

ADVANCED METERING INFRASTRUCTURE AGREEMENT

This Advanced Metering Infrastructure Agreement ("Agreement") is made this 17th day of December 2020 (the "Effective Date") between City of Cartersville, GA. ("City"), at 1N. Erwin Street, Cartersville, GA 30120, and Equipment-Controls Company, a Georgia corporation ("Vendor"), at 4555 South Berkeley Lake Road, Norcross, GA 30071.

WHEREAS, City is a municipality servicing approximately 7000 end users of electricity, and approximately 12000 end users of water, and approximately 9500 end users of gas in the territory set forth in Exhibit A ("Service Territory");

WHEREAS, Vendor supplies meters and meter reading technology; and

WHEREAS, City wishes to acquire from Vendor and Vendor wishes to provide to City, a FlexNet Advanced Metering Infrastructure System to read City's electricity, water, and gas meters on the terms set forth herein.

IT IS AGREED:

1. **Terms and Trademarks.** As used in this Agreement, the following terms shall have the following meanings:
 - a. **"Affiliate"** means, with respect to any party, any other entity directly or indirectly controlling, controlled by, or under common control with such party. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such party, directly or indirectly, whether through the ownership of the voting securities, by contract or otherwise, and the terms "controlling" and "controlled" shall have meanings correlative to the foregoing.
 - b. **"AMI System"** identifies the FlexNet Advanced Meter Infrastructure System comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, FCC licenses, and other equipment provided to City hereunder. The AMI System only includes the foregoing, as provided by Vendor. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
 - c. **"Available Meter"** means an installed FlexNet meter or a SmartPoint Module which has been installed on a third party meter, and which, in either case, is not an Unavailable Meter (or on an Unavailable Meter in the case of SmartPoint Modules on third party meters) and which satisfies all of the following criteria:
 - i. it functions properly, is powered and is not a damaged or failed meter
 - ii. it is in a deployment area of meters for City such that a sufficient number of two-way meters are in range of each other;
 - iii. it is serviced by a tower FlexNet Base Station or Echo Transceiver or Remote Transceiver that has not been subjected to a power failure greater than eight (8) total hours;
 - iv. neither it nor the FlexNet Base Station, Echo Transceiver or any other network equipment that serves that meter has been affected by a Force Majeure event;
 - v. illegal or unauthorized jamming of the radio spectrum is not preventing or interfering with radio communication to or from the meter;
 - vi. it is installed in the Service Territory;
 - vii. it has not been reported to City under Vendor' or City's preventative maintenance;

- viii. its functioning or performance has not been adversely affected by a failure of City to perform its obligations or tasks for which it is responsible under this Agreement, including, but not limited to, testing and confirming that the socket to which the meter is connected is in safe operating condition, is fully functional and is not “hot”, damaged or otherwise in need of maintenance or repair;
 - ix. its functioning or performance has not been adversely affected by a failure or insufficiency of the backhaul telecommunications network of City for communications among the components of the Vendor AMI System; and
 - x. it has been installed in compliance with the procedures and specifications approved by City and Vendor.
- d. **“Billing Window”** for a meter means the three day period commencing one day prior to the relevant billing day for such meter and ending two days after such billing day.
- e. **“CPI”** means the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) “All Items Less Food and Energy” for the U.S. City Average for All Items, 1982-84 = 100, not seasonally adjusted, or substantially similar succeeding index. Any CPI increases called forth in this Agreement shall be calculated to the third decimal point (e.g. 2.576%).
- f. **“End User”** means any end user of electricity/water/gas that pays City for the consumption of electricity/water/gas, as applicable.
- g. **“Field Devices”** means the meters and SmartPoint Modules.
- h. **“FlexNet Base Station”** identifies the Vendor manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an Echo Transceiver) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication.
- i. **“Sensus Analytics Software”** identifies the Vendor software identified in the SaaS Agreement under the heading “Sensus Analytics Software” and any Updates and purchased Upgrades to such software.
- j. **“In/Out Costs”** means any costs and expenses incurred by City in transporting goods between its warehouse and its End User’s premises and any costs and expenses incurred by City in installing, uninstalling and removing goods.
- k. **“Intellectual Property”** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author’s rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- l. **“Major Updates”** means releases of the Software that constitute a minor improvement in functionality. For clarity, Major Updates are a subset of “Updates.”
- m. **“Ongoing Fee”** means the annual or monthly fees, as applicable, to be paid by City during the Term as set forth on Exhibit B.
- n. **“Release”** means a Major Update and/or an Upgrade.

