

AGREEMENT FOR NEPTUNE WATER METERS AND ASSOCIATED PARTS

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20____, by and between the **City of Burleson**, a Texas home rule municipality, (“**CITY**”), with offices located at 141 W. Renfro St., Burleson, TX 76028, and **CORE & MAIN, LP**, a Florida limited partnership, (“**SUPPLIER**”) with offices located at 7197 Latham Drive, Richland Hills, TX 76118, and duly authorized to conduct business in the State of Texas. **CITY** and **SUPPLIER** are collectively referred to as the “Parties” and individually as “Party.”

WHEREAS, **SUPPLIER** engages in the business of supplying Neptune meters and associated parts; and

WHEREAS, **CITY** has determined that it is necessary, expedient, and in the best interest of **CITY** to retain **SUPPLIER** to provide the goods described in this Agreement; and

WHEREAS, **CITY** has standardized on Neptune meters; and

WHEREAS, **SUPPLIER** is the sole authorized Neptune distributor in a geographical area that includes the **CITY**;

NOW, THEREFORE, the **CITY** and **SUPPLIER**, in consideration of the mutual covenants, promises, and representations contained herein, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. SCOPE OF WORK

SUPPLIER shall provide and **CITY** shall purchase Neptune water meters and associated parts as described in more particular specificity herein based on the terms and conditions of this Agreement. **SUPPLIER** agrees to provide the goods as set forth in the Scope of Work, defined below, issued against and subject to the terms and conditions of this Agreement.

2. EXHIBITS INCORPORATED

This Agreement consists of a primary contract and four (4) exhibits, which are as follows:

Exhibit “A” Scope of Work;
Exhibit “B” Pricing Schedule;
Exhibit “C” Insurance Requirements; and
Exhibit “D” Warranty

These exhibits are attached hereto and are incorporated into this Agreement. In the event of a conflict between the terms and conditions provided in the Articles of this Agreement and any Exhibit, the provisions contained within these Articles shall prevail unless the Exhibit specifically states that it shall prevail.

3. TERM

The term of this Contract shall be a period of three (3) years beginning on October 1, 2022 and continuing through September 30, 2025. This Agreement may be terminated by the parties as provided herein.

4. COMPENSATION

4.1. Pricing. The quoted pricing specified in Exhibit "B" shall be pricing for the goods provided and shall contain all costs to include salaries, office operation, transportation, equipment, overhead, general and administrative, incidental expenses, fringe benefits and operating margin.

4.2 Adjustments to Pricing Schedule. Requests for equitable price adjustments due to increases imposed on the SUPPLIER by the manufacturer may be presented to the CITY. The SUPPLIER must submit requests ninety (90) days in advance for consideration. Requests must be submitted with notice of manufacturer's increase and all appropriate backup and supporting documentation. Requests will be reviewed and any changes will be negotiated between the CITY and the SUPPLIER. No more than one price increase is allowed in a three (3) month period.

5. INVOICES AND TIME OF PAYMENT

5.1 Invoice and Payment. Invoices shall contain a detailed breakdown to include: task or deliverables to the CITY and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due. Payment shall be due within thirty (30) days of the receipt by CITY of SUPPLIER'S invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. CITY will exercise reasonableness in contesting any billing or portion thereof. CITY shall approve of all invoices prior to payment.

5.2 Unacceptable Product. CITY will notify SUPPLIER that the delivered goods, or any part thereof, is unacceptable, within 20 days of receipt of an invoice and provide SUPPLIER opportunity to cure the deficiency.

6. RESPONSIBILITIES OF SUPPLIER

6.1 SUPPLIER Responsibilities. SUPPLIER shall have the following responsibilities:

- (1) SUPPLIER shall perform the work in accordance with the terms and conditions of this Agreement.
- (2) SUPPLIER shall not engage in any obligations, undertakings, contracts or professional obligations that create a conflict of interest, or even an appearance of a conflict of interest, with respect to the goods provided pursuant to this Agreement.

