Service Provider.
- 9.2 Data of Customer. Customer's information, or any derivatives thereof, contained in any Service Provider repository (the "Customer Data," which shall also be known and treated by Service Provider as Confidential Information) shall be and remain the sole and exclusive property of Customer. Customer shall be entitled to an export of Customer Data, without charge, upon the request of Customer and upon termination of this Agreement. Service Provider is provided a license to Customer Data hereunder for the sole and exclusive purpose of providing the Services, including a license to store, record, transmit, maintain, and display Customer Data only to the extent necessary in the provisioning of the Services.
- 9.3 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information, Pre-existing Materials, or Customer Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, Pre-existing Materials, or Customer Data, except as may be provided under a license specifically applicable to such Confidential Information, Pre-existing Materials, or Customer Data.
- 9.4 The provisions of this Section shall survive the termination of this Agreement.

10. Information Security. Service Provider acknowledges that Customer may have implemented an information security program (the Customer Information Security Program) to protect Customer's information assets, such information assets as further defined and classified in the Customer Information Security Program (collectively, the "Protected Data"). Where Service Provider has access to the Protected Data, Service Provider acknowledges and agrees to the following.

- 10.1 Undertaking by Service Provider. Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing and maintaining an information security program that is designed to: (i) ensure the security and confidentiality of the Protected Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Protected Data; (iii)



protect against unauthorized access to or use of the Protected Data; (iv) ensure the proper disposal of Protected Data; and, (v) ensure that all subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's information security program be less stringent than the information security safeguards used by the Customer Information Security Program as provided by Customer to Service Provider for this purpose. The Customer Information Security Program is Confidential Information of Customer.

- 10.2 Right of Audit by Customer. Customer shall have the right to review Service Provider's information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the performance of the Services, on an ongoing basis from time to time and without notice, Customer, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Service Provider's information security program. In lieu of an on-site audit, upon request by Customer, Service Provider agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by Customer regarding Service Provider's information security program.
11. Proprietary Rights Indemnification. Service Provider agrees to indemnify, defend, and hold Customer Indemnitees harmless from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from any Customer Indemnitee, arising out of a claim that the Services infringes or misappropriates any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from delivering either preliminary or permanent, or continuing to license to Customer, the Services and such injunction is not dissolved within thirty (30) days, or in the event that Customer is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the use of the Services, then Service Provider shall, at its expense: (a) obtain for Customer the right to continue using such Services; (b) replace or modify such Services so that it does not infringe upon or misappropriate such proprietary right and is free to be delivered to and used by Customer; or, (c) in the event that Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Service Provider shall reimburse to Customer the full cost associated with Termination Assistance Services.
12. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT, AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO: (A) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT; OR, (B) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY, AS FURTHER DESCRIBED IN THIS AGREEMENT. This Section shall survive the termination of this Agreement.
13. General.
 - 13.1 Relationship between Customer and Service Provider. Service Provider represents and warrants that it is an independent corporation with no authority to contract for Customer or in any way to bind or to commit Customer to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Customer. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Customer. In recognition of Service Provider's status as an independent corporation, Customer shall carry no Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. Customer shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Customer.
 - 13.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and forum of the state and federal courts in the State of California in all questions and controversies arising out of this Agreement.



- 13.3 Dispute Resolution. In the event of any dispute or disagreement between the parties with respect to the interpretation of any provision of this Agreement, or with respect to the performance of either party hereunder, Customer and Service Provider will meet for the purpose of resolving the dispute. If the parties are unable to resolve the dispute within five (5) working days, or as otherwise agreed, either party may then seek whatever remedy is available in law or in equity. The provisions of this Section will not apply to any dispute relating to the parties' obligations of non-disclosure and confidentiality as further described herein.
- 13.4 Compliance With Laws; Customer Policies and Procedures. Both parties agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Service Provider shall comply with Customer policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider. Without limiting Service Provider's other obligations of indemnification herein, Service Provider shall defend, indemnify, and hold Customer Indemnitees harmless from and against any and all Claims, including reasonable expenses suffered by, accrued against, or charged to or recoverable from any Customer Indemnitee, on account of the failure of Service Provider to perform its obligations imposed herein.
- 13.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any Customer supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to Customer, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.
- 13.6 Force Majeure. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of Customer Data. Configuration changes, other changes, viruses / malware, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for Customer to use the Services shall not constitute a force majeure event.
- 13.7 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 13.8 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 13.9 Assignment of Agreement. This Agreement and the obligations of Service Provider hereunder may be assigned in connection with a sale of Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise, with prior written notice to the Customer.
- 13.10 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.



