

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Mueller Systems
For
Smart Water Pilot Solution**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Mueller Systems ("Contractor"), having offices at 48 Leona Drive, Middleborough, MA 02346.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 Engagement of the Contractor. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Fred Quintero, Phone: (704) 682-0198, Email Address: fquintero@muellersystems.com. The City's Contract Manager for the engagement shall be Dan Strub, Phone: (512) 972-0349, Email Address: Dan.Strub@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 Contractor's Obligations. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer attached hereto and incorporated by reference hereby as Exhibit A and Exhibit B and in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. COMPENSATION

3.1 Contract Amount. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$47,590.00 for the initial term, \$3,000.00 for the first extension, and \$15,000.00 for the second extension, for a total estimated contract amount not to exceed \$65,590.00 comprising the software maintenance and support fees.

3.2 Invoices.

3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov
Mailing Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 Retainage. The City reserves the right to withhold a 10 percent (%) retainage until completion of all work required by the Contract. The Contractor's invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

3.5 Non-Appropriation. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.6 Reimbursable Expenses. Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.6.1 Administrative. The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.6.2 Travel Expenses. All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.7 Final Payment and Close-Out.

3.7.1 The making and acceptance of final payment will constitute:

3.7.1.1 a waiver of all claims by the City against the Contractor, except claims which have been previously asserted in writing and not yet settled or arising under the City's right to audit or the Contractor's indemnity and warranty obligations; and

3.7.1.2 a waiver of all claims by the Contractor against the City except claims previously asserted in writing and not yet settled or due to the intentional misrepresentation or negligence of the City.

SECTION 4. TERM AND TERMINATION

4.1 Term of Contract. The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to 2 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension and upon reasonable, customary and sufficient compensation being paid to Contractor by City, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 Right To Assurance. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In

the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 Default. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination Without Cause. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 Fraud. Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 Specific Coverage Requirements. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA,

including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.2 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.3 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so.

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified so long as such delay is reasonable.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 Ownership And Use Of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.5.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause

each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.5.3 Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.5.4 Pre-existing Material. All Contractor material, including the intellectual property rights therein, that existed prior to and independent of this Agreement are and shall remain the sole and exclusive property of Contractor. All rights in such material are hereby reserved by Contractor.

5.6 Rights to Proposal and Contractual Material. All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.7 Publications. All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.2 Warranty – Services. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources.

SECTION 7. MISCELLANEOUS

7.1 Place and Condition of Work. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 Compliance with Health, Safety, and Environmental Regulations. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 Significant Event. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract; or

7.4.6 reorganization, reduction and/or relocation in key personnel.

7.5 Audits and Records.

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the contract.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when:

7.5.2.2.1 requested by a director or an authorized City employee; or

7.5.2.2.2 the contract is completed or terminated.

7.5.3 The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity.

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including (except as described in Section 7.7.1.3) all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including reasonable attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers

and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.1.3 In the event City has a first party Indemnified Claim against Contractor, Contractor will be liable to City for reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including reasonable attorney and other professional fees that are awarded by the applicable court or alternative dispute resolution entity.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Gil Zilkha, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Mueller Systems

ATTN: Contract Manager

48 Leona Drive

Middleborough, MA 02346

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all

circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 Prohibition Against Personal Interest In Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. Notwithstanding anything to the contrary, Contractor may assign this Contract without consent (i) to an affiliate under common control, controlled by or controlling Contractor and (ii) to a third party as part of an acquisition of all or substantially all of contractor's assets or equity interests. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 Waiver. No claim or right arising out of a breach of the Contract 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 party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 Modifications. The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 Interpretation. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the

trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of either party to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to

replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 Holidays. The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 Survivability of Obligations. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.29 Order of Precedence. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Mueller Systems

By: _____
Signature

Name: K. Anita Short
Printed Name

Title: RFP Manager

Date: 3/16/17

CITY OF AUSTIN

By: _____
Signature

Name: Gil Zilkha
Printed Name

Title: Contract Administrator

Date: 3/17/17

List of Exhibits

Exhibit A	Pricing Agreement and Statement of Work
Exhibit B	Mueller Systems Terms and Conditions
Exhibit C	Non Discrimination Certification, Section 0800

EXHIBIT A
Pricing Agreement and Statement of Work



WHERE INTELLIGENCE MEETS INFRASTRUCTURE®

Austin Water

Smart Water Pilot Memorandum of Understanding

January 31, 2017

Version 1.5

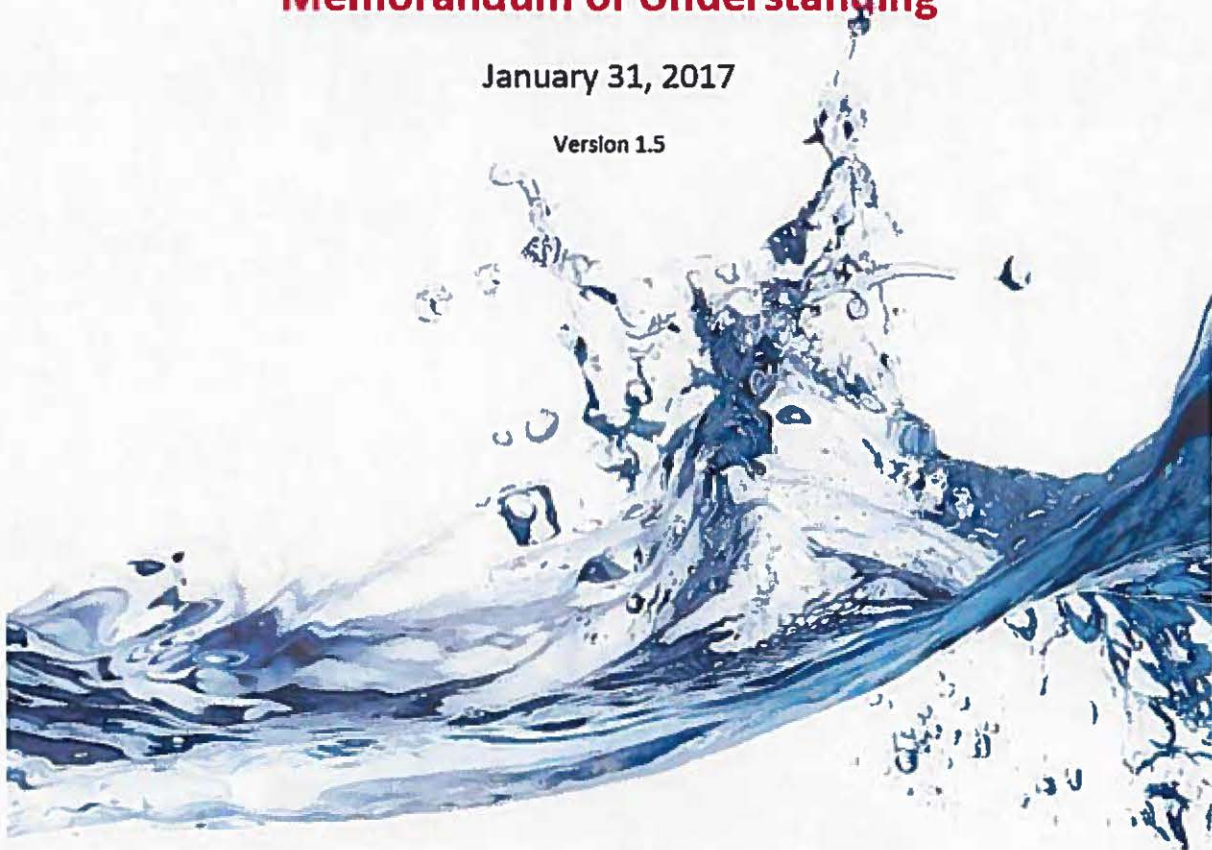




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Revision History

Rev	Description of change	Changed by	Effective Date
1	Originated & Released Propagation	Jordan Glynn	3-Jun-16
1.1	MOU outline	Fred Quintero	10-Jun-16
1.2	Reviewed	Matt Thomas	24-Jun-16
1.3	Review & update	Fred Quintero	5-Jul-16
1.4	Review & update	Fred Quintero	22-Jul-16
1.5	Revised Prop & update	Fred Quintero	8-Aug-16



Memorandum of Understanding

This Memorandum of Understanding ("MOU") summarizes the agreement in principle reached between Mueller Systems LLC, 10210 Statesville Blvd., Cleveland, NC 27013 (hereinafter "Mueller") and City of Austin Water Department Austin Texas (hereinafter "Austin Water") on July 1, 2016, concerning the Mi.Echo fixed leak detection project (hereinafter "Mi.Echo").