7. RESPONSIBILITIES OF CITY

7.1 CITY Responsibilities. CITY shall have the following responsibilities:

- (1) CITY shall perform its obligations in accordance with the terms and conditions of this Agreement.

8. TERMINATION OF AGREEMENT

8.1 Termination for Cause. CITY shall have the right, by written notice to SUPPLIER, to terminate this Agreement, in whole or in part, for failure to substantially comply with the terms and conditions of this Agreement, to include: (1) Failure to provide products that comply with the specifications herein or that fail to meet CITY'S performance standards; or (2) Failure to deliver the supplies within the time specified in this Agreement.

Prior to termination for default, CITY shall provide adequate written notice to SUPPLIER, affording SUPPLIER the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action.

In the event of termination by CITY for any cause, SUPPLIER shall be liable for any damage to CITY'S resulting from SUPPLIER'S default of the Agreement. This liability includes any increased costs incurred by CITY in completing contract performance.

In the event of termination by CITY for any cause, SUPPLIER shall not have any right or claim against CITY for lost profits or compensation for lost opportunities. After a receipt of CITY'S Notice of Termination and except as otherwise directed by CITY, SUPPLIER shall stop work on the date specified.

8.2 Termination without Cause. CITY may terminate this Agreement, in whole or in part, without cause. CITY shall provide SUPPLIER a written "Notice of Intent to Terminate" thirty (30) days prior to the date of termination. If this Agreement is terminated by the CITY without cause, SUPPLIER shall be entitled to payment for all goods provided to the satisfaction of the CITY under this Agreement prior to termination, less any costs, expenses or damages due to the failure of the SUPPLIER to properly perform pursuant to this Agreement. SUPPLIER shall not be entitled to any other compensation, including anticipated profits on unperformed work.

9. INDEMNIFICATION

SUPPLIER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY SUPPLIER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR

BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE SUPPLIER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE SUPPLIER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

SUPPLIER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF SUPPLIER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF SUPPLIER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. SUPPLIER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF SUPPLIER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

10. INSURANCE & WARRANTY

10.1 Insurance Required. SUPPLIER shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives, or agents to acquire and maintain) insurance policies that comply with the Insurance Requirements, attached as Exhibit "C", during the term of this Agreement, to include any renewal terms. Insurance shall remain in force for at least three (3) years after completion of this Agreement in the amounts and types of coverage as required by Exhibit "C", including coverage for all products delivered under this Agreement.

10.2 Insurance Certificates. Certificates of Insurance and copies of policies evidencing the insurance coverage specified in Exhibit "C" shall be filed with the CITY before the Effective Date of this Agreement. The required certificates shall identify the type of policy, policy number, date of expiration, amount of coverage, companies affording coverage, shall refer specifically to the title of this Agreement, and shall name CITY as an additional insured. No changes shall be made to the insurance coverage without prior written approval by CITY. If the initial insurance expires prior to the termination of this Agreement, renewal Certificates of Insurance and required copies of policies shall be furnished by SUPPLIER and delivered to the CITY thirty (30) days prior to the date of their expiration.

10.3 Warranty. Meters and equipment included in the Scope of Work that CITY purchases from SUPPLIER are warranted by the manufacturer to be free from manufacturers' defects for the period specified in the manufacturer's warranty. A copy of the present warranty of each meter manufacturer that will supply meters and equipment as part of the Scope of Work is attached hereto as Exhibit "D". The term of such manufacturer's warranty shall be as set forth in such attached warranty (as the same may be changed from time to time during the course of the performance of this Agreement, but with changes to apply only to purchases of meters occurring after the change becomes effective), but generally the start date for meter and equipment warranties is the date of the manufacturer's shipment of such equipment ("Manufacturer's Warranty Period"). Upon any breach of the manufacturer's warranty on a water meter noticed to SUPPLIER during the applicable Manufacturer's Warranty Period, SUPPLIER's sole responsibility shall be to cooperate with CITY in arranging for the manufacturer to repair or replace any defective meters or equipment.