- 13.11 Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Customer and Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.
- 13.12 Cumulative Remedies. All rights and remedies of Customer herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.

Executed on the dates set forth below by the undersigned authorized representative of Customer and Service Provider to be effective as of the Effective Date.

**CITY OF DAVIS
(CUSTOMER)**

By: _____

Name: _____

Title: _____

Date: _____

Address for Notice:

Approved as to form:

Harriet A. Steiner
City Attorney

**AMERICAN CONSERVATION & BILLING SOLUTIONS, INC.
(SERVICE PROVIDER)**

By: _____

Name: M. Bobby Lee

Title: President

Date: _____

Address for Notice:

PO Box 51356
Colorado Springs, CO 80949



EXHIBIT A

AquaHawk Software-as-a-Service Statement of Managed Services

This Exhibit A - Service Provider's Software-as-a-Service Statement of Work shall be incorporated in and governed by the terms of that certain Master Professional Services Agreement by and between **City of Davis** ("Customer") and **American Conservation & Billing Solutions, Inc. (AmCoBi)** ("Service Provider") dated **November 7, 2016** as amended (the "Agreement"). Unless expressly provided for in this Exhibit A, in the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit A, the provisions contained in the Agreement shall prevail.

Services Description:	AquaHawk v8.4 - A customer portal solution for utilities.
Support Description:	Customer support via telephone and e-mail is included for City of Davis employees.
Training Description:	Unlimited online training for up to five (5) utility staff members is included. Multiple sessions may be scheduled for individuals or small groups.
Backup Requirements:	Data will be managed and backed up at AmCoBi's cloud-based hosting provider.
Service Levels:	Standard service levels apply. AmCoBi will use commercially reasonable efforts to make AquaHawk available with a monthly uptime percentage of at least 99.5%. Should issues occur, AmCoBi will work diligently and expediently to correct them so as not to negatively impact the City's customer base.
Customer Resources:	City of Davis will provide first level AquaHawk support to its customers.
Service Provider Resources:	Customer support via telephone and e-mail is included for City of Davis staff members.
Number of Meters:	Not to exceed 16,800
Services Fees:	<p>Setup fee (one-time) - \$15,120 Monthly fee - \$1,770 Aclara usage data transfer fee = TBD</p> <p>Setup fee to be billed when a signed copy of this Agreement has been returned to AmCoBi. Monthly fees will be billed 30 days after the signature date below.</p> <p>If the City adds new endpoints in excess of 16,800, the monthly fee will increase by \$.11 per endpoint. Additional setup fees may apply.</p>
Start Date:	January 2, 2017 - Launch production site.
End Date:	January 1, 2019 . Contract will renew automatically unless City of Davis notifies AmCoBi of its intent to terminate prior to December 2, 2019 .

Executed on the dates set forth below by the undersigned authorized representative of Customer and Service Provider to be effective as of the Start Date.

**CITY OF DAVIS
(CUSTOMER)**

**AMERICAN CONSERVATION & BILLING SOLUTIONS,
INC. (SERVICE PROVIDER)**

By: _____

By: _____

Name: _____

Name: M. Bobby Lee

Title: _____

Title: President

Date: _____

Date: _____



STAR® Network AMI System

Appendix D

Propagation Analysis
March 8, 2016

City of Davis



Delta Engineering Sales, LLC.





What is Propagation Modeling?