The Parties Agree as Follows:

Background and Purpose:

The purpose of this MOU is to develop an understanding of and establish the expectations for a comprehensive Smart Water Pilot solution that includes a Mueller System advanced metering infrastructure (AMI) radio frequency communication system, water metrology, and permanent leak detection monitoring for Austin Water at the City of Austin, Texas. This document establishes the terms and milestones that will be used to determine if the Mueller Systems Pilot solution will be considered successful or unsuccessful.

This MOU is intended to outline additional information on the products and services Mueller Systems will provide. This document does not supersede Mueller Systems standard terms or warranties that are attached as exhibit A.

City of Austin Terms & Conditions are attached as exhibit B

Scope of Smart Water Project:

Austin Water has identified a proposed project pilot area located in the Brentwood neighborhood that is outlined more specifically on the Mueller Systems Mi.Echo RFv4 Propagation Study.

Austin Water is responsible for purchasing from Mueller Systems' Mi.Echo Sensors, Fire Hydrant Pumper Caps, Mi.Hub Collector and Repeater, Water Meters, and Mi.Nodes. Software, Hosting and Maintenance will be included with the cost of equipment during the pilot period.

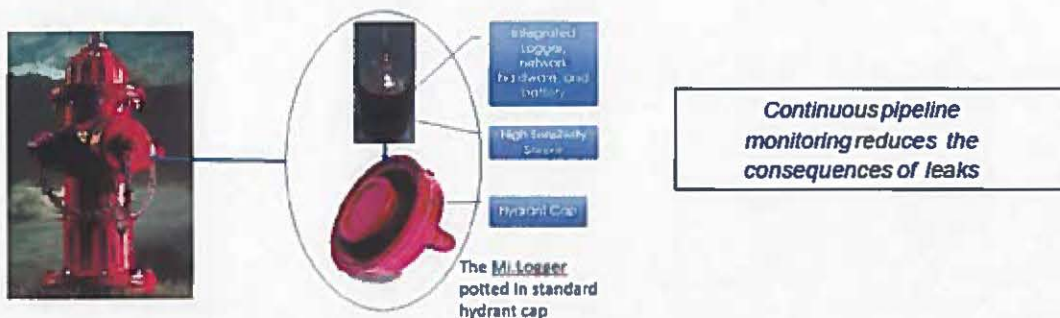
After receipt of purchase order from Austin Water, Mueller Systems will generally deliver and install the Network Collectors, Repeaters, and communication between the Acoustic Leak Detection Modules and the Mi.Host Software within 90 days or as specifically outlined in the Project Deployment Schedule.

Once the system is operational, testing will generally commence within 30 days as outlined in the endpoint acceptance plan and the test performance criteria. It is anticipated Austin Water will deem the project successful and notify Mueller Systems of the results within 90 days. Austin Water may still operate the Mi.Echo system for a full 365 days to gain additional insights into the dynamics of the Mi.Echo system. If agreeable to both parties, the project scope may be expanded by extending the dates or adding products to the project MOU.

System Description

The Mi.Echo automated leak detection system will be installed along the section of distribution main piping system identified by Austin Water. The main component of the Mi.Echo system is Mi.Logger— a radio frequency transceiver featuring Mueller Systems’ sensors, logger board, communications hardware, and battery power source.

Figure 1: Mi.Logger - Designed for installation in 90% of the pumper nozzle caps in North America



The Mi.Logger is housed in a cast-iron high-density plastic enclosure that replaces the pumper nozzle caps of wet and dry barrel fire hydrants throughout a utility’s service area.

Leak detection is performed by a pair of Mi.Logger transceivers in a similar fashion as the LeakFinderRT correlator. The transceivers collect acoustic data from pipelines before generating and wirelessly transmitting files containing the data to the MI.Net System’s host software component—Mi.Host.

Figure 2: Mi.Echo System - Based on next-generation proven LeakFinderRT™ technology

System operators can view the locations of leaks to determine “if” immediate repairs need to be made, and they can compare collected data to reports transmitted by other Mi.Loggers to rule out false leak alarms.

Detected leaks, bursts, low flow and hydrant tampering can be viewed by utility workers online through the Mi.H



Austin Water – Smart Water Pilot

A fully integrated 2-way AMI network - The Mi.Net system provides communication directly to the meter and addresses all billing exceptions and final bills prior to closing the billing cycle. The two-way capability of all network components allows the remote disconnect and on-demand meter reading functionality. Mi.Net is typically configured as a star-network but is able to operate as a multi-path redundant network for meters, which are difficult to access.

Configurable, automated alerts - A powerful feature of the Mi.Net System is its ability to provide automated alerts from all metering endpoints. These alerts include no-flow, low-flow, meter issues, immediate notification of tampering, water-leaks, missing meter data, immediate backflow notification and more. For each alert type, Austin Water can configure the system to alert staff via email or notification for each alert type. Alerts can be configured to achieve the NRW goals.



Flexibility for additional functionality - With the ability to upgrade the firmware through the network, Austin Water has the capability to grow AMI system functionality within the existing infrastructure platform. In addition, Mueller Systems is actively developing more solutions for the AMI network including pressure monitoring and water quality monitoring.

Accurate meter reading and billing - We pride ourselves on the accuracy of our meters. By helping account for every drop of water, we help regain lost revenue opportunities. We offer a meters with solid-state registers, which provide digital reading accuracy down to one-hundredth of a gallon, as well as our Encoded Register that can also transmit data to our Mi.Node endpoint. Our meters will exceed Austin Water goal for increasing billing revenue with high accuracy at low flows. As additional value, we have experience in creating real and software created DMA's, these tools with our expertise in identifying and solving meter right sizing problems will significantly reduce apparent losses

Figure 3: User Interface - Graphical and visual display of system status leveraging functionality of Mi.Host



Mi.Logger transceivers are spaced at a maximum distance of 1,500 ft. for non-plastic pipes. For plastic pipe materials, a site-specific survey is required to determine the optimal Mi.Logger spacing. The number of Mi.Hub data collection units and the need for Mi.Repeaters will be determined upon completion of a network requirements survey. The Mi.Hub data collection units are not limited by the number of Mi.Logger units, but rather by local topography.

Smart Water Objectives

Mi.Echo – Permanent Leak Detection:

- Enhance Austin's proactive leak detection to reduce non-revenue water
- Improve operational efficiency and help prioritize repairs with the ability to pin-point leaks
- Optimize and deliver actionable information on mains before they become costly or critical
- Provide the ability to do forced, on-demand correlations
- Locate, indicate and notify Austin of the birth of a leak
- Chronicle the birth of a leak with historical data (i.e. frequency Hz comparisons) indicating increase from birth through repair

Mi.Host – User Interface:

- Provide graphical ESRI GIS display for leak detection and meter reading alerts
- Improve reporting capability with custom reporting functionality for both meter reading and leak detection
- Provide single network and application umbrella interface for meter reading and leak detection
- Network Operations Center – provides the assurance of round the clock system surveillance

Austin Water – Smart Water Pilot

Mi.Net – Meter Analytics:

- Two way meter communications – On Demand functionality <1 Minute
- Accurate consumption data direct from register
- Hourly Profile Data programmable to 5-minutes
- Configurable & Real time alerts

Deployment Specifics

Mueller Systems propose the following details critical for the installation and operation of the Mi.Net AMI System.

Acoustic Survey – Mueller Systems will survey the proposed area to conduct a thorough acoustic analysis of the piping network and to validate and supplement the data provided by Austin Water. Specific hydrants selected for installation of leak detection sensors will be dependent upon input from Mueller Systems engineering team.

Data Backhaul – 3G Wide Area Network supported by AT&T will be used as the default communications to/from the Mi.Hub collector unit(s) and the Mi.Host data server.