- o. **“Remote Transceiver”** identifies the Vendor standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.
- p. **“RF Field Equipment”** means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.
- q. **“RNI”** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules.
- r. **“SaaS Agreement”** means the Software and Spectrum Lease Agreement between the City and Sensus USA, Inc., the form of which is attached hereto as Exhibit E.
- s. **“Server Hardware”** means the RNI hardware.
- t. **“Service Territory”** has the definition set forth in the first Whereas clause.
- u. **“SmartPoint™ Modules”** identifies the Vendor transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at City’s End Users’ premises that take the readings of the meters and transmit those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.
- v. **“Software”** means the software identified in the SaaS Agreement” and any Updates and purchased Upgrades to such software. “Software” includes the FlexWare Software.
- w. **“TouchCoupler Unit”** identifies an inductive coupler connection from a water register to the SmartPoint Module.
- x. **“Unavailable Meters”** include meters with sockets with power cut at the pole, meters that are booted on the line side, sockets that are not provided power due to a power delivery system failure, meters with tamper, theft or other human induced failures that render the meter or SmartPoint Module incapable of providing a read, a Force Majeure event induced failures of the power delivery system, socket or meter, and/or any system or meter maintenance issue that precludes the meter from transmitting its message to the network. Examples of Unavailable Meters include:
 - i. Cut At Pole – a meter for which power has been turned off to the socket by City
 - ii. Booted on Line Side – nominally a meter for which power has been turned off by placing “boots” in the socket from which the power to the meter has effectively been turned off.
 - iii. Failed or flawed power delivery to the meter socket – City power generation, distribution or delivery system failure that has effectively turned off power to the socket and/or meter.
 - iv. Tampered Meters – sockets, meters or distribution assets that have been modified by unauthorized personnel rendering the meter incapable of providing accurate usage readings from that meter.
 - v. Broken TouchCoupler unit — the TouchCoupler unit is damaged by intentional or unintentional acts.
 - vi. Broken Clip — the clip that holds the TouchCoupler unit into the radio package housing is broken and the unit can not complete the inductive electrical connection.
 - vii. Improper installation of the TouchCoupler unit — the TouchCoupler unit is not pushed all the way into the housing clip causing the unit to not be able to complete the inductive electrical connection.

- viii. Radio unit not securely attached to the Antenna unit — The water-proof SmartPoint Module housing is not properly installed and secured to the antenna unit.
 - ix. Damaged antenna - the unit's antenna is damaged by intentional or unintentional acts.
 - x. Damaged radio package — the unit's water-proof radio package is damaged by intentional or unintentional acts.
 - xi. Data Base errors — the unit is removed from the system but not updated in the database. Still shown as in the system when in fact has been removed.
 - xii. Phantom Units — the unit is removed from the system but is still transmitting and being heard by the system.
- y. **“Updates”** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found in the last two previous minor or major releases of the Software. For clarity, “Updates” includes Major Updates.
- z. **“Upgrades”** means all releases of new versions of the Software which constitute a significant improvement in functionality or architecture of the Software.
- aa. **“WAN Backhaul”** means the communication link between the FlexNet Base Stations and Remote Transceivers and the RNI.

