

CITY OF LEWISVILLE, TEXAS

PURCHASING AGREEMENT

Project: Manual meter replacement with the option to upgrade with advanced metering infrastructure (AMI) in the future.

This Purchasing Agreement (the "Agreement") is made on this date, _____, 2018, between the City of Lewisville (the "City") and HydroPro Solutions, LLC, a partner to Master Meter (the "Contractor").

1. Installation of Equipment. The Contractor shall provide and install the equipment, including any necessary additional materials, as outlined in the Contractor's Proposal, attached hereto as **Exhibit B** (the "Equipment"), and shall perform all services outlined in the Contractor's Proposal (**Exhibit B**), in accordance with this Agreement and the City's Request for Proposals, attached hereto as **Exhibit A**. Contractor shall furnish or cause to be furnished all personnel, labor, equipment, tools, materials, supervision, supplies, insurance and bonds (if applicable) and all other items necessary to successfully and timely complete the Project in accordance with this Agreement. The Contractor will install or cause to be installed all Equipment in a good and professional manner and in accordance with industry standards. The Contractor is responsible for installing or causing to be installed a final product that is fully functional and fit for its intended purposes, and meets all requirements set forth in the Agreement, the City's Request for Proposals (**Exhibit A**) the Contractor's Proposal (**Exhibit B**). The City will be the sole judge of the acceptability of all Equipment performed under this Agreement. Equipment shall be installed and work performed under this Agreement in accordance with work orders provided to Contractor in writing by the Director of Public Services or his designee.
2. Term. The term of this Agreement shall begin on the date that this Agreement is executed by both parties (the "Effective Date"), and shall continue for one (1) year (the "Term"). The City shall have the option to renew this Agreement for up to five (5) additional one (1)-year renewal terms ("Renewal Terms"). Renewal Terms shall operate under the same terms and conditions as outlined herein, unless otherwise agreed to in writing by both Parties.
3. Agreement Documents. The Agreement shall include the following documents, and this Agreement does hereby expressly incorporate same herein as if set forth verbatim in this Agreement:
 - A. This Agreement
 - B. The City's Request for Proposals, attached as **Exhibit A**
 - C. The Contractor's Proposal, attached hereto as **Exhibit B**

To the extent that any exhibit is in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of **Exhibit A**, followed by **Exhibit B** shall

prevail in the order listed, except that any specifications outlined in the Deviations from Specifications section of the Contractor's Proposal (**Exhibit B**) shall take precedence over any conflicting requirements outlined in the City's Request for Proposals (**Exhibit A**).

4. Purchase and Storage of Equipment. Contractor may purchase Equipment to keep on-hand for installation. No Equipment shall be purchased without written notice to proceed on installation for such Equipment from the Director of Public Services or his designee as outlined in Section 1, above. All Equipment to be kept on hand prior to installation shall be shipped directly to the City under the terms outlined in the City's Request for Proposals (**Exhibit A**) and shall be stored on City property in a location and manner to be determined by the Director of Public Services or his designee. Contractor shall document, in writing, the condition of the Equipment when it is delivered to City property, subject to review and approval by the Director of Public Services or his designee.
5. Pricing. For the Services rendered pursuant to this Agreement, the Contractor shall be compensated per unit, per hour, and in accordance with the markup percentages for additional materials as outlined in the Contractor's Proposal (**Exhibit B**). No work shall be undertaken under an adjusted price per unit, per hour, or at an adjusted markup rate without the City's prior written approval in the form of a change order, as outlined in Section 7, below.
6. Payment. City recognizes that the Project may require Contractor to purchase Equipment to keep on-hand prior to installation. For any Equipment which is not immediately installed, but rather stored on City property as provided for in Section 4, above, Contractor may invoice the city in an amount equal to the purchase cost of the Equipment to be stored on City property, which invoices shall include detailed invoices for the purchase of such Equipment. Such invoices shall be submitted as part of the next invoice for the Project, following the date of delivery of the Equipment to City property. Upon installation and acceptance by the City of the Equipment for which the City has already made partial payment, Contractor shall invoice the City for any remaining unit price, labor, additional materials, or other costs of installation of the Equipment. The City shall not accept the Equipment until after final inspection.

The City shall remit payment within thirty (30) days after receipt of invoice, in accordance with the Texas Prompt Payment Act (Tex. Gov't Code Ch. 2251). All original invoices are to be sent to the City of Lewisville, Attention: AP Division, 151 West Church Street, Lewisville, Texas 75057 or P.O. Box 299002, 75029-9002.

7. Change Orders. Any change to the pricing per unit, the pricing per hour of work, or the markup outlined in the Contractor's Proposal (**Exhibit B**), including a change in pricing as part of an annual renewal of this Agreement, shall require a change order to be submitted to by the Contractor and approved by the City. No change outlined in this section which is enacted without a properly approved change order shall be valid. In no case shall the price per unit of any unit, the price per hour of work, or the markup percentage outlined in the Contractor's Proposal

(**Exhibit B**) be increased by a total of more than twenty-five percent (25%) during the Term or any Renewal Terms.