Network Installation – The required Mi.Hub Collector is proposed to be installed on either a Streetlight Pole owned by Austin Water or a local building owned by the City. The final Mi.Hub location will be addressed during the propagation study.

Mueller Systems Responsibilities (Deployment Phase):

- Cooperate with Austin Water to identify locations for all Mi.Net Infrastructure and the Acoustic Leak Detection modules.
- Prior to the commencement of the system:
 - Provide all required AMI system hardware
 - Set-up a hosted Mi.Host AMI server and website for use the customer
 - Provide the services of a qualified Mueller Systems Project Manager to conduct product hardware, software and service tool training for the Customer, as applicable
- Set up network communication between the Mi.Logger Acoustic Leak Detection Modules, Mi.Hub collectors and the Mi.Host Software.
- Supply all necessary system operational training to utility personnel during the pilot period.
- Fully cooperate with Austin Water in performing the required testing of the pilot products.
- Assist Austin Water with installation and commissioning, as applicable for the product, and provide Customer Support in accordance with Mueller Systems policies, procedures and practices.

Austin Water – Smart Water Pilot



Austin Water Responsibilities (Deployment Phase):

- Assist Mueller Systems with site location and equipment installation of all AMI Pilot products in accordance with Mueller Systems standard product installation recommendations, including but not limited to:
 - MI.Hub network collectors
 - OWL or DC repeaters
- Provide traffic control during installation of repeaters.
- Assist Mueller Systems in selecting locations for the MI.Logger hydrant cap Acoustic Leak Detection modules.
- Cooperate with Mueller Systems in performance testing of all the AMI System components for proper functionality.
- Austin Water will monitor data via the Mueller Systems MI.Host User Interface (UI) web site.
- Provide feedback on accuracy of data being supplied by Mueller System's AMI Network and Components for daily reads of the MI.Logger acoustic leak detection devices.
- Austin Water to identify one person as single channel of communication during and after deployment.

Mueller Systems Responsibilities (Post Deployment):

- Provide hosting of MI Host server and software.
- Backhaul data from of collector(s) to user interface.
- Provide phone and email technical support to utility.
- Provide monitoring of network performance in support.

Austin Water Responsibilities (Post Deployment):

- Identify personnel to participate in training.
- Following execution of acceptance plan and training, operate and maintain installed equipment in utility service territory.
- Monitor user interface and update POI status per user manual and training outline.

Statement of Work

1. General

- 1.1. Austin Water shall supply an experienced crew for operation of all Client owned apparatus, and the addition of any required fittings to accommodate Mueller Systems equipment. The size of the crew depends on the details of the job. Mueller Systems is not responsible for any operation or modification of Client owned apparatus.
- 1.2. All fittings must be cleaned, exercised, and in safe working condition prior to initial survey and final system installation. Closed valves or other appurtenances must not be passing water.



Hydrants must not be leaking. If cleaning cannot be performed prior to site-work, on site cleaning must be arranged by Client on request.

- 1.3. Client shall provide traffic management (including labor and equipment) as and when required. Mueller Systems is not responsible for any traffic control requirements, unless explicitly included in this proposal. It is expected that the client will be proficient in all local laws and regulations.
 - 1.4. All aspects of confined space entry shall be of the responsibility of Client, unless explicitly included in this proposal.
 - 1.5. Fall protection, including supply of fall prevention equipment and harnesses, shall be of the responsibility of Client.
 - 1.6. Mueller Systems shall follow any Lock out Tag and Tag out procedures specified by Client. Client is responsible for informing Mueller Systems of any such procedures in effect at the work sites applicable for this project.
 - 1.7. All required information regarding the pipes to be tested must be provided in advance to Mueller Systems. The information must be up to date and in a form that can be easily interpreted. This includes as-built drawings, repair history, nominal pipe information, GIS information, pressure and flow information, locations of PRVs, pumps, reservoirs, cross-connections, reducers, tie-ins, valves, services, backflow preventers, hydrants, corp valves, and any other possible noise producing apparatus.
 - 1.8. If De-chlorination / Chlorination and/or backflow preventers are required, these shall be the responsibility of Client.
2. General Technical Specifications and Constraints
- 2.1. Fluid temperature must be between 33° and 100° F (0.5° and 38° C)
 - 2.2. Liquid flow velocities above 5 ft. /s (1.5 m/s) may result in turbulence in the line, introducing noise, which can reduce the sensitivity of leak detection, and prevent collection of pipe integrity testing data. Mueller Systems recommends that Client take steps to ensure velocities are below these levels, but will conduct testing nonetheless if Client elects to leave them at higher levels.
 - 2.3. Operating pressure must be between 15 and 150psi (100 to 1000 kpa). Pressures outside of this range will require special consideration.
 - 2.4. Large air pockets cannot be present in the pipe. Purging of all air may be required.
 - 2.5. Significant amounts of dispersed air (milky water) can skew results. Purging of dispersed air may be required.
 - 2.6. All forms of non-destructive testing involve an inherent and unavoidable level of uncertainty. The results provided by Mueller Systems are not guaranteed. The methods used for leak detection and condition assessment are highly dependent on input parameters therefore; it is not possible to certify the results. Mueller Systems is not responsible for any actions taken or recommendations made by Client based on the results of the report.

3. Leak Detection Technical Specifications and Constraints

- 3.1. Acceptable pipe materials are: Pit Cast Iron, Spun Cast Iron, Steel, Ductile Iron, Asbestos Cement, Reinforced or Bar-wrapped Concrete
- 3.2. Acceptable diameters are 12 inches and below.
- 3.3. The connection point must be free of dirt and debris and in good working order
- 3.4. Performance specifications are based on a sensor spacing of 1500ft
- 3.5. Performance specifications assume that accurate information has been provided regarding and pipe location including locations of bends and elevation changes.

Endpoint Acceptance Plan (EAP)

1. The objective of the EAP is to verify that the MI.Echo System will operate and meet or exceed the criteria set forth in this MOU. The parties will jointly administer the EAP. For all tests below, Mueller Systems will calculate the applicable performance requirements using the existing software features within the MI.Echo System.
2. Testing will generally commence within 30 days of when the following activities have been completed:
 - 2.1. All endpoints physically installed
 - 2.2. Network infrastructure installed
 - 2.3. Endpoints/Loggers have been configured for reporting
 - 2.4. MI.Host is configured and collecting data
3. Test Procedure
 - 3.1. The EAP test procedure can be applied to the entire population or may be applied to a subset of MI.Loggers and meters based on network layout, geographic region, or meter reading routes as mutually agreed upon by Mueller Systems and the Customer.
 - 3.2. Mueller Systems notifies customer of readiness to commence testing
 - 3.3. Mueller Systems and customer mutually agree upon start date and test duration
 - 3.4. Mueller Systems will provide written test results within 5 days of the conclusion of the test
 - 3.5. If test results fall within test performance criteria set forth below, Mueller Systems will provide written notice of successful completion and maintenance responsibility will pass to Customer at that time for all network infrastructure, meters and loggers.
 - 3.6. If test results fall outside of the performance criteria set forth below, Mueller Systems will attempt to determine root cause of non-reporting loggers utilizing MI.Host network tools
 - 3.7. If Mueller Systems determines that a given logger is not reporting due to site-specific or installation-related conditions, the customer shall take steps to remediate.
 - 3.8. If Mueller Systems determines that a given logger is not reporting due to other than site-specific or installation-related conditions, then Mueller Systems shall take steps to remediate.
4. When sufficient remediation has been completed, proceed to step 1.