- Propagation Modeling is the process by which Aclara evaluates the hardware and installation sites necessary for DCU placement to support the Star Network .
- Propagation Modeling is a simulation of the RF environment into which Aclara installs the Star Network.
- Knowing the link budget (transmitter gains & losses) for the Aclara system, a mathematical model is executed to determine the likelihood of any individual MTU in a Star Network of achieving its given performance requirement.
- A commercially available propagation modeling software package is utilized to perform this analysis. With years of experience in propagation modeling, Aclara has fine tuned the model for the Star Network to accurately reflect system performance in the real world.

Key Elements in the Propagation

□ The Key Items In The Process Of Propagation Modeling That Must Be Known Include:

- Location Of Meters: *Provided By Utility*
- Land Use Data: *Obtained From The USGS (U.S. Geological Survey)*
- Terrain: *Obtained From The USGS (U.S. Geological Survey)*
- System Technical Specifications: *Known By Aclara*



Land Use Data



Land Use Data indicates on a 30 meter x 30 meter grid what the main use of the land is for each individual box in the grid. This is important for the modeling so that the simulation knows whether the RF signal is propagating over water, farm land, residential neighborhoods or dense urban environments.



Terrain Data



Due to the fact that the Aclara STAR Network is a line-of-sight RF system, it is important to know where changes in elevation are going to result in “shadowing” of the RF signal from the MTU to the DCU. The terrain data allows the propagation modeling software to analyze the effects of changes in elevation on the performance of the system