List of Exhibits

Exhibit A	Service Territory
Exhibit B	Products and Pricing
Exhibit C	Software Listings
Exhibit D	Removed
Exhibit E	SaaS Agreements (see attachment)
Exhibit F	Statement of Work
Exhibit G	Customer Support
Exhibit H	Network Support Maintenance
Exhibit I	Data Sheets and G500 Warranty
Exhibit J	Vendor Proposal

2. Purchase of Equipment; Warranties.

a. Purchase of Equipment.

- i. City may purchase from Vendor, water, electric and gas products who is Vendor' Authorized Distributor, the quantities and types of Field Devices, RF Field Equipment, Server Hardware, and other goods (collectively, “Equipment”) set forth in Exhibit B at the prices set forth in Exhibit B. Vendor manufactured Equipment shall be covered by the warranty in Section 2(b) below.

b. Warranties.

- i. **Electricity Meters and Electricity SmartPoint Modules.** Vendor warrants the Vendor electricity meters and the electricity SmartPoint Modules installed in Vendor electricity meters to be in compliance with their respective specifications under normal use and service, and to be free from material defects in materials and workmanship for a warranty period of eighteen (18) months from the date of shipment.
- ii. **Gas Meters and Gas SmartPoint Modules.**

- (a) Vendor warrants the Vendor Sonix meters to be free from material defects in materials and workmanship for a warranty period of fifteen (15) years from the date of shipment. Vendor warrants the batteries in the Vendor Sonix meters to be free from material defects in materials and workmanship for a warranty period of ten (10) years from the date of shipment. The warranty period for new spare parts and components sold by Vendor is twelve (12) months from the date of shipment. The warranty period for repaired or refurbished parts repaired by Vendor is one hundred twenty (120) days from the date of shipment, unless repaired pursuant to a warranty, in which case the repair is warranted for the time remaining of the original warranty period.
 - (b) Vendor warrants the Vendor gas SmartPoint Modules as set forth in the "G500" warranty, as set forth in Exhibit I.
- iii. **Water Meters and Water SmartPoint Modules.** Vendor warrants the Vendor water meters and water SmartPoint Modules as set forth in the "G500" warranty, as set forth in Exhibit I.
- iv. **RF Field Equipment.**
 - (a) Vendor warrants the RF Field Equipment to be in compliance with their respective specifications under normal use and service, and to be free from defects in materials and workmanship for a warranty period of twelve (12) months from the date of shipment.
 - (b) After this twelve (12) month period, so long as City remains current in paying the Ongoing Fees outlined in Exhibit B, Vendor shall provide the ongoing repair and replacement of the RF Field Equipment (including parts), provided however that City shall pay for any replacements and/or repairs required to RF Field Equipment (including parts and labor) due to the acts or omissions of City or due to a Force Majeure event. Notwithstanding anything to the contrary herein, Vendor is not responsible for providing any labor or field visits to RF Field Equipment.
- v. **Network Warranty.**
 - (a) Subject to subsection (b), if more than **six (6)** – M400 FlexNet Base Stations, are required for the AMI System to meet the specifications set forth in this Agreement, Vendor shall deliver to the City the hardware for the additional RF Field Equipment without charge to the City, provided that the City shall locate and install all RF Field Equipment as reasonably directed by Vendor. Notwithstanding anything to the contrary, City shall pay for the installation, tower lease fees, and any Ongoing Fees for all equipment provided pursuant to this subsection (a). The City shall have title to all equipment provided pursuant to this subsection (a). This subsection (a) shall only apply to the Meter Territory.
 - (b) Notwithstanding anything to the contrary, the parties recognize and agree that the RF Field Equipment site design and build is based on the specific metering locations and antenna heights provided to Vendor by the City in writing prior to the Effective Date ("Meter Territory"). For clarity, the Meter Territory only contains the individual meter locations and antenna heights specifically provided to Vendor by the City in writing prior to the Effective Date. New or different metering locations and/or antenna heights provided after the Effective Date may or may not require additional RF Field Equipment and/or changes to the RF Field Equipment locations. In the event new and/or different RF Field Equipment locations are required to accommodate these new metering sites and/or antennae heights, City agrees to: pay Vendor for the additional RF Field Equipment hardware, perform the necessary site preparation, and pay for the necessary installation, tower lease, and ongoing fees for all equipment purchased pursuant to this subsection (b). Any equipment

required pursuant to this subsection (b) is excluded from the network warranty calculation described in subsection (a).