Test Performance Criteria

1. Collection of Mi.Echo Leak Logger Data
2. Performance Criteria is 95% uploads during the applicable Window, meaning a span in days, no shorter than 3 days, during which a valid logger upload must be obtained to properly utilize the system.
3. Performance Criteria = $100 \times ((\text{Successful Communications}) / (\text{Expected Communications}))$.
 - 3.1. Successful Communications is defined as a logger upload available in Mi.Host.
 - 3.2. Expected Communications is defined as a logger upload from each active Mi.Echo logger in the Mi.Host database.
 - 3.3. The denominator, "Expected Communications" in the formula above will be modified to adjust for the following conditions:
 - 3.3.1. Damaged logger endpoint for example: endpoints with tamper, theft or other human induced failures that render the meter or logger module incapable of providing a read
 - 3.3.2. Other Installation Defect—the unit is otherwise installed improperly so that it does not communicate with the network infrastructure.
 - 3.3.3. Logger endpoint has been identified for Customer to remediate
 - 3.3.4. Logger endpoint is serviced by network infrastructure that has been subjected to a power failure greater than eight (8) total hours within the last 3 days
 - 3.3.5. Illegal or unauthorized jamming of the radio spectrum is preventing or interfering with radio communications
 - 3.3.6. Data Base errors — the logger endpoint is removed from the field but not removed from the Mi.Host database.
 - 3.3.7. Logger endpoint is dependent on logger endpoint/ repeater that has been identified for Customer to remediate
 - 3.3.8. A logger endpoint or the network equipment that serves a logger endpoint has been affected by a Force Majeure event
4. Leak Tracking – Point of Interest (POI)
 - 4.1. Positives: Austin Water will be notified of a leak by Mi.Echo software and there is a leak identified when Austin Water investigates the POI.
 - 4.2. False positives: Austin Water will be notified of a leak by Mi.Echo software and their ground search fail to identify a leak "no leak found."
 - 4.3. False negatives: Austin Water experience's a leak without the Mi.Echo software notifying them of a leak at that location
5. Node Forced Correlation Functionality
 - 5.1. Verify forced Node correlations can be called using the Mi.Echo user interface.
 - 5.2. User will call a forced correlation from any pair of nodes using the Mi.Echo user interface
 - 5.2.1. Nodes receive forced correlations schedules the next communication period (typically 2am)
 - 5.2.2. Forced correlation files are visible on the node page typically within 1 hour of scheduled data capture.
 - 5.2.3. If there is a correlated noise source the POI is visible on the Mi.Echo system map
6. Automatic Detection of a Simulated Leak

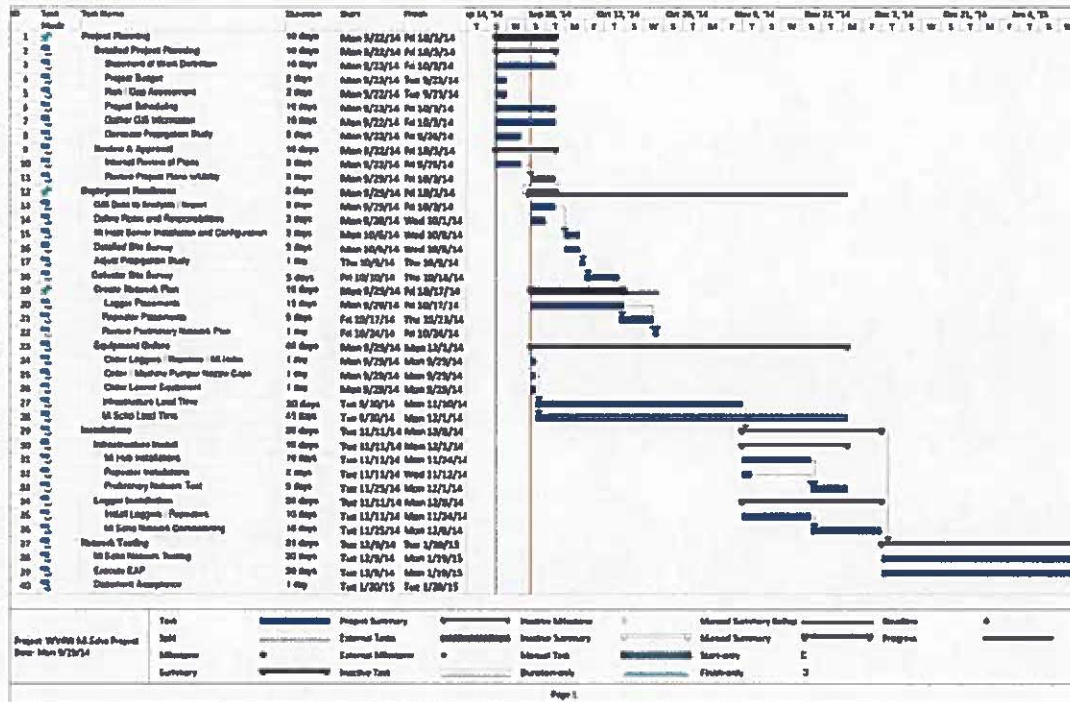


- 6.1. Description:
 - 6.1.1. Verify that simulated leaks can be automatically located and reported on the interface before noon the next day. The success of leak detection is based on the accuracy of the provided maps. Any unmarked sections or repairs may affect the ability to find leaks.
 - 6.1.2. Both hydrants are no more than 500ft apart from the leak. Flow down to 5 gallons per minute on pipe materials of DI/CI/Steel. Flow down to 8 gallons per minute on pipe materials of AC.
- 7. Leak Tracking Exceptions
 - 7.1. Failure or degradation of any software or equipment not provided by Mueller Systems and Echologics or not installed according to specifications, thereby influencing performance.
 - 7.2. Failure or degradation of any software or equipment when the system has not been properly serviced and maintained.
 - 7.3. Removal of any equipment from service in a manner that renders Products Inoperable.
 - 7.4. Errors or omissions in data provided by external systems to the Server Software such as incorrectly marked connections, pipe material and/or unmarked repairs.
 - 7.5. Failure for nodes to located acoustic source where connected pipes contain any plastic material and/or flexible couplings
 - 7.6. The election, at any time, to collect data through operations not performed in accordance with Product documentation.
 - 7.7. Installation or integration work not performed in accordance with Product documentation and installation guidelines as posted to the Mueller Systems and Echologics websites

Austin Water – Smart Water Pilot

Project Deployment Schedule

Deployment schedule will be updated after receipt of purchase order and product shipping acknowledgement from factory. Below is a representation:



Mi.Echo Training Plan

Operations Training

- Hardware Components Installation and Troubleshooting
 - Physical Network components
 - Mi.Echo Loggers
 - Servicing and Change out Procedures
- Mi.Echo UI for Installation
 - Managing Installation data
 - Managing handheld cells



Administration Training

1. Using and Navigating the UI
 - a. System Overview
 - b. Using the Mi.Net UI and Tabs
 - c. Managing data in the MI.Echo system
2. Investigating POIs
 - a. Working with the Map
 - b. Locating POIs
 - c. Editing POIs
 - d. Closing out POIs
3. Maintenance Checks
 - a. Alerts
 - b. Daily Checks on System Health
 - c. System reporting
 - d. Infrastructure Reporting and Checks

About the Propagation Model

Mueller Systems uses sophisticated proprietary software tools to develop a MI.Net formulation for the characterization of radio wave propagation as a function of frequency, distance and other specific water utility conditions. Our Models utilize large collections of data specific to water meter installations in pits with different lid materials, basements and above ground installations that produce varying radio path loss.

Mueller Systems created models to closely predict the behavior of propagation for all similar links under similar constraints. Our Models are created with the goal of formalizing the way radio waves are propagated from one place to another and typically predict the path loss along the effective coverage area of a transmitter receiver to maximize existing infrastructures.

The LoRa® Influence

Due to the LoRa® influence, propagation models developed over the past few years are being revised. LoRa® is the physical layer or the wireless modulation utilized to create the long-range communication link. Many legacy wireless systems use frequency shifting keying (FSK) modulation as the physical layer because it is the most efficient modulation for achieving low power. LoRa® is based on chirp spread spectrum modulation, which maintains the same low power characteristics as FSK modulation but significantly increases the communication range. Chirp spread spectrum has been used in military and space communication for decades due to the long communication distances that can be achieved and robustness to interference, and LoRa® is the first low cost implementation for commercial usage.

Austin Water – Smart Water Pilot



Propagation Preparation

Understanding the goals of our customers is the most important step in the design process. Each utility will have different design and success criteria. They will have varying constraints on performance requirements as well as budget. All of these goals and constraints must be fully understood before any design work is initiated. Key items to understand that will affect the design process are reliability, redundancy, bandwidth, and budget.