11. MISCELLANEOUS PROVISIONS

11.1 Required Certifications.

(1) Anti-Boycotting Provisions. SUPPLIER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

- i. Pursuant to Section 2271.002 of the Texas Government Code, SUPPLIER certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. SUPPLIER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, SUPPLIER certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. SUPPLIER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, SUPPLIER certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. SUPPLIER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

(2) Certification Regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, SUPPLIER

certifies SUPPLIER either (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization specified in Section 2252.152, Texas Government Code, or (2) meets an exception criterion specified in Subchapter F, Chapter 2252, Texas Government Code. SUPPLIER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

11.2 Independent Contractor. It is expressly understood and agreed that SUPPLIER shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the CITY. Subject to and in accordance with the conditions and provisions of this Agreement, SUPPLIER shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. SUPPLIER acknowledges that the doctrine of *respondeat superior* shall not apply as between the CITY, its officers, agents, servants and employees, and SUPPLIER, its officers, agents, employees, servants, contractors and subcontractors. SUPPLIER further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between CITY and SUPPLIER.

11.3 Government Function Clause. All parties agree that this contract is one wherein the CITY is solely performing a governmental function.

11.4 Compliance with Laws. SUPPLIER agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the CITY notifies SUPPLIER of any violation of such laws, ordinances, rules or regulations, SUPPLIER shall immediately desist from and correct the violation.

11.5 Non-Discrimination Covenant. SUPPLIER, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of SUPPLIER's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by SUPPLIER, its personal representatives, assigns, subcontractors or successors in interest, SUPPLIER agrees to assume such liability and to indemnify and defend the CITY and hold the CITY harmless from such claim.

11.6 Assignment and Subcontracting. Neither party may assign or subcontract any of its duties, obligations or rights under this Agreement, save and except, SUPPLIER may engage the services of another company to deliver the goods described herein.

11.7 Notice. Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, or (2) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

To SUPPLIER:

City of Burleson

Core & Main LP

Attn: Purchasing Manager 7197 Latham Drive
141 W. Renfro St. Richland Hills, TX 76118
Burleson, TX 76028

11.8 Governmental Powers. It is understood and agreed that by execution of this Agreement, the CITY does not waive or surrender any of its governmental powers.

11.9 No Waiver. The failure of the CITY or SUPPLIER to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the CITY's or SUPPLIER's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

11.10 Governing Law and Venue. This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.

11.11 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.12 Force Majeure. The CITY and SUPPLIER shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, pandemics, epidemics, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

11.13 Heading Not Controlling. Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

11.14 Review of Counsel. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

11.15 Amendment and Modification. No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

11.16 Entirety of Agreement. This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the CITY and SUPPLIER, their assigns and successors in

interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

11.17 Signature Authority. The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

11.18 No Waiver of Governmental Immunity. Nothing contained in this Agreement shall be construed as a waiver of CITY's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to CITY by law, except to the extent expressly provided or necessarily implied herein.

11.19 Mandatory Ownership Disclosure Provision. If required by law, SUPPLIER shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to CITY at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

11.20 Non-Exclusivity. Agreement is non-exclusive and CITY may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

11.21 No Third-Party Beneficiaries. Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

11.22 Basic Safeguarding of SUPPLIER Information Systems. SUPPLIER shall apply basic safeguarding requirements and procedures to protect the SUPPLIER's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the CITY. This requirement does not include information provided by the CITY to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

11.23 Survivability. The terms of this Agreement, which by their nature one would reasonably intend to survive this Agreement shall survive it, including terms addressing fees and payment, confidentiality, immunity, representations and warranties, limitation of liability, and the applicable miscellaneous sections.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF BURLESON:

CORE & MAIN, L.P.:

By: _____
Bryan Langley, City Manager

By: Bob O'Brien

Printed Name: Bob O'Brien

Title Branch Manager

Date: _____

Date: 9-6-2022

APPROVED AS TO FORM:

