

ORDINANCE NO. 2021-024

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FINDLAY, OHIO TO ENTER INTO AN AGREEMENT, BY AND BETWEEN THE CITY OF FINDLAY AND UTILITY SERVICE CO., INC., APPROPRIATING AND TRANSFERRING FUNDS.

WHEREAS, the Administration desires to combine the previously approved scopes of work for 2020 and 2021 to keep the water meter system project on schedule, additional funding is required.

WHEREAS, the Statement of Work is attached hereto by reference to memorialize the work as presented to the Water and Sewer Committee and further describe the benefits of the new system.

BE IT ORDAINED by the Council of the City of Findlay, State of Ohio, two-thirds (2/3) of all members elected thereto concurring:

SECTION 1: That the Mayor of the City of Findlay, Ohio be and she hereby is authorized to enter into a "Master Services Agreement" ("Agreement") with Utility Service Agreement Co., a Georgia Corporation with a principal business address of 535 General Courtney Hodges Boulevard, PO Box 1350, Perry, GA 31069.

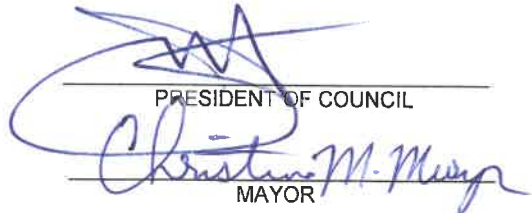
SECTION 2: That the term of said Master Services Agreement shall commence on February 11, 2021 ("Effective Date") of said Master Services Agreement, and that said Master Services Agreement shall automatically renew for successive one-year terms ("Renewal Terms") unless terminated as set forth in Section 9 of this Master Services Agreement. A copy of said Master Services Agreement is attached hereto and incorporated herein as "Exhibit A".

SECTION 3: That the terms and conditions of the "Scope of Work No. 1", to the Master Services Agreement are adopted herein as if same were fully rewritten herein. A copy of said Scope of Work is attached hereto and incorporated herein as "Exhibit B".

SECTION 4: That the following sums be and the same are hereby appropriated and transferred to pay the full amount for calendar year 2021:

FROM:	Water Fund	\$ 183,734.00	
FROM:	Sewer Fund	\$ 183,734.00	
TO:	Water Meter System Replacement 35783300		\$ 367,468.00

SECTION 5: This Ordinance shall be in full force and effect from and after the earliest period provided by law.



 PRESIDENT OF COUNCIL
 Christine M. Meyer
 MAYOR

PASSED March 2, 2021

ATTEST Deise DeVos
CLERK OF COUNCIL

APPROVED March 2, 2021

MASTER SERVICES AGREEMENT
Terms and Conditions

This MASTER SERVICES AGREEMENT ("Agreement") is entered into by and between CITY OF FINDLAY with a principal business address of 318 Dorney Plaza, Findlay, OH 45840 ("Owner"), and UTILITY SERVICE CO., INC., a Georgia corporation with a principal business address of 535 General Courtney Hodges Boulevard, P O Box 1350, Perry, GA 31069 ("Company").

WHEREAS, the Owner and Company (collectively, "the Parties") desire for Company to provide services to Owner under the terms set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Scope.** The Company agrees to provide the Owner with certain services ("Services") set forth on each properly executed SOW to be attached hereto and incorporated herein by reference. Each SOW shall be subject to the general terms and conditions (the "Terms and Conditions") set forth in this Agreement. Each time Owner engages Company to perform Services, a new SOW shall be prepared specifying the scope of Services specific to that engagement. Unless otherwise indicated in any given SOW, Company shall be responsible for furnishing all labor and materials to perform the Services. Each new SOW represents a separate contract between Company and Owner that incorporates the Terms and Conditions and is governed by this Agreement. All changes to any SOW may only be made by a written amendment to such SOW and signed by an authorized representative of each Party. Owner may terminate a SOW in accordance with the terms of each SOW. In the event there is a conflict between any term of an SOW and this Agreement, the term(s) of the SOW shall control.

2. **Term.** The effective date of this Agreement shall be February 11, 2021 ("Effective Date"). The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for one year ("Term"). This Agreement will automatically renew for successive one-year terms ("Renewal Terms") unless terminated as set forth in Section 9 of this Agreement. The term of an SOW shall begin on the commencement date provided in that SOW and continue in effect for the agreed term provided in that SOW.

3. **Fees.** For all Services performed, Owner shall pay Company in accordance with the terms of each SOW. The fees paid in accordance with each SOW shall constitute the full and complete compensation to Company for the Services performed pursuant to the SOW. Unless otherwise expressly set forth in any given SOW, Company shall be responsible for expenses it incurs in connection with its provision of the Services.

4. **Independent Contractor.** Company is, and shall at all times remain, an independent contractor. Company and each of Company's employees and principals shall not be deemed for any purpose to be Owner's employees, and they shall not be entitled to any claims, rights, benefits and privileges to which an employee of Owner or any of its respective affiliates may be entitled under any retirement, pension, insurance, medical or other plans which may now be in effect or which may hereafter be adopted. Owner is not responsible to any governing body or to Company for paying or withholding payroll taxes and other employee expenses related to payments made to Company. Notwithstanding anything to the contrary, this Agreement does not, and shall not be deemed to, constitute a partnership or joint venture between the Parties and

neither Party nor any of their respective directors, officers, officials, or employees shall, by virtue of the performance of their obligations under this Agreement, be deemed to be an agent or employee of the other. No Party has the authority to bind another Party except to the extent approved in writing by the Party to be bound.

