

Installation Services Agreement

CITY OF ROCHELLE, IL (“Buyer”) and FERGUSON ENTERPRISES, INC. (“Seller”) enter into this Installation Services Agreement (“Agreement”) effective as of _____, 2018.

1. **SCOPE:** The terms and conditions stated herein (“Terms”) shall apply to all purchases of products and services made by or through the Buyer from the Seller on or after the effective date. No other terms and conditions or modifications contrary to the Terms set forth herein covering the services shall be effective unless accepted in writing and signed by a duly authorized officer of both parties. The parties acknowledge that standard business forms may be used to facilitate processing orders including but not limited to quotations, acknowledgements, invoices, purchase orders and delivery tickets jointly referred to as “Standard Form.” However, the Terms herein shall supersede any such terms and conditions that may appear on any such Standard Form other than scope of services, price, payment terms and delivery schedule, as set forth on Attachment A (as may be amended by the parties from time to time).

2. **LIENS:** Seller shall have no mechanic’s lien rights.

3. **COMPLIANCE WITH LAWS/REGULATIONS:** Seller shall abide by workplace safety regulations, including OSHA regulations as applicable. MSDS, if applicable, shall be made available upon request of Buyer. Seller certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Seller certifies further that its services are performed in compliance with the Fair Labor Standards Act of 1938, as amended. Seller is not and shall not be bound by or liable under or pursuant to any prime contract or similar agreement, specification or requirement between Buyer and any third party, including, but not limited to, the owner of any property.

4. **INSURANCE/BONDS:** Seller shall maintain all insurance as required by law and shall not allow such coverage to lapse. Seller agrees to maintain 1) Worker’s Compensation coverage as required by applicable state law, 2) \$4 million in general liability insurance, and 3) \$5 million in automobile liability coverage. At any time, Buyer may request certificate of insurance indicating coverage in effect. Seller is not bound to pay any premium or other fee to an OCIP or CCIP type insurance program. Unless expressly provided in Seller’s quotation to Buyer, payment and performance bonds are not to be provided by Seller.

5. **INDEMNIFICATION:** Seller shall indemnify Buyer from any loss, damage, claim, suit, liability, judgment or expense to the extent caused by Seller’s negligence. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

6. **WARRANTY:**

- a) **INSTALLATION WARRANTY:** For those products installed by Seller, for a period of one (1) year from installation or first use or occupancy by end user (whichever occurs later and in no event longer than eighteen (18) months from date of installation), Seller warrants that services performed by Seller hereunder shall be provided in a professional and workmanlike manner and in full compliance with local code. Upon receipt of notice from Buyer that installation services were not performed in accordance with the limited warranty herein, Seller shall re-perform the services. This Installation Warranty does not apply if there is evidence of abuse, acts of God or misuse by Buyer or a third party.
- b) **PRODUCT WARRANTY:** All manufacturers’ warranties shall be made available to Buyer or end user. Seller shall coordinate manufacturer warranty service with the end user at Buyer’s request. The sole warranty applicable to installation service provided (as applicable) is delineated as Installation Warranty (see above). Product warranties are solely from the respective manufacturer. With respect to the underlying products, **THE BUYER’S SOLE AND EXCLUSIVE WARRANTY IS THAT PROVIDED BY THE PRODUCT’S MANUFACTURER. SELLER HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES RELATED TO THE UNDERLYING PRODUCTS PROVIDED.** All manufacturers’ warranty and service obligations shall be for the benefit of the Buyer or end user.

7. **SCHEDULE:** Buyer shall provide schedule updates to Seller and Seller requests a minimum of thirty (30) days advance notice for shipment/scheduling changes. Buyer and Seller shall coordinate the scheduling of all activities.

Seller shall perform all work during normal business hours. Buyer requests for Seller to work overtime are subject to price adjustment to be mutually agreed.