Collection and submittal of data begins the process for the utility, a report of Infrastructure assets as well as its growth potential and goals are compiled by utility personnel. While basic Propagation Models can be run for budgeting estimates, Mueller Systems recommends outlining deployment expectations and system requirements with utility management, to ensure that Implementation requirements and system performance expectations are clearly understood. This initial work is key to deliver Information to complete the modeling process, but it is also beneficial to the utility, because the team will then have a complete understanding of the process and how it will ultimately meet performance expectations.

Data for the Model

The more specific the details provided by the utility, the more accurate the Model will ultimately be. Global Positioning System (GPS) locations for all meters will provide the most accurate models. While premise addresses can be used, not all addresses will map to a specific GPS location. GPS locations for all available infrastructure assets or buildings that can be used should be provided by the utility as well as a map of the service area to be covered.

Case #	00014088	Requested Date	03.16.2016
Customer	City of Austin	Contact	Dan Strub
Type	MI.Echo / MI.Net	Project Start Date	TBD
System	Standard	Design Preferences	Water assets only
RFP Due	Pilot	Meter location data	GPS
Model	Water Only	Collector locations data	GPS and tank size
Utility Area	Square Miles	Repeater locations data	Hydrants - no GPS
Water points		Pump Station data	N/A
Meter Location	100% Pit (meter box)	Street light data	N/A
Meter box type	100% Plastic	Cell tower agreement	N/A
Use TTL	Yes	Collector backhaul	Cellular or Ethernet
Pit Photos	TBD	Installation Photos	TBD
Electric Meters	N/A	Other	
Echologics data for fixed leak detection			

Austin Water – Smart Water Pilot

Definition of targeted coverage area (ESRI, Google or paper map) <i>If paper map is provided, Phase 1 effort required to verify and digitize map.</i>		
GIS map of distribution system (ESRI shape files or compatible format) <i>Maps must include, pipe layout, type, diameter, hydrant locations</i>		
Hydrant Brand(s)	TBD	Wet/Dry barrel
Hydrant Thread	TBD	Other
Customer supplied hydrant Cap TBD		

Water Points Map



Model Information, Assumptions and Performance

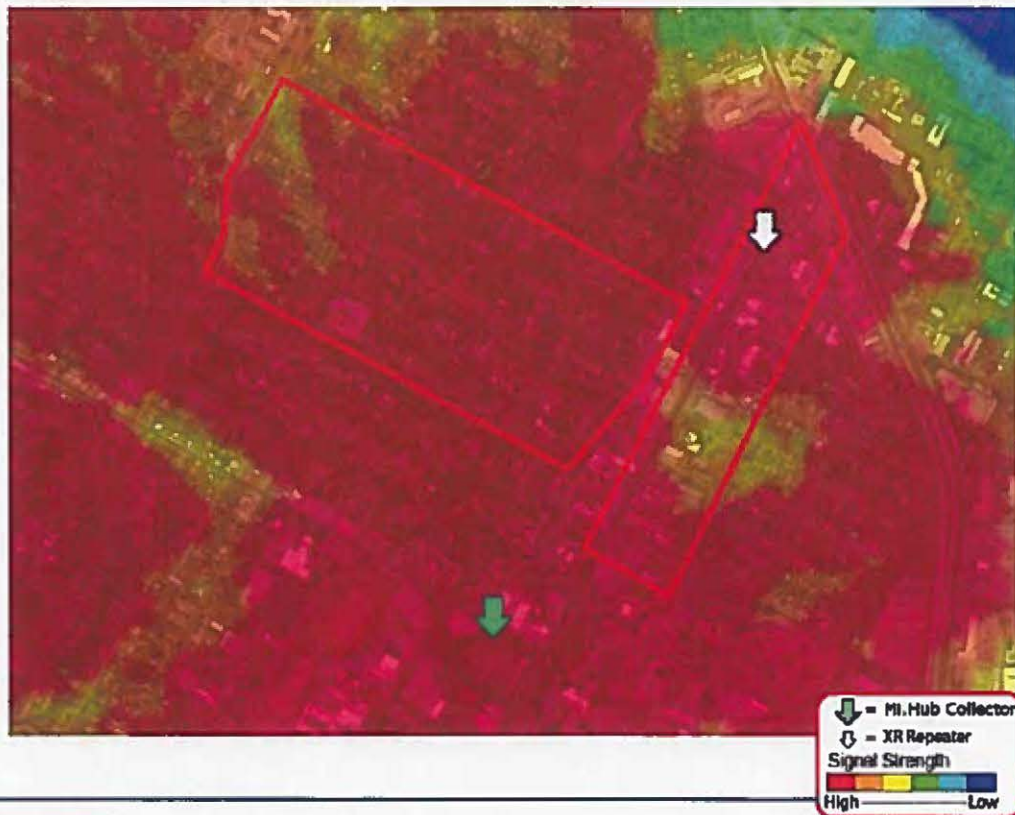
- Infrastructure Recommendation
 - One (1) XR Collectors (on Power Pole)
 - One (1) AC Owl XR Repeater (on Street Light)
- ~33 Leak Detection loggers provided to Mueller Systems for this study are covered by this propagation study. Additional logger locations provided after this study may require additional Infrastructure. The legend on slide 3 the (red line) is the Territory Border provided for reference.
- Leak detection network designed with a 2-hop max design.

Austin Water – Smart Water Pilot

- Assets proposed for XR collectors will have access to AC Power and allow an antenna height of approximately 40' from ground level.
- Hydrant leak detection loggers have directional RF. May require additional infrastructure to cover areas with low signal strength.
- Images below show all meter locations requiring coverage.
- Mueller Systems assumes that suitable connections exist to attach to existing grounding provided by the customer at collector, amplifier and antenna mounting locations.
- Assets proposed for infrastructure locations will require a site survey to determine any nearby assets/locations viable for infrastructure placement. After site survey, if there are no viable assets, study will need revision.
- The Model assumed water meters mounted under plastic lids. Nodes must be mounted through the lid with a Mueller through the lid (TTL) adapter

Assets Location

Type	Height	Asset Name	Latitude	Longitude
XR	40'	Power Pole off Old Koenig Ln	30.328093	-97.726340
AC XR	20'	Street Light of Canion St & N Lamar Blvd	03.335620	-97.720172





Google Earth KMZ File

Additional desktop review of the data can be done with Google Earth. Click on the files below, if you have Google Earth installed.



Austin_TX_ML.Echo_8-3-2016.kmz

Mueller Infrastructure Installation Assumptions

Device	Notes/assumptions
XR - Collector Utility owned water tank	<p>Mueller Systems installation of Antenna and Amplifier/filter on top of tank, running and securing coax from amplifier to collector down the tank. Installation of the collector at base of tank on utility supplied mounting panel, weather proofing all connections, RF sweep of connections.</p> <ul style="list-style-type: none"> a. Assumes available AC source within close (3ft) range of the collectors installed site b. Assumes collector can be installed to an existing circuit or to an additional circuit breaker in an existing panel and that a good ground is provided or available for lightning arrestor <p><i>Does not include the following:</i></p> <ul style="list-style-type: none"> a. Other manual work not directly associated with installation of the collector such as hand trenching from tank to collector or electrical junction box and buildup of collector mounting frame b. Structural analysis or RF study of device
AC OWL XR on utility asset	<p>Repeater and MS provided hardware mounted to utility provided asset at the height indicated in the prop study. Either bolted or clamped to building/pole provided with no additional mounting considerations using supplied mounting hardware.</p> <ul style="list-style-type: none"> a. Assumes available AC source within close (3ft) range of the repeater installed site b. Assumes all parts of the installation can be accessed with a ladder and no man-lift required c. Assumes repeater can be installed to an existing circuit or to an additional circuit breaker in an existing panel

Austin Water – Smart Water Pilot

Pricing Proposal

Initial purchase by City of Austin

MI.Net & Mi.Echo System	Quantity	Price	Ext Price
Pumper Cap & Sensor	33	\$950.00	\$31,350.00
XR Collector (installed)	1	\$5,000.00	\$5,000.00
XR Repeaters (installed)	2	\$720.00	\$1,440.00
Project Management & Setup	1	\$4,000.00	\$4,000.00
5/8 X 3/4 Brass Water Meters	20	\$190.00	\$3,800.00
Mi.Host & Mi.Data (utility portal & consumer portal)	1	\$2,000.00	\$2,000.00
Through the lid adapters	20	\$0.00	\$0.00
MI.Net & Mi.Echo Sub Total			\$47,590.00

If pilot continues after 1st year

Annual Hosting & Maintenance	Quantity	Price	Ext Price
Hosting, Backhaul & Collector Maintenance to start after year 1	1	\$3,000.00	\$3,000.00

Annual Hosting & Maintenance	Quantity	Price	Ext Price
Hosting, Backhaul & Collector Maintenance to start after year 2 - up to 4000 water meters & 150 MI. Echo Sensors. For additional Volume pricing to be determined	1	\$15,000.00	\$15,000.00

Signature not required, purchase order agrees to terms and conditions.