5. Insurance. Company shall maintain statutory minimum Worker's Compensation as required by the laws of any jurisdiction in which Services are performed, and commercial general liability insurance covering Company's liabilities hereunder and for injury to persons or damage to property with limits of not less than \$2,000,000 per occurrence. Upon Owner's request, Company shall furnish Owner with a certificate of insurance evidencing this coverage.

6. Representations. Company represents and warrants that Company has the full power and authority to enter into and perform under this Agreement; that the execution, delivery and performance of this Agreement has been duly authorized and constitutes a valid and binding agreement of Company; and that the execution, delivery and performance of this Agreement will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Company is a party to a non-competition agreement or bound by any competitive restrictive covenant concerning or relating to, in any manner, the performance by Company of services similar to the Services to be performed hereunder.

7. Indemnification. Company shall indemnify Owner and its officers and officials from and against any claims, actions, and suits resulting from and to the extent of the Company's negligence while performing the Services hereunder. The Owner's provision of prompt written notice of all third-party claim(s) is a condition precedent to the Company's obligation to indemnify the Owner and its officers and officials for any such claim.

8. Assignment of Receivables. The Company reserves the right to assign any outstanding receivables from this Contract to its financial institutions as collateral for any loans or lines of credit.

9. Termination. This Contract or any individual SOW is subject to termination by the Owner only if written notice of intent to terminate is received by the Company ninety (90) days prior to the first day of the upcoming Contract Year; a "Contract Year" shall be defined as each consecutive 12-month period following the first day of the month in which the Contract is executed by the Owner and each subsequent 12-month period thereafter during the time the Contract is in effect. Notice of Termination is to be delivered by registered mail to Utility Service Co., Inc., Attention: Customer Service, Post Office Box 1350, Perry, Georgia 31069, and signed by three (3) authorized voting officials of the Owner's management and/or Commissioners. In the event of termination by Owner, Owner shall pay Company any amounts due or owing pursuant to all SOWs for products and/or services delivered by Company prior to the date of termination, unless otherwise agreed by the Parties in SOW(s). For illustrative purposes, if a contract is signed by an Owner on June 15, 2019, Contract Year 1 for that contract would be June 1, 2019 to May 31, 2020, and Contract Year 2 for that contract would be June 1, 2020 to May 31, 2021 and so on.

10. Intellectual Property. The Owner acknowledges that all intellectual property rights in the Services, their method of delivery, and all related know-how are owned by the Company or its licensors. The Owner hereby agrees and acknowledges that this Agreement and its SOWs shall not be construed as a license for the Owner to use, deliver, or exploit the intellectual property used by the Company in delivering the Services. To the extent that any new intellectual property or know-how is developed as a result of carrying out the Services, the new

intellectual property rights will all be owned by the Company or its licensors, and the Owner agrees that it will not make a claim to any such new intellectual property rights.

11. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR ITS RESPECTIVE DIRECTORS, OFFICERS, OFFICIALS, AND EMPLOYEES BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWSOEVER CAUSED OR ARISING UNDER THIS AGREEMENT. The foregoing provision limiting the liability of the Parties' directors, officers, officials, and employees shall be deemed to be trust provisions for the benefit of such directors, officers, officials, and employees and shall be enforceable by such persons as trust beneficiaries. Such provisions shall not be construed as imposing any liability on such directors, officers, officials, and employees where it does not otherwise exist in law.

12. Rules of Construction. In construing this Agreement and the SOWs, the following principles shall be followed: (a) no meaning may be inferred from any presumption that one Party had a greater or lesser hand in drafting this Agreement; (b) examples do not limit, expressly or by implication, the matter they illustrate; (c) the plural shall be deemed to include the singular and vice versa, as applicable; and (d) the headings are for convenience only and do not affect the meaning or construction of any such provision. The Parties specifically acknowledge and agree: (a) that they have a duty to read all of the documents constituting this Agreement, including its SOWs, and that they are charged with notice and knowledge of the terms in this Agreement, including its SOWs; and (b) that it has in fact read this Agreement, including its SOWs, and is fully informed and has full notice and knowledge of the terms, conditions and effects of this Agreement, including its SOWs. Each Party further agrees that it will not contest the validity or enforceability of any provision of this Agreement on the basis that it had no notice or knowledge of such provision or that such provision is not conspicuous.