By: _____
City Attorney

Exhibit "A"
Scope of Work

- 1.01 SCOPE
Supplier shall furnish all equipment, labor, materials, supplies, licensing, transportation, and other components necessary to provide and deliver Neptune meters, related parts, and accessories (Products) on an "as needed" basis that will meet the requirements of this Agreement.
- 1.02 GENERAL REQUIREMENTS
- A. Deliver parts FOB Destination.
 - B. Items can be deleted or added at any time during the term of this Agreement by means of a written amendment.
 - C. Obtain pre-approval by the City prior to making any substitutions.
- 1.03 SERVICE REQUIREMENTS
Suppliers' services include, but are not limited to the following:
- A. Making deliveries to City of Burleson Service Center, 725 SE John Jones Dr, Burleson, Texas 76028 between 7:00 AM and 3:00 PM.
 - B. Providing a delivery ticket with each delivery to include date of deliver/service, description, quality, deliver/service location, PO number, and Release Order number.
 - C. Obtaining an authorized signature from the City representative receiving the Product(s).
 - D. At its own expense, pick up any Product delivered that does not meet the performance and quality assurance set forth by the City. At the City's discretion the Supplier will be required to replace or provide full credit for any and all returned products within 72 hours of pickup.
 - E. Make deliveries of new parts within forty-five (45) days of receipt of an order, with a goal of delivery within 30 days of receipt of an order.
 - F. Notify the City within 90 days of manufacturer's plant shut down.
- 1.04 *This provision intentionally left blank.*
- 1.05 CITY RESPONSIBILITIES
- A. The City will provide written notice of warranted defective product to the Supplier within the period of guarantee.
 - B. The City reserves the right to reject any or all materials if, in its judgement, the item reflects unsatisfactory workmanship or manufacturing or shipping damage.

Exhibit "B"
Pricing Schedule

1.01 FEES

Supplier pricing for Neptune meters and associated parts shall be as shown below and shall remain firm for a minimum of thirty (90) days after execution of the Agreement:

PRICING GOOD 9-1-22 THRU 8-31-23		
NEPTUNE METERS	METER PART#	
MISC R900I REGISTERS W/SNUB		\$ 201.71
5/8x3/4 T10 R900I METER W/SNUB	ED2B31RWG3	\$ 243.56
3/4" T10 R900I METER W/SNUB	ED2D21RWG3	\$ 295.97
1" T10 R900I METER W/SNUB	ED2F21RWG3	\$ 362.47
1-1/2" T10 R900I METER W/SNUB	ED2H11RWG3	\$ 572.26
1-1/2" HPT R900I METER W/SNUB	ET4HRWG3	\$ 849.37
2" T10 R900I METER W/SNUB	ED2J11RWG3	\$ 752.91
2 HPT R900I LESS STRAINER	ET4ARWG3	\$ 849.37
2 TF R900I LESS STRAINER	EC2ARWG3	\$ 1,846.15
3 TF R900I WITH STRAINER	EC3BRWG3	\$ 3,398.59
3 HPT R900I WITH STRAINER	ET4BRWG3	\$ 2,203.18
4 TF R900I WITH STRAINER	EC3CRWG3	\$ 4,797.74
4 HPT R900I WITH STRAINER	ET4CRWG3	\$ 3,043.23
6" TF R900I WITH STRAINER	EC3DRWG3SG90	\$ 8,361.94
3" FIRE HYDRANT METER-DIRECT READ	ET2BR8G1	\$ 1,305.94
UME TURBO(PRICE PER INCH)R900I		\$ 418.00
UME COMPOUND(PRICE PER INCH)R900I		\$ 835.00
MAINCASE GASKET 2" TF	9675-001	\$ 4.90
5/8 T10 CHAMBER	9400-6000S/9400-900NS	\$ 21.00
1-1/2 T10 CHAMBER	9098-600	\$ 111.00
2 T10 CHAMBER	9098-610	\$ 142.00
2" Strainer	53120-000	\$ 434.44
5/8x3/4 T10 METER BODY	DM5B21	\$ 49.83
1 T10 Meter Body	DM2F21	\$ 150.15
3" ZINC FLG B&G KIT		\$ 9.00
3" 304SS FLG B&G KIT		\$ 14.40

1.02 PRICE ADJUSTMENT

Supplier fees for Neptune meters, related parts, and accessories shall remain firm for a minimum of thirty (90) days after execution of the Agreement. No more than one price increase is allowed in a three (3) month period.