Mueller Systems

Austin Water

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



About Mueller Systems

Where Intelligence Meets Infrastructure®

Mueller Systems provides Smart Metering solutions to optimize the delivery and use of water. Municipalities that supply water need innovative ways to increase efficiencies, reduce costs, conserve water, and improve customer service. The MI.Net® Mueller Infrastructure Network for Utilities from Mueller Systems meets that need.

For more than 150 years, the most practical, respected and intuitive products in the water industry have been built by the company now known as Mueller Systems.

Mueller Systems offers a full line of residential, fire line and commercial meters, AMR / AMI systems and related products. We are committed to providing utilities with the infrastructure technology needed to optimize their operations and ensure the sustainability of our water. By building on our expertise in water management, we help water utilities had better manage their operations and resources.

Mueller Systems LLC is a Mueller Water Products company. Mueller Water Products has been a leading manufacturer and marketer of infrastructure and flow control products and services for more than 150 years. Mueller Water Products is continuously developing systems and components that make collecting information easier and more beneficial to utilities and their customers.

Mueller Systems
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Middleborough, MA 02346

www.muellersystems.com

Contact:

Fred Quintero - 704-682-0198
fquintero@muellersystems.com

Cynthia Tucker - (214) 385-3461
CTucker@echologics.com

Customer Support
Monday – Friday 8am – 7pm ET
(800) 323-8584
CustomerCare@MuellerSystems.com
Support@MuellerSystems.com

**EXHIBIT B
MUELLER SYSTEMS TERMS AND CONDITIONS**

Exhibit A

Terms & Conditions

APPLYING TO MUELLER SYSTEMS' TYPE PRODUCTS ONLY
SUBJECT TO CHANGE WITHOUT NOTICE

ALL ORDERS ARE SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY CHANGES MUST BE IN WRITING AND SIGNED BY A DULY AUTHORIZED MUELLER SYSTEMS REPRESENTATIVE. ANY CHANGE MADE ON PURCHASERS ORDER OR OTHER PRINTED MATERIAL SHALL BE EFFECTIVE TO CHANGE OR MODIFY MUELLER SYSTEMS' TERMS AND CONDITIONS ONLY IF AGREED TO IN WRITING.

AN ORDER, WHICH SPECIFIES A FUTURE SHIPPING DATE, WILL BE SHIPPED ON OR NEAR SAID DATE. ANY CHANGE IN THE SHIPPING DATE TO BE VALID MUST BE MADE AT LEAST 30 DAYS PRIOR TO SAID SHIPPING DATE. MUELLER SYSTEMS RESERVES THE RIGHT TO INVOICE FOR THE MATERIAL ON THE VALID SPECIFIED SHIPPING DATE.

CANCELLATION OF AN ORDER CAN ONLY OCCUR WHEN CONFIRMED IN WRITING BY AN AUTHORIZED MUELLER SYSTEMS REPRESENTATIVE. ORDERS WHICH INVOLVE SPECIAL MATERIAL OR ITEMS WHICH ARE NOT NORMALLY INVENTORIED BY MUELLER SYSTEMS WILL REQUIRE PAYMENT OF REASONABLE CANCELLATION CHARGES TO TAKE INTO ACCOUNT EXPENSES FOR LABOR AND MATERIAL COST INCURRED PRIOR TO THE CANCELLATION. DETERMINATION OF MATERIAL WHICH IS CONSIDERED SPECIAL ALONG WITH THE CHARGE WILL BE PROVIDED BY MUELLER SYSTEMS TO THE CUSTOMER PRIOR TO ACTUAL CANCELLATION OF THE ORDER.

ALL PRICES ARE SUBJECT TO CHANGE AND ALL MATERIALS WILL BE BILLED AT PRICES IN EFFECT ON THE DATE OF MUELLER SYSTEMS ORDER ACKNOWLEDGEMENT UNLESS MUELLER SYSTEMS OTHERWISE AGREES IN WRITING.

MINIMUM ORDER FROM ONE SHIPPING POINT--\$250 NET

ALL SHIPMENTS ARE F.O.B.* POINT OF SHIPMENT WITH FREIGHT ALLOWED ON EACH ORDER HAVING A NET PRICE VALUE OF \$7,500 OR MORE PER DESTINATION.

*F.O.B.--THE POINT AT WHICH TITLE TO THE GOODS AND RISK OF LOSS OR DAMAGE PASSES TO THE BUYER.

MUELLER SYSTEMS WILL ATTEMPT TO COMPLY WITH PURCHASER'S DIRECTIONS FOR SHIPMENT, BUT MUELLER SYSTEMS' DETERMINATION OF THE METHOD OF SHIPMENT SHALL BE FINAL AND CONCLUSIVE.

TERMS OF PAYMENT ARE AS FOLLOWS UNLESS OTHERWISE AGREED UPON: 2% DISCOUNT AVAILABLE 15 DAYS AFTER INVOICE DATE; NET AMOUNT 30 DAYS AFTER INVOICE DATE.

~~ANY TAXES AND EXCISES LEVIED BY ANY GOVERNMENTAL OR MUNICIPAL AUTHORITY INVOLVING THE SALE OR TRANSPORTATION OF THE GOODS MUST BE BORNE BY BUYER.~~ KAO

MUELLER SYSTEMS SHALL NOT BE LIABLE FOR ANY DELAY OR DEFAULT IN SHIPPING FOR CAUSES NOT WITHIN MUELLER SYSTEMS' CONTROL INCLUDING, BUT NOT LIMITED TO STRIKES, PRODUCTION OR TRANSPORTATION DIFFICULTIES, EMPLOYEE LABOR DIFFICULTIES, FLOODS, ACTS OF GOD, OR OTHER CASUALTY NOT WITHIN MUELLER SYSTEMS' CONTROL. IN THE EVENT OF ANY DELAY OR DEFAULT IN DELIVERY FOR SUCH CAUSES, MUELLER SYSTEMS SHALL HAVE SUCH ADDITIONAL TIME AS MAY BE REASONABLY NECESSARY, UNDER THE CIRCUMSTANCES, TO COMPLETE DELIVERY.

~~THIS AGREEMENT SHALL BE CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS. ANY DISPUTES ARISING HEREUNDER SHALL BE SUBMITTED TO EITHER THE CURRENT COURT OF MACON COUNTY, ILLINOIS, OR THE FEDERAL DISTRICT COURT IN SPRINGFIELD, ILLINOIS, AND THE PARTIES HERETO HEREBY SUBMIT TO THE JURISDICTION OF SAID COURTS.~~ KAB

NO MATERIAL SHALL BE RETURNED TO MUELLER SYSTEMS WITHOUT EXPRESS WRITTEN AUTHORIZATION FROM A DULY AUTHORIZED MUELLER SYSTEMS REPRESENTATIVE. UNUSED STANDARD CATALOG ITEMS, DELIVERED AS ORDERED, MAY BE RETURNED, WITH PROPER AUTHORIZATION, FOR CREDIT. NON-CATALOG OR SPECIALLY MANUFACTURED ITEMS, DELIVERED AS ORDERED, ARE NOT RETURNABLE UNLESS MUELLER SYSTEMS CAN LOCATE AN ALTERNATE PURCHASER. ALL AUTHORIZED RETURNS ARE SUBJECT TO INSPECTION TO VERIFY MERCHANTABILITY AND WILL BE ASSESSED THE USUAL AND CUSTOMARY RESTOCKING CHARGES THEN IN EFFECT BY MUELLER SYSTEMS.

