



**SPECIAL MEETING
AGENDA
CITY OF GUSTINE
CITY COUNCIL
COUNCIL CHAMBERS, CITY HALL
352 5th STREET GUSTINE, CALIFORNIA
SEPTEMBER 22, 2020 – 6:00 P.M.**

In accordance with State and County "stay-home" orders and in an effort to protect public health and prevent the spread of COVID-19 (novel coronavirus), the City of Gustine will conduct the City Council meeting in accordance with the Governor's Executive Order N-29-20 as follows:

1. Council Chambers at City Hall will be closed to the public. The City Council encourages the public to join the meeting from your computer, tablet or smartphone by following the link: <https://global.gotomeeting.com/join/528193397> or via telephone by dialing (872) 240-3212, access code: 528-193-397.
2. Members of the public who wish to comment on matters before the Council, in lieu of doing so in person, may do so by joining the meeting virtually or by dialing in via telephone. Members of the public who choose to use the teleconference line are urged to place themselves on MUTE while listening in order to reduce static and background noise. A list of telephone keypad commands is available immediately following the City Council agenda in the agenda packet. Alternatively, members of the public may provide comment on an item by submitting an email to the City Clerk at: mcorrea@cityofgustine.com. Email comments will be read aloud at the meeting and included in the record, and will be subject to the same three (3) minute time limit when read aloud. Please include the agenda item in the subject line of the email. All email comments must be received by 5:00 p.m. on Tuesday September 22, 2020 to be included in the meeting.
3. If you have questions or require accommodation, please contact the City Clerk's office at (209) 854-9407 as soon as possible.

CALL TO ORDER - PLEDGE OF ALLEGIANCE

Please take a moment to silence your cell phone.

ROLL CALL

Council Members: Ford – Alexander – Turner - Mayor Pro Tem Oliveira - Mayor Nagy

PUBLIC COMMENT

Members of the audience may address the City Council on any item that has been described in the notice for the meeting before or during consideration of that item and may step to the podium, State their name and City of residence for the record (requirement of name and City of residence is optional) and make their presentation. Please limit presentations to three minutes. The City Council cannot take action on matters not on the Agenda, unless the action is authorized by Section 54954.2 of the Government Code.

ADMINISTRATIVE AGENA

1. **Consider Authorizing City Manager to Execute Amendment to Energy Services Agreement for Water Meter Replacement Project**

1. Receive Staff Report
2. Receive Public Comment
3. Consider a motion to authorize City Manager to execute Amendment No. 1 to Energy Services agreement with Schneider Electric Buildings America, Inc.

CLOSED SESSION

ADJOURNMENT

Note:

1. In compliance with the Americans with Disabilities Act, a disabled person requesting a disability-related modification or accommodation to participate in this meeting, must contact City Hall at (209) 854-6471 or (209) 854-2127 (fax). Requests must be made as early as possible, preferably one-full business day before the start of the meeting.
2. Any document provided to a majority of the City Council regarding any open session item on this agenda is available for public inspection during normal business hours at the front counter of City Hall located at 352 5th Street, Gustine, CA. Documents or writings received after the general distribution of the Agenda are also available for inspection.

CERTIFICATION

I, Melanie Correa, Deputy City Clerk do hereby declare under penalty of perjury that the foregoing Agenda was posted at the Gustine City Hall, 352 5th Street, Gustine CA and made available for public review on this 21st day of September 2020, at or before 12:00 p.m.



Melanie Correa



**COUNCIL AGENDA ITEM
SPECIAL MEETING
SEPTEMBER 22, 2020**

PREPARED BY: Doug Dunford, City Manager

SUBJECT: Consider and Authorize Execution of Amendment No. 1 to Energy Services Agreement with Schneider Electric Buildings Americas, Inc. (Water Meter Replacement Project)

BACKGROUND:

The City entered into an Energy Services Agreement ("Agreement") with Schneider Electric Buildings Americas, Inc. ("Schneider Electric") on August 16, 2017. That Agreement was approved pursuant to Government Code section 4217.10 et seq., which authorizes the City to enter into energy services agreements for types of conservation measures designed to result in energy savings to the City. The Agreement with Schneider Electric implements the City's water meter replacement project, whereby existing water meters requiring manual readings by City staff will be replaced with Advanced Metering Infrastructure ("AMI"). The Agreement included a contract price of \$1,554,438 to be paid to Schneider Electric for completion of the Project (including development, design, engineering, labor, equipment, materials, etc. specified in the Scope of Work). Funding for the agreement was to be provided through a combination grant/loan from the State Water Resources Control Board, whereby 50% of the project cost would be covered by a grant and 50% would be provided through a low-interest loan paid by the City. At the time, it was estimated that the entire Project would take about 6 months from the time of commencement and would be completed by July 2, 2018.