- vi. **Server Hardware.** Vendor provides no warranty on the Server Hardware.
- vii. **Third Party Goods.** Notwithstanding anything to the contrary herein, Vendor does not warrant any goods manufactured or software supplied by third parties. For example, if City elects to buy meters from a third party, the SmartPoint Modules installed in such third party meters shall be covered by the warranty above, but any warranty on the meter itself shall be a matter directly between City and such third party meter supplier.
- viii. **Remedy.** If any Field Device or RF Field Equipment fails during the applicable warranty period (a "Failed Good"), Vendor' obligation, and City's exclusive remedy, is, at Vendor' option, to either (i) repair or replace the Failed Good, provided the City (a) returns the product to the location designated by Vendor within the warranty period; and (b) prepays the freight costs to such location; or (ii) deliver replacement components to the City, provided the City installs, at its cost, such components in or on the Failed Good (as instructed by Vendor). In all cases, City shall be responsible for returning the Failed Good to Vendor, including all costs associated with the return of the Failed Good, and Vendor shall be responsible for shipping the repaired or replaced good back to City's warehouse. City shall, in all cases, be responsible for the In/Out Costs. If Vendor determines that the returned good is not defective, City shall pay and/or reimburse Vendor for all expenses incurred by Vendor in the examination of the returned good.
- ix. **Services.** Vendor warrants that its services shall, at the time of performance, materially conform to the contract requirements, and shall be performed in a professional and workmanlike manner, free from defects in workmanship. City's remedy under the warranty for services shall be, at Vendor' sole cost and expense, to correct or re-perform any defective or non-conforming services to assure compliance with the contract requirements.
- x. **Warranty Exceptions.** The warranties do not include costs for removal or installation of products, or costs for replacement labor or materials, which are the responsibility of the City. The warranties do not apply to goods that have been: installed improperly or in non-recommended installations; installed to a socket that is not functional, or is not in safe operating condition, or is damaged, or is in need of repair; tampered with; modified or repaired with parts or assemblies not certified in writing by Vendor, including without limitation, communication parts and assemblies; improperly modified or repaired (including as a result of modifications required under section 2(b)(viii)); converted; altered; damaged; read by equipment not approved by Vendor; for water meters, used with substances other than water, used with non-potable water, or used with water that contains dirt, debris, deposits, or other impurities; subjected to misuse, improper storage, improper care, improper maintenance, or improper periodic testing (collectively, "Exceptions"). If Vendor identifies any Exceptions during examination, troubleshooting or performing any type of support on behalf of City, then City shall pay for and/or reimburse Vendor for all expenses incurred by Vendor in examining, troubleshooting, performing support activities, repairing or replacing any Equipment that satisfies any of the Exceptions defined above. The warranties do not apply in the event of Force Majeure
- xi. THE ABOVE WARRANTIES IN THIS SECTION 2(b) ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE GOODS, SOFTWARE AND SERVICES SOLD OR OTHERWISE PROVIDED BY VENDOR. THERE ARE NO IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.
- xii. VENDOR ASSUMES NO LIABILITY FOR COSTS OR EXPENSES ASSOCIATED WITH LOST REVENUE OR WITH THE REMOVAL OR INSTALLATION OF EQUIPMENT. THE FOREGOING REMEDIES ARE CITY'S SOLE AND EXCLUSIVE REMEDIES FOR THE

FAILURE OF EQUIPMENT, SERVICES OR LICENSED SOFTWARE TO CONFORM TO THEIR RESPECTIVE WARRANTIES.