Exhibit "C"
Insurance Requirements

1.01 INSURANCE

Supplier, consistent with its status as an independent contractor, shall carry and shall require any of its subcontractors, if any, to carry, at least the following insurance in such form, with such companies, and in such amounts:

- (1) **Worker's Compensation and Employer's Liability Insurance**, including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas;
- (2) **Commercial General Liability Insurance**, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Completed Operations/Products Liability, Premises Liability, Medical Payments, Interest of Employees as additional insureds, and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis; and
- (3) **Comprehensive Automobile Liability Insurance** covering all owned, nonowned or hired automobiles to be used by the Supplier, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.

Exhibit "D"
Warranty

1.01 The warranties on water meters included in in this Agreement shall be as follows:

- (a) General. Meters and equipment that City purchases from Supplier are warranted by the manufacturer to be free from Manufacturers' Defects for the period specified in the manufacturer's warranty. A copy of the present warranty of each meter manufacturer that will supply meters and equipment under this Agreement is attached hereto as Appendix D-1, attached hereto and incorporated herein by reference for all purposes.

Appendix D-1
Neptune Warranties

Attached to this Appendix D-1 are the manufacturers' warranties.



A NEPTUNE TECHNOLOGY GROUP WARRANTY STATEMENT

E-CODER®)R900i™

1. WARRANTY EFFECTIVE DATE

This warranty will be effective for any E-CODER®)R900i™ that has shipped on or since August 1, 2021.

2. E-CODER®)R900i

Neptune Technology Group Inc. warrants that the E-CODER®)R900i (which includes a Neptune®-supplied battery that is not intended to be removable or replaceable) shall be free from defects in manufacture and design for a period of twenty (20) years from the "Date of Shipment" (such period being the "Warranty Period"). Neptune shall not be responsible for any defects in the E-CODER®)R900i (whether due to design, materials, manufacture, or otherwise) which manifest themselves after the expiration of the Warranty Period. Neptune will repair or replace a non-performing E-CODER®)R900i free of charge for the first ten (10) years and at a discount off of the then-current list price during the remaining ten (10) years according to the discount schedule at the right.

3. WARRANTIES ARE INAPPLICABLE UNDER CERTAIN CONDITIONS.

This warranty does not include field replacement labor or materials costs, which are the responsibility of the utility. This warranty does not apply if product is placed in non-recommended installations; may have been repaired with parts not recommended by Neptune; converted, altered, or connected by other than Neptune recommended procedures; is used with other than genuine Neptune meter registers and components or read by equipment not approved or licensed by Neptune; or damaged due to improper care or maintenance, or improper periodic testing (please refer to E-CODER®)R900i Installation and Maintenance Guide). This warranty does not apply to any E-CODER®)R900i that has been damaged by, or subjected to, conditions which, in the opinion of Neptune, have affected the E-CODER®)R900i register's ability of performance, including but not limited to: misuse; improper handling; application or installation; excessive operating conditions; tampering or unauthorized repairs and modifications; accidental or intentional damage; or acts of God. In no event shall Neptune be liable for special, incidental, indirect, or consequential damages, including, without limitation, lost revenue.