Since entering into the Agreement, significant delays in receiving the approved funding from the State Water Board suspended commencement and completion of the Project. However, the State Water Board also revised its original grant offer to the City to provide 100% grant funds to fully fund the Project in the amount of \$2,224,438.00. The final, formal grant documents reflecting the new grant funding were received by the City in July 2020. The City Council authorized the City Manager to execute the grant agreement with the State Water Board at the August 4, 2020 City Council meeting. The grant agreement has been executed by the City and the City is now waiting on receipt of the fully executed agreement from the State Water Board to proceed.

Accordingly, it is now time to update certain provisions of the original Agreement with Schneider Electric to reflect the new Contract Price and Project Schedule. Additional amendments are proposed to reflect revised water meter revenues and a revised scope of work to reflect current conditions and updated water and sewer rates and revenue projections. The Amendment will modify certain specific provisions of the existing Agreement only – it is not a new or restated agreement. All other terms and conditions

of the original Agreement will remain in effect.

DISCUSSION:

The attached Amendment No. 1 to the Energy Services Agreement contains the following updates:

Changed Contract Price from \$1,554,438 to \$2,259,787

**The grant funding from the State Water Board is \$2,224,438. This leaves a difference of \$35,349 to be paid to Schneider Electric. The increase is due to certain increased estimates in cost of work that has resulted from the 3-year delay in contract performance, and is expected to be offset in part by guaranteed increased revenues realized in the first year(s) of the new meters.*

Changed Completion Date and Project Schedule (Exhibit B of the Agreement) to reflect current timelines, with project completion now set for June 30, 2021 (matches the timelines for the State Water Board grant)

Changed Scope of Work (Exhibit A of the Agreement) to reflect updated numbers and equipment for the City's water meter retrofits, based on current City data

Changed Exhibits L, M, and N of the Agreement to reflect adjustments to projected water meter revenues

Exhibit L is the Performance Guarantee, which reflects increased estimated amounts in water revenues of \$48,554, based on current rates and projected meter replacements, for purposes of calculating Schneider Electric's guarantee.

Exhibit M is the Measurement & Verification Plan, which demonstrates the current methodology used by Schneider Electric in making its guarantees contained in Exhibit L. According to Schneider Electric, the methodology used has changed over the years. Which now uses different language and formulas than the original Agreement, to focus on total projected water revenues instead of energy savings.

Exhibit N is the Customer Responsibilities for Performance Guarantee, which has been updated to reflect more accurate wording, for example more clearly specifying the water meter project, removing inapplicable provisions, and replacing "customer" with "owner"

FISCAL IMPACT:

Projected energy savings and efficiency due use of AML, as well as significant reduction in staff time and expense. The new contract price will obligate \$35,349 paid by the City to Schneider Electric, which is expected to be recovered by water revenues within the first year of project completion.

RECOMMENDATION:

Approve and Authorize Execution of Amendment No. 1 to Energy Services Agreement between City of Gustine and Schneider Electric Buildings Americas, Inc.

EXHIBITS:

A) Amendment No. 1 to Energy Services Agreement

Includes attachments:

Amendment No. 1 Exhibit A

Amendment No. 1 Exhibit B

Amendment No. 1 Exhibit L

Amendment No. 1 Exhibit M

Amendment No. 1 to Exhibit N

*A copy of the original Energy Services Agreement is available at City Hall, or by contacting the City Clerk's Office (large file).