8. BUYER'S OBLIGATIONS:

a) Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products and services.

b) Buyer shall work with the private property owners to provide Seller with access to job site and facilities deemed necessary by Seller to provide the products and services.

c) Buyer must identify any overhead surface or underground wire cable, pipe, conduit, channel or other obstruction or impediment that could adversely affect, restrict or prevent Seller's provisions of the products and services.

d) Buyer must appoint a Buyer contact for the Seller consultant or project manager furnishing the products and services. This contact, or designated alternate, must be available on site or by phone at all times that products and services are being provided by Seller. Buyer contact must have the authority to resolve matters and coordinate the resolution of any problems.

e) If during the performance of its obligations under the assignment, Seller or Seller's subcontractors encounter asbestos or other such hazardous substances or conditions, Seller or Seller's subcontractors will promptly cease work activities and notify Buyer. Seller or Seller's subcontractors are not required to continue performance before the removal or containment of such substances. In the event that the property owner does not provide for the removal or containment of such substance and Seller deems in its reasonable discretion that the physical conditions are unsafe, Seller may refuse to complete the work at the location(s) in question.

f) Buyer shall be solely responsible for verification and approval of all materials, equipment, supplies and related products (and quantities of same) ordered relating to the products and services. Upon completion, Buyer shall inspect the products and services within a reasonable time of delivery of the service, which time shall not to exceed five (5) business days.

g) Buyer shall perform any test reasonably necessary to determine faulty workmanship or installation.

h) Buyer shall provide Seller notice of rejection within five (5) days of the service date of any faulty workmanship or installation. After the five (5) day period, Buyer shall be deemed to have irrevocably accepted the products and services, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products or services for any reason or to revoke acceptance. Buyer hereby agrees that such five-(5) day period is a reasonable amount of time for such inspection and rejection.

9. RETURNS: The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the repair or replacement of the merchandise, subject to the manufacturer's inspection and warranty. Buyer may return any product which Seller stocks with no restocking charge if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts, (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged, and (iii) will not cause an overstock condition at Seller's servicing facility. Buyer's surplus job returns, and those not meeting the above conditions, will be evaluated on an individual basis after Buyer has contacted Seller. Special orders or non-stock items may be returned only if the manufacturer will accept the return, subject to restock, shipping, and handling fees

10. MANUFACTURER DOCUMENTATION: Manufacturer's Product Data, Literature, Shop Drawings, and Submittals to be provided to Buyer upon request. Owner's manuals and similar end-user documentation shall be provided to Buyer, or placed in dwelling unit, as per request.

11. PAYMENT TO SELLER: Buyer agrees to pay for the services set forth on Attachment A according to the Seller's payment terms. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to service charges at the rate agreed upon by the parties, otherwise at the maximum contract rate permitted by law. There shall be no retainage. Seller reserves the right to rescind the extension of credit to Buyer should Buyer's account become delinquent or should there be a change in the Buyer's creditworthiness (Seller to be the sole determiner of creditworthiness of Buyer). Should Seller pursue collection due to non-payment by Buyer, Buyer does hereby agree to reimburse Seller all costs of collection, including attorney fees.

12. SCHEDULE: Seller will make a good faith effort to meet the estimated delivery schedule set forth in Attachment A. Local resource availability may affect the ability of Seller to deliver services in some locations. Therefore, Seller

assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to perform, whether or not such loss or damage was made known to Seller.

13. **FORCE MAJEURE:** Seller shall not be responsible for non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental or indirect damages, losses or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

14. **TAXES:** The amount of any sales, excise or other taxes, if any, applicable to products or installation services shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities.

15. **SET-OFF:** Buyer shall not be entitled to set-off any amounts due Buyer against any amount due Seller in connection with this transaction.

16. **SEVERABILITY:** These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance herefrom.

17. **ASSIGNMENT AND SUBCONTRACTING:** Seller shall not assign this contract except to an affiliate owned and controlled by or under common ownership and control with Seller. Seller may subcontract installation services upon notice to Buyer. In the event Seller subcontracts installation services, each subcontractor shall be required to meet the insurance requirements set forth herein and Seller shall remain liable for all obligations hereunder notwithstanding such subcontracting.