13. Miscellaneous.

a. Notices. All notices hereunder shall be in writing and shall be sent by certified mail, return receipt requested, or by overnight courier service, to the address set forth below each Party's signature, or to such other addresses as may be stipulated in writing by the Parties pursuant hereto. Unless otherwise provided, notice shall be effective on the date it is officially recorded as delivered by return receipt or equivalent.

b. Entire Agreement; Amendment. This Agreement and each properly executed SOW supersedes all prior agreements, arrangements, and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter thereof. This Agreement may not be amended except by written instrument executed by both Parties. In the event of a conflict between the terms of any given SOW and this Agreement, the terms of the SOW shall prevail. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

c. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party. Any attempt to assign this Agreement without the prior written consent of the other Party shall be null and void. A change in control of a Party shall not be deemed an assignment of this Agreement.

d. **Force Majeure.** If either party is prevented from performing any of its duties or obligations hereunder (other than duties or obligations with respect to payment) in a timely manner by reason or act of God or force majeure such as fire; war; earthquake; strike; lock-out; labor dispute; flood; public disaster; pandemic or epidemic event (to include but not limited to COVID-19); interruptions or delays in reasonably available means of transportation; acts of any government or its agencies or officers, or any order, regulation, or ruling thereof; equipment or technical malfunctions or failures; power failures or interruptions; or any other reason beyond its reasonable control, such condition shall be deemed to be a valid excuse for delay of performance or for nonperformance of any such duty or obligation for the period during which such conditions exist.

e. **Survival of Certain Provisions.** Notwithstanding the termination or expiration of this Agreement, the provisions of Sections 6, 10, and 11 shall survive and continue to bind the parties and their legal representatives, successors and permitted assigns.

f. **No Waiver.** The waiver of any breach or failure of a term or condition of this Agreement by any party shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other breach or failure of a term or condition of this Agreement.

g. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. The Parties may utilize electronic means (including facsimile and e-mail) to execute and transmit the Agreement and all such electronically executed and/or transmitted copies of the Agreement shall be deemed as valid as originals.

h. **Jurisdiction.** Any claims or disputes under this agreement are subject to the laws and jurisdiction of the State of Georgia.

SIGNATURE PAGE TO FOLLOW.

WHEREFORE, for the purpose of being bound, the Parties execute this Agreement by their duly authorized representatives as of the date(s) set forth below.

OWNER

CITY OF FINDLAY

By: Christina M. Muryn

Title: Mayor

Print Name: Christina M. Muryn

Date: 02/11/2021

COMPANY

UTILITY SERVICE CO., INC.

By: [Signature]

Title: Senior VP, Advanced Solutions LOB

Print Name: Jonathan Cato

Date: February 10, 2021

Notice Address for Each Party:

CITY OF FINDLAY

Attn: City Clerk

318 Dorney Plaza, Rm 310

Findlay, OH 45840

Utility Service Co., Inc.

Attn: Customer Service Department

Post Office Box 1350

535 General Courtney Hodges Boulevard

Perry, Georgia 31069

SCOPE OF WORK NO. 1
 TO THE MASTER SERVICES AGREEMENT BETWEEN
 UTILITY SERVICE CO., INC.
 AND
 CITY OF FINDLAY, OH

METER MAINTENANCE PROGRAM

1. **Effective Date.** The Effective Date for this Scope of Work No. 1 ("SOW1") shall be February 11, 2021.
2. **Term.** This SOW1 shall commence on the Effective Date and shall continue in full force and effect for a period of fifteen (15) years ("Term"), unless terminated as set forth in Section 9 of the Master Services Agreement.
3. **Description of Meter Maintenance Program and Company's Obligations.** The Meter Maintenance Program shall consist of two phases: an initial deployment phase and a maintenance phase. This SOW1 and the attached Appendix 1 outlines the Company's responsibility for deployment, commissioning and maintenance of a Meter Maintenance Program. The Company shall provide all labor, equipment, and materials and use proprietary technology and know-how to complete the installation services described herein for the Meter Maintenance Program.

- a. The Company shall supply water meters ("meters"), remote shutoff valves ("valves"), and leak detection sensors ("sensors") at locations throughout Findlay, OH. The meters, valves and sensors supplied will be in the following quantities by size:

Meter Size	Quantity
5/8"	2000
3/4"	500
1"	250
TOTAL	2750

Remote Disconnect Valve Size	Quantity
1/2" or 5/8" or 3/4"	510

Leak Detection Sensors	Quantity
Zonescan Acoustic Sensors	12

The residential and light commercial meters will comply with the following specifications:

- All meters shall meet or exceed the latest version of the American Water Works Association Standard C700 or C710 for positive displacement type meters.
- All materials used in the construction of the main cases shall have sufficient dimensional stability to retain operating clearances at working temperature up to 105 degrees Fahrenheit.
- The meter serial number shall be stamped on the main case of the meter.

- Measuring chambers shall be made of a suitable engineered plastic as described in AWWA C700 or C710.
- The measuring chamber shall employ a stainless-steel shaft for the drive magnet.
- The measuring chamber drive magnet shall be encapsulated in plastic.
- The measuring chamber shall incorporate a locating device that aligns to the main case of the meter to ensure proper chamber orientation and alignment.
- The measuring chamber shall be locked into place with a chamber retainer.
- All meters shall be 100% factory tested for accuracy and have the factory test results provided with each meter.
- Meters shall be pressure tested to ensure against leakage.