**AMENDMENT NO. 1
TO ENERGY SERVICES AGREEMENT
BETWEEN CITY OF GUSTINE
AND SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.**

This Amendment No. 1 to the ENERGY SERVICES AGREEMENT ("Amendment No. 1") is made effective as of September 22, 2020 ("Amendment No. 1 Effective Date") by and between the City of Gustine ("Owner"), and Schneider Electric Buildings Americas, Inc. ("Contractor"), a Delaware corporation. Owner and Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Parties previously entered into that certain agreement dated August 16, 2017 and entitled ENERGY SERVICES AGREEMENT ("Agreement"). As described in more detail in the Agreement, it provides for the development, construction, and installation of energy and operational cost savings measures.

B. Owner has received funding commitment from the California State Water Resources Control Board and reaffirms that all requirements of Government Code section 4217.10 *et seq.* are met.

C. Thus, the Parties desire to enter into this Amendment No. 1 in order to reflect certain updated and changed terms for completion of the Work by the Contractor. The Agreement, as amended by this Amendment No. 1, shall be referred to herein as the "Amended Agreement."

Now, in consideration of the foregoing and of their respective rights and obligations pursuant to the Amended Agreement, the Parties hereby agree as follows:

AGREEMENT

1. Scope of Work. The Scope of Work to be completed by the Contractor in connection with the Project, as set forth in Exhibit A of the Agreement, is hereby modified and replaced to read in full as described in the "Amendment No. 1 Exhibit A" attached hereto and incorporated herein. Accordingly, in addition to all other work, services and things required pursuant to the Agreement, the Contractor must furnish all materials, labor, equipment, supervision and other things of whatever nature as are necessary and/or convenient to fully and satisfactorily complete the Work, all in accordance with the terms and conditions and other applicable provisions of the Amended Agreement.

2. Contract Price. The "Contract Price" number set forth in Box D of the Energy Services Agreement, Cover Page shall be amended and replaced to read "\$2,259,787."

3. Completion Date/Project Schedule. The "Completion Date" set forth in Box B of the Energy Services Agreement, Cover Page shall be amended and replaced to read "6/30/2021." Exhibit B of the Agreement entitled "Project Schedule" is hereby modified and replaced to read in full as described in the "Amendment No. 1 Exhibit B" attached hereto and incorporated herein.

4. Adjustments to stipulated new water revenues. Exhibit L of the Agreement entitled

“Performance Guarantee” is hereby modified and replaced to read in full as described in the “Amendment No. 1 Exhibit L” attached hereto and incorporated herein. Exhibit M of the Agreement entitled “Measurement & Verification Plan” is hereby modified and replaced to read in full as described in the “Amendment No. 1 Exhibit M” attached hereto and incorporated herein. Exhibit N of the Agreement entitled “Owner Responsibilities for Performance Guarantee” is hereby modified and replaced to read in full as described in the “Amendment No. 1 Exhibit N” attached hereto and incorporated herein.

5. No Other Modifications. This Amendment No. 1 shall be construed as the sole extent of the modifications to the Agreement. Except as hereby modified, all terms and conditions of the Agreement shall continue in full force and effect in accordance with its provisions.

6. Governing law and Venue. This Amendment No. 1 shall be construed in accordance with the laws of the State of California, notwithstanding any choice of law, conflict of laws, or other provision of any state, federal, or other law. Any arbitration, mediation, litigation or other proceeding arising out of this Amendment No. 1 shall be initiated and conducted in the County of Merced, State of California.

7. Severability. If, for any reason, a court of competent jurisdiction determines that any provision of this Amendment No. 1 is to any extent invalid, unenforceable, or void, which determination becomes final, such decision shall not affect the validity of each of the remaining provisions of this Amendment No. 1, which shall remain in full force and effect.

8. Entire Agreement. This Amendment No. 1 represents the entire understanding of the Parties with respect to the matters addressed herein, and this Amendment No. 1 supersedes and cancels all prior and contemporary understandings, promises or representations relating to such matters, whether written or oral.

9. Counterparts. This Amendment No. 1 may be signed in one or more counterparts, which individually and collectively shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Amendment No. 1 bearing original signatures of both parties.

10. Due Authority of Signatories. Each person signing this Amendment No. 1 on behalf of a Party represents and warrants that he or she has been duly authorized by appropriate action of such Party to sign, and thereby bind such Party to this Amendment No. 1. Pursuant to Section 7.11 of the Agreement, this Amendment No. 1 is subject to approval of Owner’s City Council, and shall not be effective unless and until such approval.