18. **ENTIRE AGREEMENT:** This document along with Buyer’s Credit Application with Seller and Seller’s Bid/Quotation and Invoice constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale. No course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by the facility manager of the Seller’s servicing location. All transactions shall be governed solely by the terms and conditions contained herein.

19. **GOVERNING LAW:** This transaction shall be governed in all respects by the laws of state where delivery occurred or was scheduled to occur (excluding choice of law provisions).

20. **AGREED:** The parties have read, understood, and agree to the terms and conditions herein as evidenced by the signature of their authorized representatives below. This Agreement shall continue in effect unless terminated in writing by either party.

CITY OF ROCHELLE, IL

FERGUSON ENTERPRISES, INC.

By: _____

By: _____

Printed Name: _____

Printed Name: Kim Foster

Title: _____

Title: Business Development Manager

Date: _____

Date: _____

Attachment A**Services/Scope of Services:**

Seller agrees to provide the following services (as indicated by an "X") as back office administrative support:

Public Education

X Seller will provide an Internet link which will house information about the upcoming meter/MIU project.

Customer Notification & Appointment Scheduling

X Seller will conduct a mailing campaign of up to three (3) mailings per utility customer to schedule a meter/MIU change-out appointment. Seller will supply the notifications and the postage. Buyer will approve the text of the notifications, prior to mailing.

X Seller will provide a 24/7 call center where utility customers can call a toll-free number to schedule an appointment. Seller will also provide a secure website access where utility customers can logon and schedule their appointment.

X Seller will provide the Buyer with secure "read only" access to its proprietary installation database software, to review progress in scheduling appointments. All notifications to utility customers will be tracked by Seller's software.

Data Integration

X The Seller will be required to provide (1) Android Smartphone, as needed. Buyer will use the Android for project purposes only.

X The Seller will fully cooperate with the Buyer in developing a download/upload of utility customer information between the Buyer's utility billing software and the Seller's installation database software. The Buyer is ultimately responsible for any/all costs that are incurred from the utility billing software company or 3rd party consultant for creating the transfer file.

X Once the download/upload of data has been tested and verified, Seller will assist the Buyer in analyzing the population of accounts to be changed-out and developing an installation schedule.

X Seller will assist the Buyer in loading the inventory of meters/MIUs to be installed into the installation database software, by scanning each unit's unique barcode.

Installation Coordination

X Seller will train the Buyer's installers on the use of the Seller's software. The Buyer has chosen to activate the following functions of the Seller's software:

X Capture of time-stamped digital photos during installation.

X Capture of GPS coordinates at the location of the meter/MIU. (Standard=Phone Quality)

X (3) Onsite survey questions to be completed by field personnel.

X Signature capture from utility customers at the conclusion of the install.

X Assignment of an "install code" for sorting/analyzing completed installs.

X Capture of installer mileage for tracking purposes.

X Seller will monitor appointment scheduling by utility customers and assist the Buyer in managing its installers' daily scheduling.

X Seller will perform an ongoing electronic review of data that is captured in the field as part of the meter/MIU change-out. Discrepancies will be flagged. Seller will assist the Buyer in review and resolution of the situation. Once discrepancies have been resolved, the data from the completed install will be sent in a predetermined format for loading into the Buyer's utility billing software.

Pricing and Payment Terms:

CPI Adjustment. To the extent that any fees schedules established under this Agreement extend beyond one year after the execution of this Agreement, Contractor shall be entitled to increase such fees by a percentage equal to the then applicable annual percentage increase in the Consumer Price Index.

Given the fact that our scope of work described above is administrative in nature, and distinctly separate from the actual meter/MIU installation, our pricing is based on the number of utility customer accounts that are imported and managed through our proprietary database software, **not** the number of completed installs.

Pricing for this project is for 1 year:

\$25.00 per customer account with an estimate of 1100 accounts per year with a not to exceed cost of \$27,500.

Payment terms are Net 10th Prox.

Delivery Schedule:

N/A