The commercial meters will comply with the following specifications:

- Shall meet or exceed all requirements of ANSI/AWWA Standard C715 for Cold Water Meters - Electromagnetic and Ultrasonic Type. Each meter assembly shall be performance tested to ensure compliance.
 - The meter main case shall be stainless steel, bronze or epoxy coated ductile iron composition.
 - The meter package shall meet or exceed all requirements of NSF/ANSI Standard 61.
- b. The company will supply 20,818 Single Port Advance Metering Infrastructure (AMI) water modules ("AMI Modules") and 510 Single Port AMI Modules with Remote Disconnect which meet the following specifications:
- The AMI Module shall be capable of receiving meter data from the meters described above.
 - AMI Modules meters/service and other related endpoint devices shall be capable of being configured to communicate with the installed Data Collector Units ("DCUs").
 - The AMI Module shall communicate using licensed 450 MHz band, certified to comply with FCC Part 90 rules.
 - The AMI Module shall be designed and built for installation in outdoor water meter boxes
 - Water endpoint devices shall be housed in a single package design designed for rugged, harsh environments and capable of complete submersion in water without damage.
 - The AMI Module must function accurately and not be damaged over an operating temperature range of -40 deg. C to +70 deg. C.
 - The AMI modules shall be designed to operate in the above conditions and have an estimated battery life of 15 years.
 - Battery life data shall be transmitted alerting of low battery levels for preemptive maintenance.
 - The AMI module shall have the capability to receive and process commands from the host system for all firmware updates to eliminate the need to manually perform the update function at each locale.
 - The AMI Module shall employ actionable reports/alerts, to include:
 - Tamper Alert or Meter disconnected
 - Bad Read -? or – marks
 - Small Leak Detected
 - Large Leak Detected
 - No Flow detected – specific period of time set in the host software

- Reverse Flow / Backflow
 - High Flow Rate Detected – Specifics set in host software
 - Battery Health
- Each AMI module's clock date & time settings shall be updated to match reference date & time that shall be regularly provided to the meter via the Host Software, defined below.
- c. The company will supply and install eleven (11) Data Collector Units (DCU) based on the Propagation Study attached hereto as Exhibit 1 and incorporated herein by reference. The DCU's will comply with the following specifications:

The DCUs will comply with the following specifications:

- The DCUs shall be battery powered with either AC or solar powered battery charger, which communicates in the licensed 450 MHz range with all the AMI modules in its assigned area.
 - The DCUs shall communicate to the Network Control Center (NCC) via a universal wide area network (WAN) connection, such as GSM/GPRS cellular, Ethernet or fiber to allow communication with the Host Software.
 - The DCUs shall collect and aggregate the stored meter data from all the AMI Modules in its zone a minimum of once per day and upload the information to the Host Software a minimum of once per day providing interval reads from each AMI module as programmed.
 - The Host Software shall allow self-diagnosis of any problems associated with the back haul of the communication system and the ability to automatically seek an alternate communication path if initial daily or real-time upload is unsuccessful.
 - The DCU shall have the ability to time synchronize all devices to within 5 seconds once per day and allow daily upload of meter data and system health checks is required.
 - The DCU shall allow remote firmware and software upgrades.
- d. If the number of water meters, AMI Modules or DCU's required to complete the initial deployment phase exceeds the water meter, AMI Module or DCU quantities set forth in Section 3a, 3b or 3c above, the Company will notify the Owner of this change in writing. The Company will supply water meters, AMI Modules, and DCU's at these additional locations, unless the Owner declines the additional water meter, AMI Modules or DCU quantities in writing to Company's Project Manager, prior to start of work. The Owner will have the choice to pay for the additional water meters, AMI Modules, or DCU's separately as a one-time charge or have the Investment Fees and the Maintenance Fees updated to reflect the new cost of service.
- e. The Company will assist the Owner with the preparation of a license application for submittal to the Federal Communications Commission for the issuance of a license which would allow the Owner to operate the AMI system within the utility service territory of the Owner. The Company cannot guarantee the issuance of a license by the Federal Communications Commission, and the Company shall not be liable to the Owner for any damages in the event that the license is not issued; however, if the license is not issued, the Owner shall pay the Company for all Services performed/completed prior to the Federal Communications Commission's decision not to issue the license.

- f. The Company shall provide the Owner with accessibility to a managed hosting service, which will include monitoring services and backup services, installation of security patches and various levels of technical support. The hosted solution shall utilize a secure web-based application.
- g. The Company will provide a hosted software system ("Host Software") with the following capabilities:
 - The Host Software shall act as the central collection point for the data within the system. The server collects data from all of the DCUs and stores the gathered data in a database. Once data is stored and analyzed on the server, the data shall be available for display via a web based graphical interface. Access to the data shall be provided to the Owner by means of a user name and password.
 - The data will be available via a user interface that will allow for analysis as well as bill generation.
 - The Host Software shall manage and archive data for five years, and it can be accessed by Owner's computers and handheld devices remotely via the Internet.
 - Using information from alerts uploaded in the data, the Host Software shall have the ability to generate user specific reports for each status code, configured by the User Interface.
- h. The Company will provide ZoneScan Leak Detection Software.
- i. While this SOW1 is in effect, the Company will establish and maintain communications service between the DCUs and the Host Software.
- j. The Company shall be responsible for supplying and delivering the AMI System components, including training and ensuring the proposed AMI system is operational prior to full deployment. This includes the development of an exporting interface to the Owner's utility billing system and functional testing of the system.
- k. The Company's project manager shall oversee the execution of all aspects of the project and provide regular progress reports to the Owner. In the event that this SOW1 is terminated prior to the full deployment, the Company shall be entitled to reimbursement for the value of the project management services and additional services performed by the Company as well as for equipment purchased prior to termination.
- l. The Company will provide replacement hardware of any component, which fails, except as detailed in Section 8 of this SOW1.