In Witness Whereof. The Parties have executed this Agreement as evidenced by the signatures of their authorized representatives below.

City of Gustine

Schneider Electric Buildings Americas, Inc.

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Fed. Tax ID No: 75-2066352

EXHIBIT A - WATER METER REPLACEMENT & RETROFIT

The following water meters will be installed with Advanced Metering Infrastructure (AMI) type registers as part of this project. These components will allow the meter readings to be recorded remotely from central data collection units.

Water Meter Retrofits

Size	Type	Quantity	Description
5/8"	Badger E Series	628	Stainless steel housing with ultrasonic reader. ORION transmitter for AMI
3/4"		3	
1"		677	
1 1/2"		11	
2"		5	
2 1/2"		1	
4"		1	
-		Retrofit Transmitter	
-	Meter Installation for flat rate conversion – Badger E Series	13	Install 5/8" meters for existing flat rate accounts
-	Lid Replacement	284	Metal Lid to Composite Lid
-	Meter box replacement	205	-

The project includes all necessary project management, labor, and materials to perform the water meter retrofits with AMI as shown above. This scope was created using information from the Owner's water billing system, surveys, and estimates from this information. This scope covers the residential meter account quantities and types listed above.

- The Owner's Water Customers will be notified of the meter replacement before performing the actual work. If necessary, the meter work will be scheduled with the customer to avoid any detrimental interruptions.
- The existing piping structure will be examined to verify its condition. Should the service line be in a condition that the existing piping will be damaged or the existing piping has a pre-existing leak then no installation will be performed and the Owner will be notified for further review.
- Should major pipe reconfiguration and/or vault reconstruction be required to incorporate the new meter, no installation shall be performed and the Owner will be notified for further review.
- When needed, the Owner will provide an employee to assist in locating meters and to shut off main valves in situations where the meter isolation valves do not hold. Installation time is estimated at four months of on-site work.
- Meter box and lid shall be inspected. Approval from the Owner will be obtained prior to replacing any damaged meter boxes or lids. If the number of boxes exceeds the amount listed above, the boxes will be replaced as an addition to the project price.
- Additional lids will be replaced as needed to accommodate the water meter transmitter.
- Meters will be isolated from the up-stream line pressure by use of the inlet curb stop valve. If the curb stop does not exist or if the valve does not operate properly and the installation cannot be performed the owner will be notified for further review.
- Replacement meter will be installed using new inlet and outlet gaskets. Meters will be replaced like-for-like. Installation of strainers, test valves, bypasses or piping modifications are not included.
- Contractor takes responsibility for underground piping and valves for 12 inches on either side of the meter resulting from meter removal or installation. Any leaks caused by the installation of the new meter will be repaired with like for like materials by Contractor.
- Meters must be accessible to the installation team. The definition of an accessible meter includes:
 - Meter account and location data are accurate
 - Meter access is not blocked (ex: car parked over meter or meter located in a fenced

- area with a dog)
 - Residential type meter is located no more than 18" below the top of the meter box
- If a meter is not accessible then no installation will be performed and the Owner will be notified for further review.
- Storage facilities for meter inventory and staging area will be supplied by the Owner.
 - A hose bib if available and accessible will be opened at the residence to allow line flushing and the purging of any air in the system. The curb stop valve will be reopened and the new meter will be inspected for leaks.
 - Water meters replaced as part of this project will be returned to the Owner.
 - If needed, the Owner agrees to provide traffic safety during installation as required.
 - As routes are completed, the Owner agrees to complete their inspections and sign offs according to the Contractor's route acceptance and sign off procedures.
 - The Owner agrees to provide support for hard to find meter locations and system isolation assistance when needed.
 - The Owner agrees to provide support on the location of the installation of meters at existing residential flat rate accounts.
 - If required during system integration, facilities for the information system manager will be supplied by the Owner.
 - Contractor will provide all necessary data and support for the data integration into the Owner's billing system. Contractor will coordinate route installations working closely with the Owner's billing department to execute the project in a planned and organized manner. Contractor will coordinate training for the Owner's personnel for the new AMI system.
 - Hazardous material removal or abatement (including asbestos, lead, etc.) is excluded
 - Lead piping will not be replaced. The meter will only be exchanged if it can be done without disturbing the lead piping. If the meter cannot be replaced the Owner will be notified.