WE HEREBY CERTIFY THAT THESE GOODS ARE PRODUCED IN COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF SECTION 6, 7, AND 12 OF THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED, AND REGULATION AND ORDERS OF THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION ISSUED UNDER SECTION 14 THEREOF. PLEASE CONTACT OUR SALES REPRESENTATIVE OR OUR CUSTOMER CARE DEPARTMENT FOR ITEMS NOT SHOWN IN OUR PRICE SHEETS.

LIMITED WARRANTY FOR MUELLER SYSTEMS PRODUCTS

This Warranty shall apply to the Mueller Systems hardware and software products specified in Appendix A (respectively, the "Hardware" and "Software" and collectively, the "Products") and is extended only to utilities, municipalities and other commercial users of the Products (referred to as the "Customer").

Product Warranty

Subject to the limitations and conditions set forth herein, Mueller Systems warrants that commencing from the date of shipment to the Customer and continuing for the period set forth in Appendix A (referred to as the "Warranty Period"); (a) the Hardware will be free from defects in materials and workmanship under normal use, installation and service conditions; (b) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (c) the Software substantially conforms to the applicable published Mueller Systems functional specifications for the Software. Except as provided for in Appendix A, Mueller Systems will, at its option, either repair or replace the Product if it malfunctions or becomes inoperable due to a defect in workmanship or materials during the Warranty Period. If in its sole discretion Mueller Systems determines that it is unable to repair or replace the Product, it will refund to Customer a pro-rated amount paid for the defective Product. Products that are repaired or replaced under this Warranty will be warranted for the remainder of the original Warranty Period or 30 days, whichever is longer.

Exclusions

If, in Mueller Systems' sole judgment, a Product has been subject to misuse, neglect or accident or has been damaged through abuse, alteration, improper installation or application, failure to follow Mueller Systems' operation or maintenance instructions or negligence in transportation, handling, or storage, or repaired by anyone other than Mueller Systems or its authorized personnel, this Warranty will not be applicable. For Software, this Warranty will not apply if there has been a change to the Software's operating environment not made or authorized by Mueller Systems; Customer fails to install any correction or enhancement provided by Mueller Systems; or a virus is introduced through not fault of Mueller Systems. This Warranty will also not cover damage due to acts of God, power failures, lightening, fire, flood, severe weather, hailstorms, insect and pest infestation, and other events reasonable beyond Mueller Systems' control.

Product Returns

Claims under this Warranty will be considered if submitted to Mueller Systems within 60 days following the discovery of any defect covered by this Warranty and provided Mueller Systems or its agents

are permitted a commercially reasonable opportunity to examine and analyze the material or workmanship claimed to be defective. If Mueller Systems elects to repair the Product, Customer will send it, properly packaged, to a repair facility designated by Mueller Systems. Customer will pay the cost of returning defective Products to the place of repair designated by Mueller Systems and Mueller Systems will pay the cost of delivering repaired or replacement Products to Customer.

Limits of Warranty and Liability

Damage to persons or property or other loss or injury resulting from defects in the Products or from improper installation or use shall not be the responsibility of Mueller Systems. Mueller Systems will not under any circumstance be liable for any indirect, special, incidental or consequential damages of any nature, whether based on contract, tort or other legal theory including but not limited to, business interruption costs, loss of profit or revenue, loss of data, loss of use of services, cost of capital, cost of substitute services or facilities, downtime costs or damages and expenses arising out of third-party claims, even if Mueller Systems has been advised of the possibility of such damages. In all cases, Mueller Systems' total liability will be limited to the total payments made by Customer to Mueller Systems for the Products and services provided.

Disclaimer of Warranty

EXCEPT AS EXPRESSLY SET FORTH IN THIS WARRANTY, MUELLER SYSTEMS DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AGAINST TITLE AND AGAINST INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TO THE EXTENT ANY IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD.

Appendix A

Software / Equipment

1. AMR / AMI Products¹:

Software – Mi Host, Mi Data, EZReader and other software products are covered by a one (1) year warranty on material and workmanship and shall perform substantially as described with Provider then current Documentation

Hardware – Mi Node electric (Smart Meter), Mi Hub Data Collector, Street Machine RF Receiver, PitStop handheld receivers, TRuRead™ remotes, laptops PC's, Server Hardware and all other peripheral electronic products are covered by a one (1) year warranty on material and workmanship

Radio Modules – Mi Node Water Modules and Hot Rod™ Modules are covered by a ten (10) year warranty on material and workmanship. Additionally, Mi Node Water Modules and Hot Rod™ Modules are covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. Mi Hydrant and Repeater Transceivers are covered by a ten (10) year warranty on material and workmanship. 420RDM (Remote Disconnect Valve) are covered by a five (5) year warranty on material and workmanship. Additionally, the unit is covered by a prorated warranty for years six (6) through ten (10) at a fifty-percent (50%) discount. All prorated warranty credit listed will apply to list pricing in effect at the time of the return.

Encoder Register Products – Hersey Translator™ Encoder registers, Hersey SSR Solid State Register, Wall Pads and Pit Pads are covered by a ten (10) year warranty on material and workmanship. Additionally, the complete unit is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. The prorated warranty credit listed will apply to list pricing in effect at the time of the return.

2. Water Metering Products:

Models 400, 500, MYR, RFM, FM3, HM, and HbMag cold-water meters and detector check models, EDCIV are covered against defects in material and workmanship for a period of one (1) year from the date of installation.

Malfunctions for the above listed meters are guaranteed to be free from defects in material and workmanship for a period of twenty-five (25) years from the date of installation.

Standard Registers for the above listed meters are guaranteed to be free from defects in material and workmanship for a period of fifteen (15) years from the date of installation.

Models 400 and 500 meters are guaranteed to perform to AWWA new meter accuracy standard as defined in the most current revision for a period of five (5) years from the date of installation.

Models MYR, RFM, FM3, HM and HbMag meters are guaranteed to perform to AWWA new meter accuracy standard as defined in the most current revision for a period of one (1) year from the date of installation.

Models 400 and 500 meters are guaranteed to perform to AWWA repaired meter accuracy standards for the following time periods:

5/8" – Fifteen (15) years from the date of installation, or the registration of 1,750,000 U S gallons, whichever comes first,

3/4" – Fifteen (15) years from the date of installation, or the registration of 2,000,000 U S gallons, whichever comes first,

1" – Fifteen (15) years from the date of installation, or the registration of 3,000,000 U S gallons, whichever comes first,

1-1/2" – Fifteen (15) years from the date of installation, or the registration of 5,500,000 U S gallons, whichever comes first,

2" – Fifteen (15) years from the date of installation, or the registration of 8,500,000 U S gallons, whichever comes first.

If the above listed meters do not perform as specified, Provider will repair or replace them, at Provider's option, subject to the following:

- a) Provider shall be determined to not be performing as guaranteed if it fails to pass an accuracy test, conducted by the customer according to AWWA standards. If the meter is inoperative because of foreign material, all such material must be removed prior to testing. A copy of the customer's test results must accompany the Hersey meter being returned. If the customer chooses not to test a Hersey meter before returning it, Provider will repair or replace the meter at Provider's option after the meter has been tested by Provider. When test is conducted by Provider, the customer will be charged a reasonable testing fee.]
- b)

¹ Unless otherwise expressly stated herein, all warranty terms are provided from the date of this Agreement
8 14

MUELLER SYSTEMS MASTER AGREEMENT

THIS MASTER AGREEMENT (this "Agreement") is entered into this _____ day of _____ between MUELLER SYSTEMS, LLC, a Delaware limited liability corporation having its principal offices at 10210 Statesville Blvd, Cleveland, North Carolina 27013 (referred to in this Agreement as "Provider"), and City of Austin, Texas, a home-rule municipality having its principal offices at 301 W. Second St. (referred to in this Agreement as "Customer"). This Agreement governs the sale by Provider and the purchase by Customer for its own use and not for resale of, as applicable, Equipment, Software, Documentation and other items related to advanced metrology infrastructure systems. In consideration of the mutual obligations set forth in this Agreement, Customer and Provider agree as follows:

1. DEFINITIONS.

a. "Content" means the information developed or legally acquired by Customer which may be used in connection with or accessed by any module of the Software.

b. "Documentation" means the user guides, reference manuals, and installation materials provided by Provider to Customer related to the Software and Equipment.

c. "Equipment" means the components, devices, products, equipment and related items provided by Provider Identified in Appendix A.

d. "Services" means activities related to deployment and installation services, repair services, hosting services and technical support/maintenance services as Identified in Appendix B.

e. "Software" means the object code versions of the Provider's software identified in Appendix A, together with all subsequent authorized updates, replacements, modifications or enhancements.