4. Owner's Obligations.

- a. Owner shall be responsible for providing site access to Company and its installation subcontractor for site surveys and installation planning purposes along with any required permits.
- b. Owner shall provide the Company and its subcontractors(s) with access to Owner's public buildings or on water tanks as necessary in order to install DCU's. If the DCUs cannot be located in public buildings or on public water tanks, the Owner shall be responsible for: (i) managing the site acquisition process and securing locations(s) for the installation of DCUs and (ii) any related site acquisition expenses (if applicable). For the avoidance of doubt, the "site acquisition process" shall include, but not be limited to, negotiating and executing agreements for the purchase or rental of real property, including poles, for the installation of DCUs on the site, and "site acquisition expenses" shall include the purchase price and/or rental payments made to acquire or lease the installation site(s) over the Term of the Agreement. The Owner will be responsible for working with the Company and its installation subcontractor to provide access to DCU installation locations,

including any locked or secured areas, or the roofs of any buildings where a DCU is installed. The Owner will supply an escort to these locations should it be required. The Company is responsible for preparing the DCU installation site in order to meet Aclara's DCU installation standards (including pole installation and back haul connectivity.) The Owner will also have the computer hardware to access the ACLARAONE software.

- c. The Owner will provide all of the information and support needed so that the Company can efficiently and effectively implement the AMI system export interface to the Owners billing system.

5. **Software License.** This Section sets forth the terms and conditions of the license for the Host Software ("Software") provided to Owner. Company and its suppliers grant to Owner a limited, nontransferable, non-exclusive and perpetual license to use the Software in object code form on a single central processing unit or computer network owned or leased by Owner or otherwise embedded in equipment provided by Company's supplier, solely in connection with the Owner's business operations. Owner may not modify or change the Software.

No right, title, or license in the Software shall transfer to the Owner, including any of Company supplier's trademarks, copyrights, patents, trade secrets, trademarks or other intellectual property rights embodied therein or used in connection therewith. The Owner is expressly prohibited from sublicensing, selling or otherwise transferring any of the Software. The Owner is required, as soon as practically possible, to notify Company and Company's supplier of any actual or suspected infringement of all or any part of the Software. The Software may be used only for the Owner's own business and the Owner shall not permit any parent, subsidiary, affiliated entity or third party to use the Software. The Owner may make one archival copy of the object code for the Software, provided that the copy shall include the copyright and other proprietary notices found herein.

Company's supplier owns all proprietary rights, including patent, copyright, trade secret, trade name, trademark, service mark, logo, and other proprietary rights, in and to the Software, the training and instructive materials, and any corrections, bug fixes, enhancements, derivative works, updates or other modifications, including custom modifications, of or to the Software and the training and instructive materials related thereto, whether made or created by Company's supplier, Company, the Owner or any third party. Except as expressly agreed by Company's supplier and Company in a signed writing, all rights in and to Company's supplier's intellectual property are expressly retained by Company's supplier. Except as expressly set forth herein, no license or right related to Company's supplier's intellectual property shall be deemed to be granted to Company, the Owner or any third party.

Only Company's supplier or its authorized agents shall have the right to alter, maintain, enhance, customize, or otherwise modify the Software. Company' supplier shall not be responsible for any malfunction, error, or failure of the Software resulting from any alteration, maintenance, enhancement, customization or modification performed by the Owner or any unauthorized third party. The Owner shall not disassemble, decompile, reverse engineer, reverse assemble, reverse compile or make extracts from the Software or create any derivative works or similar methods therefrom or permit others to do so.

Restrictions on Use.

Licensing parameters. The Owner's use of the Software is restricted to these Licensing Parameters. Use of the Software outside the Licensing Parameters is subject to the express written consent of Company and Company's supplier and the payment of all required additional fees.

1. Technology System
 - a. The Owner may not rent the Software or use the Software on a time share basis. This restriction is specifically applicable to any service or service bureau arrangement to which the Owner is, or may be, a party. The Owner shall not directly or indirectly, make the Software available to others.
 - b. If the Owner has a Multi-Utility license, the Owner's use of the Software and training and instruction materials is restricted to (i) the Owner's internal use solely in connection with the Owner's use of Company's Technology System and to (ii) the Owner's use in providing meter reading services to its customer/utilities utilizing Company's Technology System.
 - c. The customer/utilities to which the Owner may provide such services are limited to those that shall be identified as the Attachment A of this SOW1. It is the obligation of the Owner to update such list no less frequently than annually.
2. Alteration. The Owner's use of the Software is limited in that the Owner is prohibited from altering, attempting to reverse engineer, attempting to decompile, or creating or attempting to create a derivative work from the Software.
3. Copies
 - a. The Owner's use of the Software is limited in that it may not copy the Software except for:
 - i. Use in the computer equipment of Company or Owner in which the Software is loaded and such additional equipment as Company and Owner may from time to time designate in writing;
 - ii. Back up purposes; and
 - iii. Archival purposes.
 - b. All such copies shall include any copyright notices appearing in the Software.
 - c. The Owner shall have the right to copy and modify the Software training and instruction materials to coordinate these materials with the Owner's own internal training and working procedures. Company and Company's suppliers shall have no liability or obligation to the Owner with respect to any modified training and instruction materials, and any additional costs incurred by Company or Company's supplier in the integration of maintenance changes caused by such modifications shall be reimbursed to Company by the Owner.
4. Compliance with Laws. The Owner's use of the Software is limited in that it must use the Software and the training and instruction materials in accordance with all applicable laws and regulations of the United States and the Federative Republic of Brazil.
5. Used on Designated Equipment. The Owner's use of the Software is restricted to use on the Designated Equipment, defined as the computer equipment of Company or Owner in which the Software is loaded and such additional