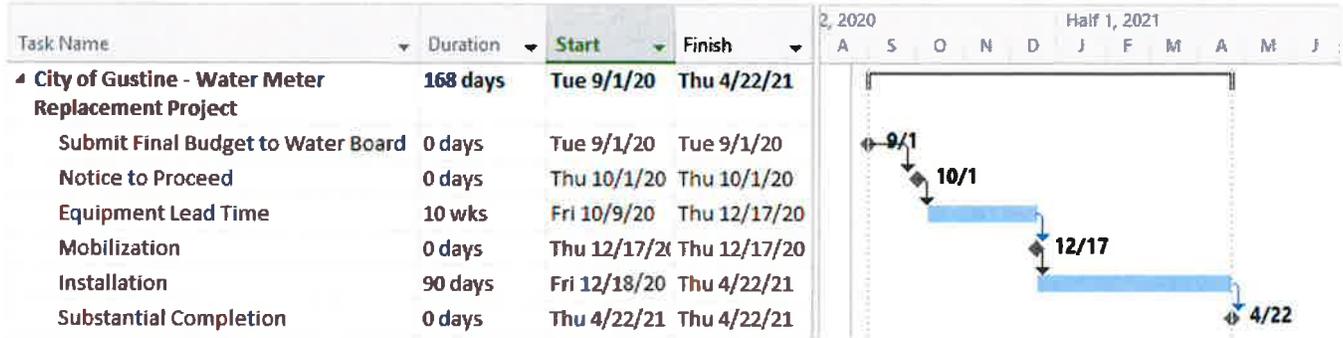
ADVANCED METERING INFRASTRUCTURE (AMI)

The Advanced Metering Infrastructure system will include the following:

- Cellular Data Collector(s)
- Contractor to coordinate and provide support for Tyler Technologies and Owner to Interface meters to the Owner's Billing Software
- Contractor to coordinate and provide support for Badger and Owner for training to operate Badger software
- One year of AMI product support and Beacon data hosting

Exhibit B - Project Schedule

The following is an example of a possible schedule for this contract. Factors such as grant submission, grant approval, and issuance of the Notice to Proceed will impact the actual construction schedule.



AMENDMENT NO. 1 EXHIBIT L: PERFORMANCE GUARANTEE

The Performance Guarantee provided by Contractor will be as follows:

Year	Annual Guaranteed Water Revenues (Meter Accuracy)	Cumulative Guaranteed Revenues (Meter Accuracy)
1	\$48,554	\$48,554
2	\$48,554	\$97,108
3	\$48,554	\$145,662
4	\$48,554	\$194,216
5	\$48,554	\$242,770
6	\$48,554	\$291,324
7	\$48,554	\$339,878
8	\$48,554	\$388,432
9	\$48,554	\$436,986
10	\$48,554	\$485,540
11	\$48,554	\$534,094
12	\$48,554	\$582,648
13	\$48,554	\$631,202
14	\$48,554	\$679,756
15	\$48,554	\$728,310
16	\$48,554	\$776,864
17	\$48,554	\$825,418
18	\$48,554	\$873,972
19	\$48,554	\$922,526
20	\$48,554	\$971,080
Total	\$971,080	\$971,080

The procedure used to calculate revenues is described in Exhibit M.

GUARANTEED SAVINGS RECONCILIATION

Owner, if required, will send Contractor all necessary utility or energy data as set forth in Exhibit N herein. Within sixty (60) days of receipt of such information for the previous Guarantee Year, Contractor will determine the Actual Revenue for such Guarantee Year hereafter defined as "Revenue Reconciliation".

In the event the Actual Revenues are less than the amount stated above, Contractor may, at its sole option, either pay Owner the net present value of the series of annual revenue reconciliations at 5% interest rate, each calculated as the difference between the Annual Revenue Guarantee and the Actual Revenue amount for the corresponding twelve (12) months, calculated as shown herein, or Contractor may elect to pay only for the revenue shortfall to date and extend the measurement period for twelve (12) months at no cost to Owner. Contractor will make payments for any revenue shortfall to Owner within thirty (30) days of that year's Revenue Reconciliation. At the end of this extended measurement period, Contractor will again determine the revenue for the remaining guarantee periods using the methodology as set forth in Exhibit M and will again choose to reconcile any shortfalls with the same options presented at the conclusion of the initial measurement period. Contractor will make payments for any revenue shortfalls to Owner within thirty (30) days of the Revenue Reconciliation.