THE ABOVE WARRANTY FOR THE E-CODER®)R900i IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY NEPTUNE WITH RESPECT TO THE E-CODER®)R900i. ALL OTHER WARRANTIES, CONDITIONS, TERMS, REPRESENTATIONS, OR OTHER LEGALLY OPERATIVE PROVISIONS CONCERNING THE E-CODER®)R900i ARE HEREBY EXPRESSLY EXCLUDED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION, TERM, AND REPRESENTATION OR OTHER LEGALLY OPERATIVE PROVISION AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS PARAGRAPH IS EXPRESSLY INTENDED TO EXCLUDE FROM THIS CONTRACT ALL STATUTORY AND COMMON LAW WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW. TO AVOID ANY AMBIGUITY OR MISUNDERSTANDING, ALL PROBLEMS ARISING WITH AN E-CODER®)R900i AFTER THIS POINT ARE BUYER'S RESPONSIBILITY. NEPTUNE'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE E-CODER®)R900i. NEPTUNE SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (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 NEPTUNE, OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.

Year of Failure	E-CODER®)R900i Replacement Price Discount*
1-10	Full replacement: 100%
11	70%
12	70%
13	60%
14	60%
15	50%
16	45%
17	40%
18	35%
19	30%
20	25%

* Replacement price discount percentages will be applied towards then-current contract prices in effect for the year product is accepted by Neptune under warranty conditions. Replacement E-CODER®)R900i registers are warranted for one (1) year after date of shipment or balance of original E-CODER®)R900i warranty, whichever is greater.



Neptune T-10®, HP Turbine, TRU/FLO® Compound Cold Water Meters

1. TERMS OF LIMITED WARRANTY

With respect to its Neptune T-10®, HP TURBINE, TRU/FLO® Compound Water Meters (collectively the "Water Meters"), Neptune Technology Group Inc. ("Neptune") warrants the following on meters sold on or after 11/1/92:

The Water Meters will be, at the later of (i) the date of original purchase from Neptune or (ii) the date of original shipment from Neptune-authorized distributor of Water Meters (that later date is referred to as "the Date of Shipment") and will remain for a period of eighteen (18) months from the Date of Shipment, or twelve (12) months from date of installation, whichever comes first, free from manufacturing defects in workmanship and material.

(a) Maincase. The no-lead high copper alloy or Brass maincase of the Water Meters will be at the Date of Shipment free from manufacturing defects in workmanship and material for the life of the Water Meter.

(b) Frost Protection. All Neptune T-10 Cold Water Meters shipped with a synthetic polymer or cast-iron bottom cap will, commencing upon the Date of Shipment, be warranted against chamber damage for a period of ten (10) years.

(c) Registers. Standard, roll sealed registers of the Water Meters will be at the Date of Shipment, and shall remain for the following periods, free from manufacturing defects in workmanship and material for a period of ten (10) years. The ARB®, ProRead™ (ARB VI), E-CODER® (ARB VII), and ProCoder™ system registers are warranted for ten (10) years from Date of Shipment. All ProRead encoder receptacles shipped after January 1, 2001, shall be warranted for five years from the Date of Shipment. All other components and parts are covered under Neptune's standard one-year material and workmanship guarantee.

(d) Meter Accuracy for Neptune T-10.

Neptune T-10 Meters and Neptune T-10 nutating disc chambers in TRU/FLO Compound Water Meters are warranted to meet or exceed, as listed herein, accuracy standards of the AWWA Standard C700-95 for a period of: (i) five (5) years from Date of Shipment for 5/8", 3/4" and 1" meters; (ii) for a period of two (2) years from the Date of Shipment for 1 1/2" and 2" meters; or (iii) the applicable registration shown below, whichever occurs first. Neptune further guarantees that the Neptune T-10 and Neptune T-10 nutating disc chambers in TRU/FLO Compound Water Meters will perform to at least Repaired Meter Accuracy Standards, according to AWWA Manual M-6 Chapter 5 (1999) Table 5.3 for an additional ten (10) years or the registration shown below, whichever occurs first.