equipment as Company and Owner may from time to time designate in writing. Should the Owner desire to transfer the operation of the Software to a computer other than the Designated Equipment, the Owner shall notify Company and Company's supplier upon such transfer. Such computer must meet the required specifications of the Designated Equipment. Under no circumstance may the Software be used for production purposes on other than the Designated Equipment.

6. Temporary Use. Without notice to Company or Company's supplier, the Owner may temporarily transfer the operation of the Software to a backup computer if the Designated Equipment is inoperative due to malfunction, or during the performance of preventative 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.

IN NO EVENT WILL COMPANY OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE EVEN IF COMPANY OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall Company's or its suppliers' liability to Owner, whether in contract, tort (including negligence), or otherwise, exceed the price Owner paid.

This License is effective until this SOW1 is terminated as set forth in Section 9 of the Master Service Agreement. Additionally, Company may terminate this License immediately upon notice to Owner. This License will terminate immediately without notice from Company if Owner fails to comply with any provision of this SOW1, to include nonpayment or violation of the terms of use in effect from time-to-time during the term of this SOW1. Upon termination of this License, Owner must return or destroy all copies of Software.

This License shall be governed by and construed in accordance with the laws of the State of Georgia. If any portion hereof is found to be void or unenforceable, the remaining provisions of this License shall remain in full force and effect. This License constitutes the entire License between the parties with respect to the use of the Software.

6. **Investment Fees and Payment Terms for Investment Fees.** The five (5) Investment Fees ("Investment Fees") shall be payable to the Company in the amounts listed in the Project Milestone table below:

	Project Milestone	Investment Fees	
Year	Milestone	Amount	Total
2021	Milestone I	\$ 1,267,468.00	\$ 1,267,468.00
2022	Milestone II	\$ 780,936.00	\$ 2,048,404.00
2023	Milestone III	\$ 804,365.00	\$ 2,852,769.00
2024	Milestone IV	\$ 828,496.00	\$ 3,681,265.00
2025	Milestone V	\$ 853,350.00	\$ 4,534,615.00

Project Milestone	Description	Equipment with (Quantity)
Milestone I	Installation of AMI Network, AclaraOne, Work Order Management, Integration to Billing and Supply of Endpoints, Remote Disconnect Valves with Water Meters and Wireless Field Programming Coil	Data Collectors (11); AclaraONE (1) Integration to Billing (1) Aclara Single Port AMI Module (4318) Aclara Single Port AMI Module with Remote Disconnect (110) Remote Disconnect Valve with Water Meter (110) Wireless Field Programming Coil (8) 5/8" Water Meters (400); 3/4" Water Meters (100); 1" Water Meters (50)
Milestone II	Supply of Endpoints, Water Meters and Remote Disconnect Valves with Water Meters	Aclara Single Port AMI Module (4100) Aclara Single Port AMI Module with Remote Disconnect (100) 5/8" Water Meters (400) 3/4" Water Meters (100) 1" Water Meters (50) Remote Disconnect Valve with Water Meter (100)
Milestone III	Supply of Endpoints, Water Meters and Remote Disconnect Valves with Water Meters	Aclara Single Port AMI Module (4100) Aclara Single Port AMI Module with Remote Disconnect (100) 5/8" Water Meters (400) 3/4" Water Meters (100) 1" Water Meters (50) Remote Disconnect Valve with Water Meter (100)
Milestone IV	Supply of Endpoints, Water Meters and Remote Disconnect Valves with Water Meters	Aclara Single Port AMI Module (4100) Aclara Single Port AMI Module with Remote Disconnect (100) 5/8" Water Meters (400)

		3/4" Water Meters (100)
		1" Water Meters (50)
		Remote Disconnect Valve with Water Meter (100)
		Aclara Single Port AMI Module (4100)
		Aclara Single Port AMI Module with Remote Disconnect (100)
Milestone V	Supply of Endpoints, Water Meters and Remote Disconnect Valves with Water Meters	5/8" Water Meters (400)
		3/4" Water Meters (100)
		1" Water Meters (50)
		3/4" Remote Disconnect Valve with Water Meter (100)