Owner acknowledges that population growth or shrinkage and changes in residential accounts may affect water consumption and its associated water revenue. Additionally, revenue will depend on factors other than improved meter accuracy, such as, well production, consumption, water utility rates, and weather among others. The guarantee is limited solely to the accuracy of the water meters, operating under normal conditions. The baseline period used to estimate the increased revenue was July 2019 through June 2020.

AMENDMENT NO. 1 EXHIBIT M: MEASUREMENT & VERIFICATION PLAN

WATER/SEWER RATE DATA

- The cost of water in any period will be determined by applying the rates as defined below to the water/sewer water used in a given period for each applicable meter.

Water Rates

Description	Rate ID	Base Charge	Tier 1		Tier 2		Tier 3		Tier 4		Tier 5	
			> kGal	\$/kGal								
Residential	201a	\$29.54	3.740	\$1.5642	7.48	\$1.9118	14.96	\$2.2995	22.44	\$2.8610	29.92	\$3.5160
Residential Outside City	204a	\$88.63	3.740	\$1.5642	7.48	\$1.9118	14.96	\$2.2995	22.44	\$2.8610	29.92	\$3.5160
Flat Residential	205a	\$29.54										
Commercial	211a	\$29.54	3.740	\$1.5642	7.48	\$1.9118	14.96	\$2.2995	22.44	\$2.8610	29.92	\$3.5160
Fire Hydrant	212a	\$30.75	3.740	\$1.5642	7.48	\$1.9118	14.96	\$2.2995	22.44	\$2.8610	29.92	\$3.5160
Apartment	215a	\$37.09	3.740	\$1.5642	7.48	\$1.9118	14.96	\$2.2995	22.44	\$2.8610	29.92	\$3.5160
OLM Catholic School	216a	\$1,148.87										
High School	217a	\$1,271.97										
Middle School	218a	\$1,354.02										
Elementary School	219a	\$1,354.02										
No Charge	220a	\$0.00										

Sewer Rates

Description	Rate ID	Base Charge	Tier 1	
			> kGal	\$/kGal
Residential	301a	\$31.84		
Residential Outside City	302a	\$40.13		
Apartments	304a	\$79.05		
Mobile Home	305a	\$1,040.76		
Flat Commercial	321a	\$17.64		
Commercial	322a	\$22.69	5.236	\$0.03075
Restaurant	323a	\$31.84	7.480	\$0.05481
Light Industry	324a	\$145.63		
School	343a	\$132.50		
Secondary School	344a	\$257.50		

NON-MEASURED REVENUE

- A. Overview of M&V Plan, and Revenue Calculation
- B. Annual Non-Measured Revenue
- C. Performance Period Verification Activities

A. Overview of M&V Plan, and Revenue Calculation

The Actual Revenue associated with this methodology will be agreed upon as outlined herein and will not be verified by measurements after implementation has occurred. Customer and ESCO agree to accept the annual revenue values included in Section B with no additional verification. In the event that verification steps are performed by Customer or ESCO, the annual revenue values included in Section B will still be the reported revenue and values used for reconciling the guarantee in Exhibit L. Section B details the agreed upon revenue.

B. Annual Non-Measured Revenue (Meter Accuracy)

Water Utility Revenue (Meter Accuracy)

The annual revenue in the table below for each measure will be claimed for each Guarantee Year after the Revenue Guarantee Commencement Date.

Non-Measured Revenue	Revenue
Water Meter Revenue (Meter Accuracy) Increase	\$48,554

C. Performance Period Verification Activities

Performance Period accuracy of water meter in each flow category will be determined by taking samples of the accuracy of the post-project water meters. This will be completed at least 12 months after the Date of Commencement of this Contract. Accuracy will be computed by dividing measured consumption by the actual water flow during a short-term test. These tests may be performed at the meter location or at a remote testing facility. Results of accuracy testing will be provided to Customer.