8. Subcontractors. Subcontractors, if any, will be directed and supervised solely by the Contractor. The Contractor shall require any subcontractors to hold the same insurance as required of the Contractor under this Agreement.
9. Right of Inspection and Required Repairs. The City shall have the right to observe and check all ongoing work in sufficient detail to determine if the installation of the Equipment is proceeding satisfactorily. The City shall have the right to inspect all Equipment completed before accepting them and making payments in accordance with this Agreement. Should any portion of the installed Equipment fail to meet the requirement of the City, the Contractor shall repair or replace work failing to meet requirement until compliance with this Agreement is demonstrated.
10. Termination. This Agreement may be terminated by the City at any time upon providing thirty (30) days advance written notice to Contractor of the termination date, or by the Contractor in the event of breach of this Agreement by the City, after thirty (30) days written notice of breach and opportunity to cure. Contractor shall invoice City for any services performed or materials purchased by the City from the Contractor as part of this Project prior to the termination date, but City shall not be required to pay any additional charges as a result the termination. City shall remit payment within thirty (30) days of receipt of invoice.
11. Confidential Information. To the extent allowed by law, the City will safeguard and keep from release any documents marked “proprietary” or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
12. Insurance. During the period of this Agreement, the Contractor will maintain, at its expense, insurance with limits not less than those prescribed in the City’s Request for Proposals (**Exhibit A**). All insurance must be reviewed and approved by the City **prior to commencement of work**.
13. Bonds and Warranties. The Contractor shall provide warranties and bonds as outlined in the City’s Request for Proposals (**Exhibit A**) and as required by state law. The Contractor shall provide the City with copies of any applicable manufacturers’ warranties for the Equipment installed.
14. Worker’s Compensation. The Contractor and any of its subcontractors shall abide by the requirements of the Texas Administrative Code, Title 28, RULE §110.110, in regards to workers compensation.
15. Independent Contractor. Contractor shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the work and

installation of the Equipment. No term or provision herein or act of the City shall be construed as changing that status.

16. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including, but not limited to the Immigration Reform and Control Act (IRCA).
17. Governing Law and Venue. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
18. Arbitration. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
19. Tax Exempt Status. The City is exempt from and shall not pay state and local sales and use taxes on labor and materials incorporated into the Project. If necessary, it is the responsibility of the Contractor to obtain from the State Comptroller's Office a sales tax permit, resale certificate, and exemption certificate that will enable the Contractor to buy any materials for the Project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.
20. Entire Agreement. This Agreement and its exhibits contain the entire agreement of the parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Contractor, and no amendment to the Agreement shall be made except upon the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.
21. Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party.
22. Governmental Immunity. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.
23. Liens. The Contractor agrees that, under state law and City charter, no lien may be placed upon City-owned property.
24. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the

address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: HydroPro Solutions, Inc.
Attn: Maurice De Vries
907 Rockmoor Drive
Georgetown, Texas 78628

If to City, to: City of Lewisville
Attn: Todd White, C.P.M.
151 W. Church Street
Lewisville, Texas 75057

25. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
26. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
27. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
28. Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, order of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

29. Waiver. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.
30. **INDEMNIFICATION**. THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONTRACTOR'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.
31. Limitation on Liability, Damages or Remedies. Contractor shall not limit its liability or damages under this Agreement, nor shall it limit the remedies available to City under this Agreement, and any such limitation which is outlined in any part of this Agreement or its attached exhibits is not accepted.
32. Immigration Reform and Control Act (8 U.S.C. 1324a). The City supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor and its subcontractors shall at all times during the term of the Agreement with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA.

The Contractor also warrants that it has not had an IRCA violation within the last five (5) years. The City may terminate this Agreement with the Contractor if the City determines (a) the Contractor or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Contractor or its subcontractors fail to timely notify the City of an IRCA violation.

33. ADA Compliance. All goods and services provided to the City must be compliant with the Americans with Disabilities Act and any amendments thereto (the “ADA”) and all regulations promulgated pursuant to the ADA. Contractor will be required to certify compliance, if required under the law or otherwise required by the City.
34. Protection of Resident Workers. The City actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9) for every worker performing services under the Agreement.
35. Advertising. Contractor shall not advertise or publish, without the City’s prior consent, the fact that the Contractor has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
36. Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person, or agent of a person, who contracts or seeks to contract for the sale or purchase of property, good, or services with the City of Lewisville must file a completed conflict of interest questionnaire which is available online at www.ethics.state.tx.us. The conflict of interest questionnaire must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An offense under Chapter 176 is a Class C misdemeanor.

Contractor should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirement of Chapter 176.

37. Texas Government Code Chapter 2270. Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Agreement serves as written verification that Contractor:

(1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.

38. Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that is it not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.
39. Closure. By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

CITY OF LEWISVILLE

By: _____
Donna Barron, City Manager

Date: _____

HYDROPRO SOLUTIONS, INC.

By: Maurice de Vries
Maurice de Vries Vice President
Printed Name/Title

Date: 12/07/18

907 Rockmoor Drive
Street Address

Georgetown, TX 78628
City, State, and Zip

972-754-6454
Telephone Number

512-996-8938
Fax Number

maurice@hydroprosolutions.com
Email Address

45-5510009
Federal Tax ID Number

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

LIST OF EXHIBITS:

**EXHIBIT A
CITY'S REQUEST FOR PROPOSALS**

**EXHIBIT B
CONTRACTOR'S PROPOSAL**