The Investment Fees are exclusive of, and Owner is solely responsible for, and shall pay, and shall hold the Company harmless from, all taxes of every description, including, but not limited to, sales and use taxes. As for payment terms for the Investment Fees, the Company shall be entitled to invoice the Owner on a quarterly basis for equipment delivered to the Owner and for services completed by the Company during that quarter. However, the Company's failure to submit a quarterly invoice shall not be a waiver of payment for the provision of the equipment and services in that quarter. In such an event, the Company shall be entitled to invoice the Owner for the equipment and services provided in a subsequent quarterly invoice. Quarterly progress payments shall be made by the Owner on or before the twentieth (20th) day following the Owner's receipt of the Company's quarterly invoice. The Company agrees that title to the equipment delivered to the Owner shall vest in the Owner upon receipt of the corresponding quarterly progress payment, but the risk of loss of or damage to the equipment will pass from the Company to the Owner immediately upon delivery of the equipment to the Owner. The Investment Fees shall be adjusted to reflect any additional cost for the provision of services or equipment incurred pursuant to Section 3.d. above. The fee adjustments shall be documented in the form of an amendment to this SOW1. *Furthermore, if the Owner elects to terminate this SOW1 prior to remitting the first five (5) Investment Fees, then the unpaid balance of the five (5) Investment Fees shall be due and payable within thirty (30) days of the termination.* The Owner shall only be billed for the equipment ordered and delivered in a given calendar quarter. Notwithstanding any other provision herein, the Owner can, by sending prior written notice to the Company, delay or shift the ordering of an aggregate of up to fifteen percent (15%) of the quantity of the equipment to be delivered in a specific Milestone to the Milestone that immediately follows such Milestone, so long as all equipment to be delivered in Milestones I through V is delivered and invoiced for prior to the end of calendar year 2025. For example, if the Owner delays the delivery 15% of the equipment required in Milestone I to Milestone II and thereafter continues to delay the delivery of 15% of the equipment through Milestone IV, the Owner must agree to have that 15% of equipment plus the required quantity of equipment scheduled for Milestone V to be delivered and paid for in Milestone V.

7. Maintenance Fees and Payment Terms for Maintenance Fees.

a. The annual maintenance fees ("Maintenance Fees") shall be payable, in addition to the Investment Fees described above, each Contract Year during the Term of this SOW1. The Maintenance Fee for Contract Year 1 shall be **\$125,000.00**; however, at each anniversary date, the annual Maintenance Fee shall be adjusted to reflect the current cost of service. The adjustment of the annual Maintenance Fee shall be limited to a maximum of 5% per annum. The Maintenance Fees are exclusive of, and Owner is solely responsible for, and shall pay, and shall hold the Company harmless from, all taxes of every description, including, but not limited to, sales and use taxes

b. Adjustment to Maintenance Fees: The Maintenance Fees shall be adjusted to reflect any additional cost of services incurred pursuant to Section 3.c. above. The fee adjustments shall be documented in the form of an amendment to this SOW1.

c. The Maintenance Fee for Contract Year 1, plus all applicable taxes, shall be due and payable 12 months from the signing of this SOW1. Each subsequent Maintenance Fee, plus all applicable taxes, shall be due and payable on the first day of each Contract Year thereafter.

8. Limited Warranty on Equipment. ALL NEW EQUIPMENT (EXCEPT REMOTE DISCONNECT VALVES, AND LEAK DETECTION SENSORS) SUPPLIED BY THE COMPANY IS WARRANTED TO BE FREE FROM MATERIAL DEFECTS AND WORKMANSHIP UNDER NORMAL USE AND SERVICE FOR DURATION OF THIS SOW1. THE COMPANY'S OBLIGATION UNDER THIS LIMITED WARRANTY IS LIMITED TO REPAIRING OR REPLACING, AT THE COMPANY'S OPTION, ANY PART OR NEW EQUIPMENT FOUND TO THE COMPANY'S SATISFACTION TO BE SO DEFECTIVE. THIS LIMITED WARRANTY DOES NOT COVER LABOR FOR ON-SITE REPAIR, REMOVAL, INSTALLATION, RE-INSTALLATION, OR REPLACEMENT OF EQUIPMENT, WHICH INCLUDES, BUT IS NOT LIMITED TO: WATER METERS, AMI MODULES, LEAK DETECTION SENSORS AND/OR REMOTE DISCONNECT VALVES.

DAMAGE RESULTING FROM MISUSE, ACCIDENT, NEGLIGENCE, ABUSE, ALTERATION, AND VANDALISM OR FROM IMPROPER OPERATION, MAINTENANCE, ALIGNMENT, MODIFICATION, OR ADJUSTMENT IS HEREBY EXPRESSLY EXCLUDED FROM THIS WARRANTY.

THE COMPANY'S LIABILITY FOR BREACH OF THESE WARRANTIES (OR FOR BREACH OF ANY OTHER WARRANTIES FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE BEEN GIVEN BY THE COMPANY) SHALL BE LIMITED TO: (A) ACCEPTING RETURN OF SUCH EQUIPMENT AND (B) REFUNDING ANY AMOUNT PAID THEREON BY THE OWNER (LESS DEPRECIATION AT THE RATE OF 15% PER YEAR IF THE OWNER HAS USED SUCH EQUIPMENT FOR MORE THAN THIRTY (30) DAYS), AND (C) IN THE CASE OF SERVICE, AT THE COMPANY'S OPTION, RE-PERFORMING THE SERVICE, OR REFUNDING THE AMOUNT OF THE SERVICE OR PORTION THEREOF UPON WHICH SUCH LIABILITY IS BASED. THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND THE COMPANY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN LIEU OF ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF THE COMPANY WHETHER A CLAIM IS BASED UPON NEGLIGENCE, BREACH