Propagation Study

Service area 13 square miles

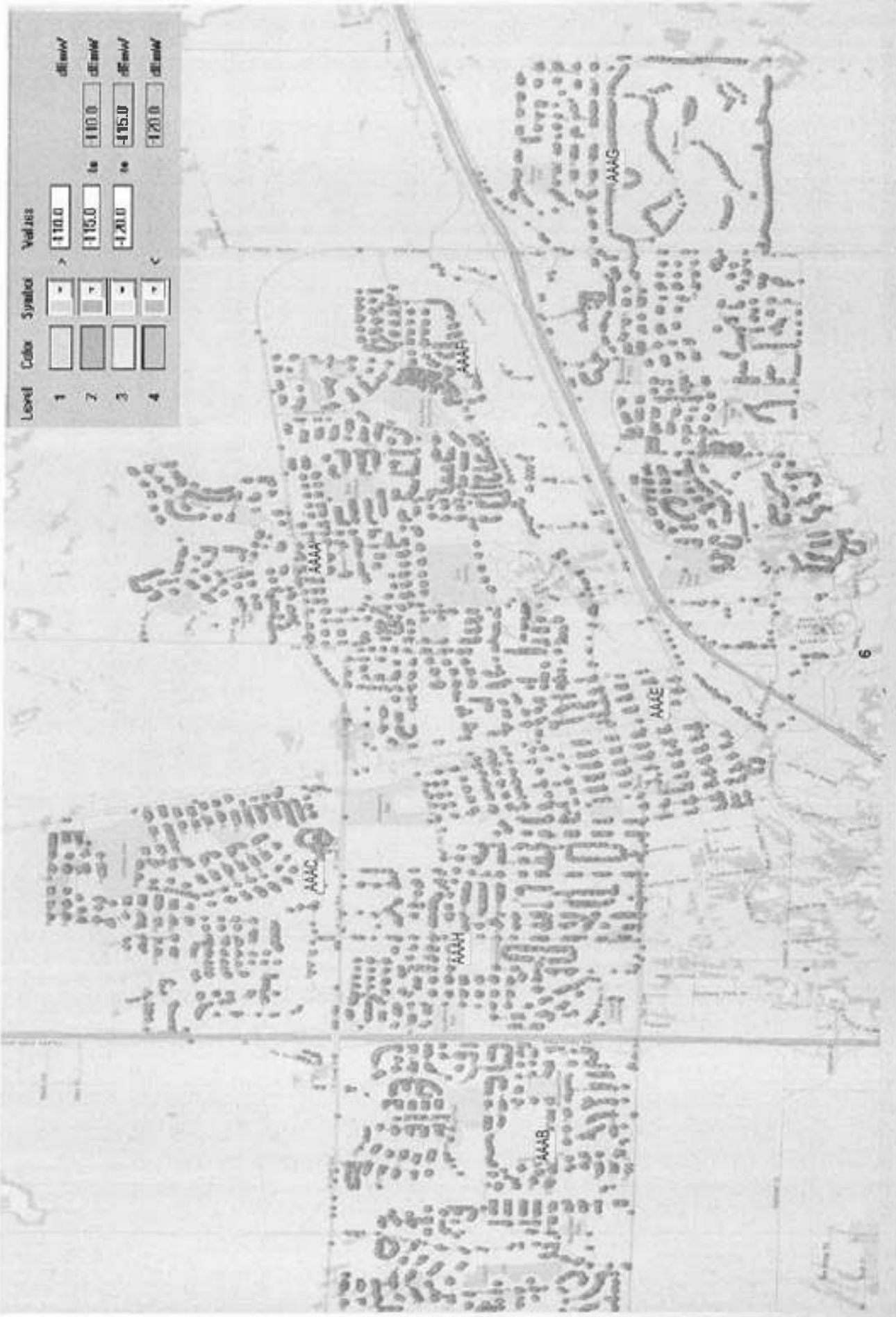


Propagation Study WATER DCU's:

- FULL SERVICE AREA COVERAGE – Recommended 7 DCU's to support 16,780 water services
- REDUNDANCY - Meter to Data Collector Unit (DCU) redundancy
 - 12,747 Triple (75.9%)
 - 3,590 Double (21.4%)
 - 443 Single (2.6%)
- Series 3300 Standard Range MTU used for evaluation
- DCU installations sites listed below

Name	Latitude	Longitude	Antenna Height	Description
AAAA	38.56186724	-121.7257074	30	Aclara Selected Site
AAAB	38.55066189	-121.7808138	30	Aclara Selected Site
AAAC	38.56195873	-121.755541	30	Aclara Selected Site
AAAE	38.54531022	-121.7394839	30	Aclara Selected Site
AAAF	38.55471547	-121.7070189	30	Aclara Selected Site
AAAG	38.54746694	-121.6891726	30	Aclara Selected Site
AAAH	38.55480756	-121.7623672	30	Aclara Selected Site