SIZE	EXTENDED LOW FLOW ACCURACY	NEW METER ACCURACY	REPAIRED METER ACCURACY
5/8" & 3/4" x 3/4"	1/4 US gpm @ 95% 5 years or 500,000 gallons	500,000 gallons	1,500,000 gallons
3/4"	1/4 US gpm @ 95% 5 years or 750,000 gallons	750,000 gallons	2,250,000 gallons
1"	3/8 US gpm @ 95% 5 years or 1,000,000 gallons	1,000,000 gallons	3,000,000 gallons
1 1/2"	3/4 US gpm @ 95% 2 years or 1,600,000 gallons	1,600,000 gallons	5,000,000 gallons
2"	1 US gpm @ 95% 2 years or 2,700,000 gallons	2,700,000 gallons	8,000,000 gallons

(e) Meter Accuracy for HP Turbine and TRU/FLO. The HP Turbine and TRU/FLO Compound Cold Water Meters will perform, for a period of one (1) year from the Date of Shipment, to American Water Works Association ("AWWA") accuracy standards for new water meters.



2. WARRANTY RETURN

If a Neptune Water Meter fails an accuracy test during an applicable warranty period, it may be returned to Neptune for repair or replacement at Neptune's option. An accuracy test shall be conducted by the customer according to AWWA standards. Any meter being returned for repair to Neptune under this performance guarantee must be returned with a copy of the customer's test results. If the meter is returned to Neptune without a copy of the test results or if Neptune's factory test shows the meter to meet current AWWA standards, the customer will be charged a nominal testing fee by Neptune in such cases. Neptune will repair or replace the meter at Neptune's option after the meter has been tested by Neptune. Meters repaired or replaced under the performance guarantee will be guaranteed to perform to AWWA repaired meter accuracy standards.

3. WARRANTIES ARE EXCLUSIVE

The warranties set forth in this certificate of warranty are in lieu of any other warranty, guarantee, or representation, whether expressed or implied, including without limitation, the warranty of merchantability and the warranty of fitness for a particular purpose.

4. DAMAGES LIMITED TO COSTS OF REPLACEMENT AND REPAIR

If the Water Meter fails to meet the warranties set forth in Paragraph 1 of this Certificate of Warranty, Neptune, at its option shall, without charge of labor or materials, repair or replace the Water Meter or part thereof, provided that (a) the Water Meter is delivered to a Neptune representative, (b) the Water Meter is accompanied by a Return Material Authorization (RMA), and (c) all costs of delivery to Neptune are assumed by the purchaser of the Water Meter. Neptune's liability is limited to its costs of replacement and repair of the defective water meter. Damages resulting from miscalculation of water usage or lost revenue or profit are not recoverable from Neptune. It is the responsibility of the customer to periodically verify the operation and accuracy of its meters.

5. WARRANTIES ARE INAPPLICABLE UNDER CERTAIN CONDITIONS

The warranties set forth in this Certificate of Warranty do not apply to any Water Meter that has been damaged by, or subjected to, conditions which, in the opinion of Neptune, have affected the Water Meter's ability of performance, including but not limited to: misuse; improper handling, application or installation; excessive operating conditions; foreign materials in the water; aggressive water conditions; tampering or unauthorized repairs or modifications; accidental or intentional damage; acts of God. This Certificate of Warranty shall not apply if product is placed in non-recommended installation, is connected or altered by other than Neptune recommended procedures, is used with other than genuine Neptune meter registers and components, or read by equipment not approved or licensed by Neptune. Neptune makes no claims concerning operability and/or compatibility or third party reading systems. In addition, this Certificate of Warranty shall not apply if third party reading equipment is believed to have caused damage to the meter or register. In order to determine its liability, if any, under this Certificate of Warranty, Neptune shall have the right to inspect any Water Meter or part thereof that is claimed to be defective at Neptune or other location designated by Neptune.

NEPTUNE'S LIABILITY WITH RESPECT TO BREACHES OF THE FOREGOING LIMITED WARRANTY SHALL BE LIMITED AS STATED HEREIN. NEPTUNE'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE. NEPTUNE SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (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 NEPTUNE, OR ANY UNDERTAKINGS, ACT OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.