OF WARRANTY, BREACH OF CONTRACT, OR ANY OTHER THEORY OR CAUSE OF ACTION. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT AND/OR REVENUE. FOR PURPOSES OF THIS SECTION, THE EQUIPMENT WARRANTED SHALL NOT INCLUDE EQUIPMENT, PARTS, AND WORK NOT MANUFACTURED OR PERFORMED BY THE COMPANY. WITH RESPECT TO SUCH EQUIPMENT, PARTS, OR WORK, THE COMPANY'S ONLY OBLIGATION SHALL BE TO ASSIGN TO THE OWNER THE WARRANTIES PROVIDED TO THE COMPANY BY THE MANUFACTURER OR SUPPLIER, IF ANY, PROVIDING SUCH EQUIPMENT, PARTS OR WORK. NO EQUIPMENT FURNISHED BY THE COMPANY SHALL BE DEEMED TO BE DEFECTIVE BY REASON OF NORMAL WEAR AND TEAR, OWNER'S FAILURE TO PROPERLY STORE, INSTALL, OPERATE, OR MAINTAIN THE EQUIPMENT IN ACCORDANCE WITH GOOD INDUSTRY PRACTICES OR SPECIFIC RECOMMENDATIONS OF THE COMPANY, OR OWNER'S FAILURE TO PROVIDE COMPLETE AND ACCURATE INFORMATION TO THE COMPANY CONCERNING THE OPERATIONAL APPLICATION OF THE EQUIPMENT.

9. **Liability Limit.** Notwithstanding any contrary provision(s) contained in the MSA and this SOW1, the liability limit of the Company, its affiliates, agents, and employees under the MSA and this SOW1, whether based in contract, warranty, tort (including negligence), strict liability or otherwise shall not exceed in the aggregate a sum equal to one hundred percent (100%) of the total of all Maintenance Fees paid by the Owner to the Company over the 15-year term of this SOW1.

10. **Exclusions from Agreement.** This Agreement and its SOW do NOT include the cost for and/or liability on the part of the Company for: (1) interruptions to the Owner's service or system implications or malfunctions related to the Owner's carrier discontinuing support for or use of its 2G network; (2) the installation of water meters and MTUs sold under this SOW1; (3) the provision of repairs or modifications to water meters and MTUs sold under this SOW1; (4) any modifications needed or required for the Owner's billing system for any reason or at any time during the Term; (5) any claims, actions, or suits expressly excluded from the limited warranty in Section 8 above; and (6) the performance of any field work or provision of any labor or tools necessary for the repair, replacement, installation, and/or re-installation of equipment.

SIGNATURE PAGE TO FOLLOW.

The Parties hereby execute this SOW1 by their duly authorized representatives as of the date(s) set forth herein below.

OWNER

COMPANY

City of Findlay

Utility Service Co., Inc.

By: Christina M. Meryn
Title: Mayor

By: [Signature]
Title: Senior VP, Advanced Solutions LOB

Print Name: Christina M. Meryn

Print Name: Jonathan Cato

Date: 02/11/2021

Date: February 10, 2021

APPENDIX 1

As a guide to help the Owner and the Owner's Council appreciate the value of the warranty that is included in the products, (hardware and software, including MTU's/endpoints), services, and support the Company is providing over the next fifteen (15) years, the Company presents the following value added benefits:

- 1) **Risk and Responsibility:** Under the program, the Company will be managing the risk and responsibility for the warranty of the Owner's AMI system, AMI software and the equipment Company supplies for fifteen (15) years.
- 2) **Visio Center and Service Center:** The Company's service center, in collaboration with the Company's Visio Center, will be monitoring daily the health of Owner's AMI system, MTU's/endpoints and water meters supplied with support through the Company's Work Order Management System to the Owner.
- 3) **Fifteen (15) Year Warranty (No Proration):** Endpoints and Meters supplied under the Company's program are warranted for a full (15) years – no prorated term.
- 4) **Technology:** Currently the Badger Meter AMI technology in use by the Owner is obsolete. The 2G T-Mobile backhaul is no longer supported and maintained. Under the Company's program, we will support and maintain the AMI technology for fifteen (15) years.
- 5) **Project Management:** The Company will be supporting the Owner on-site through all the milestones to assist with the coordination of the installation, training and deployment of the AMI endpoints to keep the project timeline. The Company's obligation is limited to a good faith effort to assist the Owner with project management; however, nothing herein shall be construed as the Company providing a guarantee that the project will be completed on schedule.
- 6) **Escalation Protection:** All hardware (water meters, endpoints, Data Collectors) are subject to a 5% escalation increase annually. Under our program, the Owner is protected through all of the milestones.
- 7) **Installation Contingency Plan:** The Company is anticipating the project will need to be expedited over the life of the contract to ensure accurate meter readings can be used for billing. Once the project is underway, the Company will begin developing a contingency plan with the Owner to accelerate the Aclara network deployment. The Company's efforts to develop a contingency plan with the Owner will be included in the cost of this SOW1; however, the Company will be entitled to negotiate a mutually agreeable scope of work and fee for its role in the deployment of the contingency plan.

EXHIBIT A PROPAGATION STUDY