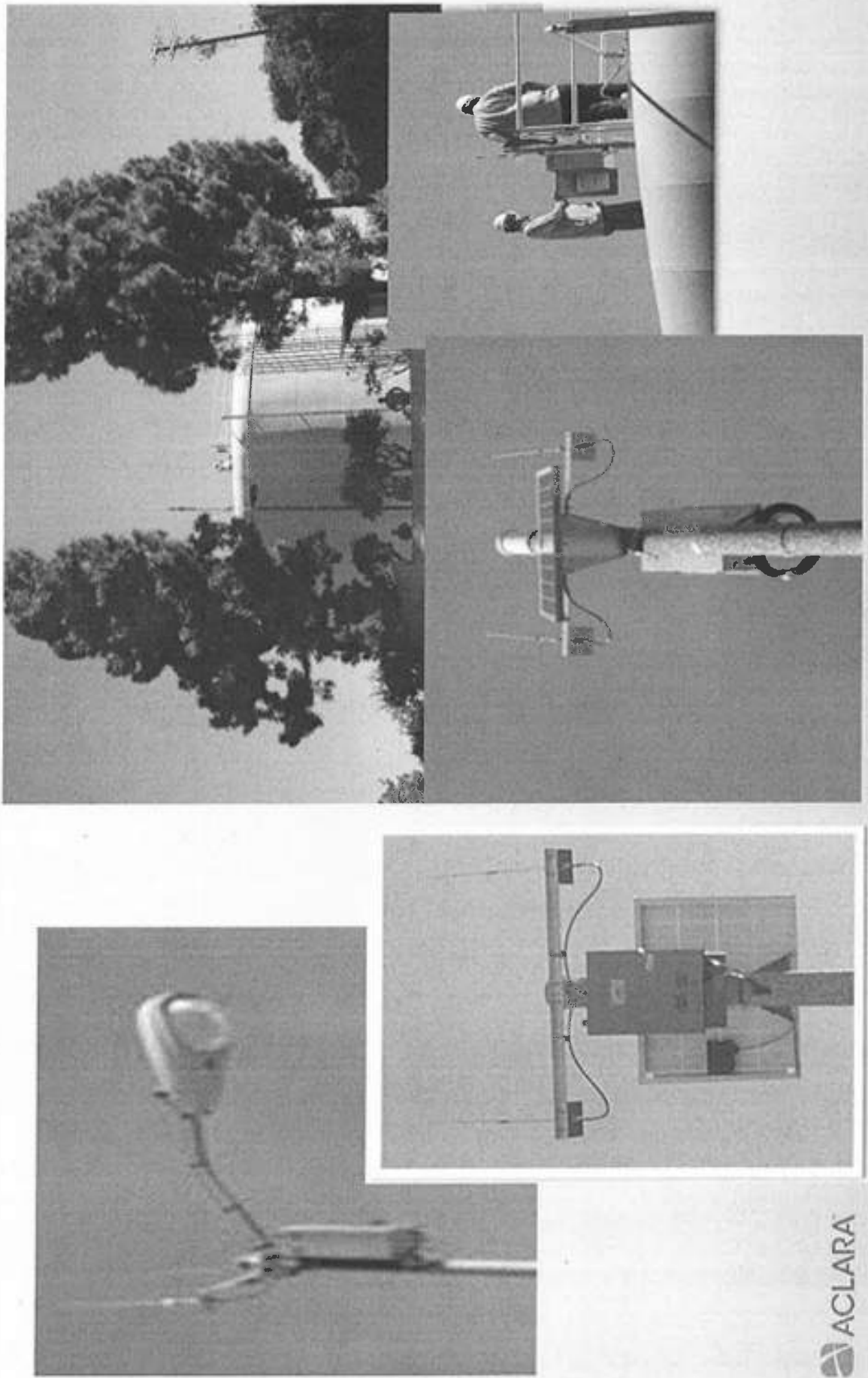
Propagation Study – 7 DCUs



DCU Installation Photos



- DCU's may be located on water tanks, poles, buildings, etc.
- DCU's have 2 Omni-directional antennas.



F-928-20
07/90

TO: City Manager
VIA: Finance Director

CITY OF DAVIS
Request for Budget Adjustment

Agenda Item: 05A

City Council Meeting Date: 11/15/16

FROM: _____

Dept Head

[Signature] 11-8-16
Signature and Date

I request the following budget adjustments:

A. Internal Transfers of Currently Appropriated Funds:

TRANSFERS FROM PROGRAM NAME	FUND NO.	DIV/ PROG.	ACTIVITY	ELEMENT/ OBJECT	AMOUNT (CR)	FUND
Surface Water Pipelines	512	8224	490	4530	\$562,238.	
					\$ -	
					\$ -	
TOTAL					\$562,238.	

B. New Appropriation's Source of funding/Revised Revenue Change:

Unallocated Reserve

Fund Name					
FUND NO.	DIV/PROG.	ACTIVITY	ELEM/OBJ		
New/Revised Revenue Account				\$ -	
New/Revised Revenue Account				\$ -	
Revenue Account Number					
TOTAL					

C. Allocation of Internal Transfers and/or New Appropriations:

TRANSFERS TO PROGRAM NAME	FUND NO.	DIV/ PROG.	ACTIVITY	ELEMENT/ OBJECT	AMOUNT (DR)	FUND
Network Radio - Read Water Meters	512	8187	490	4530	\$562,238.	
					\$ -	
					\$ -	
TOTAL					\$562,238.	

D: Reason For Adjustment (Explain fully. Attach sheet if necessary. If new revenue, record a description on reverse side on Part VI.)

This project involves the replacement of the all the 16,800 meters in the City and conversion to a fixed radio system. This will include all residential, commercial, industrial and irrigation customers and replacement of all the old City meters.

A. ☒ Funds have been appropriated & are available.

A. ☐ Approved
☐ Disapproved

B. ☐ Funds have been appropriated.
☐ Funds must be appropriated.

B. ☐ City Council appropriated funds.
☐ City Council informed of revised revenue estimate.

[Signature]
Signature and Date

Signature and Date

Date: 11/10/16 BA No. 43

Posted By: _____