EXHIBIT N: OWNER RESPONSIBILITIES FOR PERFORMANCE GUARANTEE

GENERAL RESPONSIBILITIES

Owner acknowledges and agrees that proper maintenance is essential to any water metering program. Therefore, Owner agrees to undertake the following responsibilities:

Owner agrees to: (1) provide, or cause its suppliers to provide, periodic utility invoices to Contractor within ten (10) days of receipt, (2) execute all Owner responsibilities as outlined herein, and (3) provide to Contractor reasonable access to all Owner facilities and information necessary for Contractor to perform its responsibilities. Access will include, but is not limited to, the following items:

- All residences served by the meters listed within this Contract
- Personnel with responsibility for operating and/or managing the water metering system listed within this Contract
- Monthly utility invoices and billing history for all of the meters listed within this Contract
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed within this Contract
- Any data relevant to M&V associated with this Contract
- Water meters required for accuracy sampling. If access is not provided, the missing meter's performance will be estimated as equal to the projected performance.

Should it be needed, Owner will solely be responsible for providing communications and/or network interfaces to the water meter system for ongoing M&V activities.

Owner will designate a "Primary Operator" of the system. The Primary Operator is defined as the individual who will be trained by Contractor during the installation period and will be responsible for daily operation and maintenance of the equipment and systems necessary to achieve the Performance Guarantee. Owner will notify Contractor within five (5) days after the departure or termination of the Primary Operator. Within ten (10) days of the departure of the current Primary Operator, Owner will designate a new Primary Operator and shall provide Contractor access to train the new Primary Operator. Contractor shall train a new Primary Operator at the sole expense of Owner on a time and materials basis.

MAINTENANCE RESPONSIBILITIES

Owner agrees to use its best efforts to maintain the residential water meter system in original operating condition ("Original Operating Condition") with allowance for normal wear and tear. If the residential water meter system is operating at any state other than the Original Operating Condition Owner agrees to (1) repair or replace the residential water meter system immediately, and (2) contact a PASS representative at 1-800-274-5551 option 4, within 24 hours of such event. Contractor reserves the right to adjust the amount of Performance Guarantee associated with the Failed components of the residential water meter system for the duration of the failure in the Annual Savings Guarantee.

Owner will agree to maintain all parts of the Project site(s) where the residential water meter system reside including but not limited to components, equipment, machinery, SCADA systems, structure of the facility(s), computer hardware, network and IT systems, either existing or newly installed. Owner must comply with the general maintenance requirements specified by equipment manufacturers and the maintenance tasking guidelines included in the operating and maintenance manual. Owner will be responsible to provide to Contractor documentation that proper maintenance has been performed at ESCO'S request within fifteen (15) days of written request.

Notwithstanding anything to the contrary contained herein, the residential water meter system must be maintained in proper working condition in all cases where the performance of said affects or could affect

the ability to achieve, measure or verify the Annual Revenue Guarantee. Should Owner refuse to perform the required maintenance as required in this Contract, Contractor and Owner shall agree to one of the following means of recourse: (1) Contractor will adjust the Performance Guarantee associated with that residential water meter system pursuant to Exhibit N, or (2) Contractor may terminate this Performance Guarantee and any and all obligations and liabilities of Contractor associated therewith upon fifteen (15) days written notice.

MAINTENANCE TASKING FOR WATER METER ACCURACY

As part of this agreement, Owner and Contractor concur that proper maintenance is an essential part of a complete revenue generation program. Therefore; Owner agrees to maintain all new and existing water meter equipment involved with the Performance Contract to ensure maximum operating efficiencies. Standard preventative maintenance and periodic meter testing procedures should be followed to improve equipment performance and extend equipment life. Owner must make available to Contractor all testing and maintenance logs. Any unusual meter conditions must be promptly reported to Contractor for further inspection.

Owner and Contractor agree that hardness of water (ex: calcium and magnesium content) as well as volume of water can adversely affect the accuracy of the meters over time. If a water meter shows signs of excessive damage due to debris passing through the water meter, the water meter will be excluded from the accuracy testing sample.

Owner agrees to operate the installed water meter equipment according to the manufacturer's recommendations.