3. **Installation of Equipment.**

- a. **Generally.** The parties shall have their respective obligations for the deployment and operation of the AMI System as set forth in the Statement of Work attached as Exhibit F.
- b. **Field Devices.** City shall install the Field Devices at its End User's premises, or other location as applicable. City shall first test and confirm that each socket to which a Field Device will be connected is in safe operating condition, is fully functional and is not "hot", damaged or otherwise in need of maintenance or repair.
- c. **RF Field Equipment.** Vendor shall perform the site selection survey and propagation analysis in the Service Territory to determine where to locate the RF Field Equipment. Each party shall perform its respective obligations in Exhibit F with regard to the RF Field Equipment installation.

4. **IT Systems Integration Services.** Integration of the Server Hardware into City's internal systems is not included in this Agreement. If City desires Vendor to assist City with integration of the Server Hardware into City's new or existing internal IT systems, City and Vendor shall agree on a price and a scope of work for such services.

5. **Project Management.** Project Management of the AMI System deployment is not included in this Agreement.

6. **Ongoing Maintenance of the System.**

- a. **Field Devices.** City is responsible for maintaining its field population of Field Devices. City shall provide the field services labor to visit a problem Field Device and perform diagnostics and repair or replacement.
- b. **RF Field Equipment.** City shall be responsible for the ongoing monthly operations and expenses related to siting of the RF Field Equipment, including any leasing costs, construction costs, taxes and costs of WAN Backhaul. City shall pay for electric power to the RF Field Equipment.
- c. **Customer Support.** Vendor shall provide the Customer Support set forth in Exhibit G. Furthermore, Vendor shall provide the network support maintenance set forth in Exhibit H.

7. **Software License, Third Party Software and Software Maintenance.** Rights and obligations with respect to the Software are addressed in the SaaS Agreement. City shall enter into, and Vendor shall cause Sensus USA, Inc. to enter into the SaaS Agreement. The fees payable by City under the SaaS Agreement are set forth in Exhibit B and shall be payable to Vendor.

a.

8. **Spectrum.** Rights and obligations with respect to transmission and reception of signals over the radio spectrum in connection with equipment delivered under this Agreement are set forth in the SaaS Agreement.

9. **Payment.**

a. **Escalation.**

- i. City shall pay for all goods and services provided by Vendor hereunder at the prices set forth in Exhibit B.
- ii. The pricing in Exhibit B shall remain firm until January 1, 2023 ("General Trigger Date").

- b. **Equipment.** Invoices for all Field Devices, RF Field Equipment, Server Hardware and any other goods sold by Vendor hereunder shall be delivered along with the relevant goods.
- c. **Third Party Devices.** In cases where City requests or requires Vendor to deliver SmartPoint Modules to a third party meter manufacturer (or any other third party), payment for such modules is due within thirty (30) days of the invoice date to such manufacturer or other third party, irrespective of how long it takes such third party to deliver the SmartPoint Modules to City.
- d. **Services.** Invoices for Ongoing Fees and services shall be delivered annually or monthly, as applicable, in advance. Invoices for other services shall be delivered upon completion of the applicable service.
- e. **Invoices and Payment.**
 - i. **Address.** Vendor shall send all invoices to: 1N. Erwin Street, Cartersville, GA 30120
 - ii. **Payment of Invoices.** City will pay all invoices within thirty (30) days of the invoice date.
- f. **Disputed Invoices; Withholding.**
 - i. If City disputes an invoice, it shall give written notice of the dispute to Vendor within 30 days of the invoice date. If it does not do so, the entire invoice shall be deemed payable without reduction, set off, or claim. If City gives written notice of the dispute within the required thirty (30) days, it shall, at such time as the notice is given, pay the undisputed amount of the invoice and the disputed portion shall be resolved by the parties or, if necessary, under the dispute resolution provision of Article 18. If it is ultimately determined that some or all of the disputed amount was payable, that amount shall bear interest from the original due date until City pays it at the Interest Rate.
 - ii. City may withhold payment on an invoice for defective goods and services.
- 10. **Taxes.** All prices quoted are exclusive of federal, state and municipal taxes. City shall be liable for all sales, use and other taxes (whether local, state or federal) imposed on this Agreement or the goods, services, licenses, and/or other rights provided to City hereunder.
- 11. **Term and Termination.**
 - a. This Agreement shall commence on the Effective Date and terminate on December 31, 2022 unless terminated pursuant to Section 11.b, provided that it may be extended for a longer period by mutual written agreement ("Term").
 - b. Either party may earlier terminate this Agreement if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party.
 - c. Upon any expiration or termination of this Agreement, Vendor' and City's obligations hereunder shall cease, but the rights and obligations under the SaaS Agreement shall continue in full force and effect in accordance with the terms and conditions of the SaaS Agreement.
 - d. ..
- 12. **General Indemnity.** Vendor (the "Indemnifying Party") shall and hereby does indemnify, defend and hold harmless the City (the "Indemnified Party") from and against all Third Party Litigation Costs incurred by any Indemnified Party in any Third Party Litigation caused by: (i) the Indemnifying Party breaching this Agreement; or (ii) the negligence or intentional misconduct of the Indemnifying Party. As used in this Agreement, "Third Party Litigation" means litigation brought against an Indemnified Party by a Person that is not an Indemnified Party; and "Third Party Litigation Costs" means all reasonable attorneys' fees and other legal expenses incurred in the Third Party Litigation as well as the judgment

rendered or settlement reached therein. To avoid doubt, "Third Party Litigation" does not include disputes between the Parties or their Affiliates. It is meant to cover only third party claims by persons or entities other than Indemnified Parties. The Indemnifying Party shall have the right to select counsel in such proceedings and control such proceedings and shall be responsible for the legal costs thereof as well as any judgment rendered therein or settlement reached therein. Nevertheless, the Indemnifying Party shall not settle any claim which may affect the Indemnified Party without the Indemnified Party's prior written approval.

13. **Limitations on Liability.**

- a. Vendor' aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the total amount paid by City to Vendor under this Agreement. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise.
- b. As separate and independent limitations on liability, Vendor' liability shall be limited to direct damages. Vendor shall not be liable for; (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by City or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (iv) manual meter read costs and expenses; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure.
- c. The limitations on liability set forth in this Agreement are fundamental inducements to Vendor entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Vendor the maximum protection permitted under law.
- d. To the maximum extent permitted by law, no Cause of Action may be instituted by City against Vendor more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.

14. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party so affected will give written notice of the existence, extent and nature of the Force Majeure to the other party. The party so affected will take reasonable steps to mitigate the Force Majeure. The term "Force Majeure" as used in this Agreement means an event beyond the control of the affected party, including acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder provided that such unavailability is not due solely to pricing increases or escalation, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosions.

15. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent: (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Vendor shall not subcontract its obligations hereunder without the prior written consent of City, which consent shall not be unreasonably withheld, provided that City acknowledges Vendor may use subcontractors to perform RF Field Equipment installation, the systems integration work, or project management, without requiring City's consent.

16. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Georgia. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination ("Disputes") shall first be

resolved by the Parties attempting mediation in Georgia. If the Dispute is not resolved within sixty (60) days of the commencement of the mediation, it shall be litigated in the Bartow County Superior Court or the United States District Court, Northern District of Georgia, Rome Division

17. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.
18. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both City and by a vice president (or higher) of Vendor.
19. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
20. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year written below.

Equipment-Controls Company

City of Cartersville, GA

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: Matthew J. Santinni _____
Title: Mayor _____
Date: _____

Attest:
Signature: _____
Name: Julia Drake _____
Title: City Clerk _____
Date: _____