2. SOFTWARE

a. License. Provider hereby grants to Customer, a limited, non-exclusive, nontransferable license (without the right of sublicense) to, in connection with the Equipment, use, install, run, execute, display and, subject to the restrictions described below, duplicate and distribute internally, the Software and Documentation solely for Customer's internal information management and processing purposes.

b. Restrictions. Except as specifically and expressly permitted in writing by Provider, Customer shall not (i) violate any restriction set forth in this Agreement; (ii) modify, translate, de-compile, reverse compile, disassemble, or

create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Software; (iii) adapt the Software in any way for use to create a derivative work; (iv) include or combine the Software in or with any other software; or (v) use the Software to provide processing services to third parties or on a service bureau basis. Except as expressly permitted in this Agreement, Customer may not copy the Software other than to make one machine readable copy for disaster recovery or archival purposes. Customer may only make copies of Documentation as reasonably necessary for the use contemplated herein and with proper inclusion of Provider's copyright notices.

c. Ownership. This Agreement does not grant to Customer any ownership interest in the Software or Documentation. Customer has a license to use the Software and Documentation as provided in this Agreement. Customer hereby agrees and acknowledges that Provider owns all right, title, and interest in the Software and Documentation, and Customer will not contest those rights or engage in any conduct contrary to those rights. Any copy, modification, revision, enhancement, adaptation, translation, or derivative work of or created from the Software and Documentation made by or at the direction of Customer shall be owned solely and exclusively by Provider, as shall all patent rights, copyrights, trade secret rights, trademark rights and all other proprietary rights, worldwide.

d. Reservation. Provider reserves all rights not specifically granted under this Agreement.

3. EQUIPMENT In consideration of the fees set forth in Appendix D of this Agreement, Provider will provide the Equipment identified in Appendix B.

4. SERVICES In consideration of the fees set forth in Appendix D of this

Agreement, Provider will provide the Services identified in Exhibit B.

5. **CONFIDENTIALITY** The Software, Equipment and Documentation, including any ideas, concepts, know-how and technology contained therein, shall be considered the proprietary and confidential information of Provider and, as such, shall be subject to the confidentiality provisions of this Agreement. If a separate, written non-disclosure agreement exists between Provider and Customer, such agreement will control and will apply according to its terms and conditions to all confidential information the parties exchange with each other. If no separate, written non-disclosure agreement exists between Provider and Customer, the terms listed in Appendix C will apply to the confidential information the parties exchange with each other.

6. FEES AND PAYMENT

a. **Software Fees.** Customer shall pay the Software fees set forth in Appendix D of this Agreement.

b. **Equipment Fees.** Customer shall pay the Equipment fees set forth in Appendix D of this Agreement. Title to the Equipment, except the Software and Documentation that are subject to licenses provided in this Agreement, passes from Provider to Customer when Provider ships the Equipment.

c. **Service Fees.** Customer shall pay the Service fees set forth in Appendix D of this Agreement.

d. **Taxes.** All prices and fees are in U.S. dollars unless otherwise specified. All amounts payable under this Agreement are exclusive of all sales, use, value-added, excise, property, withholding, and other taxes and duties. ~~Customer will pay all taxes and duties assessed by any authority in connection with this Agreement and with Customer's performance hereunder. Customer will promptly reimburse Provider for any and all taxes or duties that Provider may be required to pay in connection with this Agreement or its performance. This provision does not apply to taxes based on Provider's income, or any taxes for which Customer is exempt, provided Customer has furnished Provider with a valid tax exemption certificate.~~

e. **Payment.** Unless provided otherwise herein, Customer agrees to pay all amounts specified in Appendix D or otherwise due under this Agreement within thirty (30) days after the date of invoice. Past due amounts will shall bear interest from the due date until paid at a rate of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law, whichever is less. All payments made under this Agreement shall be nonrefundable, except as specifically provided otherwise in this Agreement.

7. TERM; TERMINATION

a. **Term.** The term of this Agreement is one (1) year commencing upon the date of this Agreement. ~~This Agreement will automatically renew for subsequent, successive one (1) year periods at the then current Provider prices unless either party gives the other party written notice of its intent to not renew at least thirty (30) days prior to the expiration of the then current term.~~ Provider may increase support fees at any time on thirty (30) days prior notice to Customer. Within such thirty (30) days, Customer may terminate the Agreement by providing written notice to Provider.

b. **Termination for Breach.** If either party breaches this Agreement, and such breach is not cured within ten (10) days of the breach, after receiving written notice, the non-breaching party may terminate this Agreement, including all licenses provided herein, effective upon written notice to the other party. The breaching party agrees that if it breaches this Agreement, the non-breaching party will be entitled to injunctive or similar equitable relief and that the breaching party will not argue in any proceeding that its breach will not cause irreparable harm to the non-breaching party or that the non-breaching party can be adequately compensated for any such harm by any remedies other than by injunctive relief.

c. **Effect of Termination.** Termination of this Agreement shall have the effect designated in Appendix B.

d. **Non-Exclusive Remedy.** Termination of this Agreement or any license granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

c. Survival. Unless otherwise stated herein, any provision that, by its nature or terms, is intended to survive the expiration or termination of this Agreement, will survive.

8. LIMITED WARRANTIES; REMEDIES

a. Software. Subject to the exclusions herein, including those in Appendix A, Provider warrants that commencing from the date of shipment to Customer and continuing for the period set forth in Appendix A (the "Warranty Period"), (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software will perform substantially in conformance with the applicable Documentation provided to Customer by Provider. Provider does not warrant that the Software will operate in combinations with other software, except as specified in the Documentation, that the Software will meet the Customer's requirements or that the operation of the Software will be uninterrupted or error-free. Customer assumes responsibility for taking adequate precautions against damages which could be caused by defects, interruptions or malfunctions in the Software or the hardware on which it is installed. Provider's entire obligation and Customer's exclusive remedy with respect to the Software warranties set forth above shall be, at Provider's option, to either (x) repair or replace any Software containing an error or condition which is reported by Customer in writing to Provider which causes the Software not to conform with the warranty set forth herein; or (y) refund a pro rated amount paid by Customer to Provider and terminate this Agreement and all licenses provided herein.

b. Services. Provider warrants that all services provided by it to Customer under this Agreement shall be performed in a workmanlike manner. Provider's entire obligation and Customer's exclusive remedy with respect to the Service warranties set forth above shall be the re-performance of the applicable non-conforming Service.

c. Equipment. Subject to the exclusions herein, including those in Appendix A, Provider warrants to Customer that the Equipment will be free from defects in material and workmanship for the periods specified in Appendix A. Claims under this Section will be considered if submitted to Provider within sixty (60) days

following the discovery of any defect covered by this Section and provided Provider or its agents are permitted a commercially reasonable opportunity to examine and analyze the material or workmanship claimed to be defective. Provider's entire obligation and Customer's exclusive remedy with respect to the Equipment warranties set forth herein, at Provider's option, is repair or replacement of any Equipment found defective during the applicable warranty period after such Equipment is properly packaged and returned prepaid to Provider's designated service center.

d. Costs. Any and all costs associated with uninstalling and shipping defective Equipment and Software and installing replacement Equipment and Software will be the responsibility of Customer. Customer agrees to furnish Provider reasonable access to such Equipment and Software. During the warranty prior for infrastructure type products list as Hardware or Software in Appendix A, Provider will pay any and all costs associated with installations and shipping of defective Equipment and Software.

e. Exclusions. The warranties provided by Provider shall not apply to Equipment and/or Software which: (i) have been altered, except with the express written consent, permission or instruction of Provider, (ii) have been used in conjunction with another product resulting in the defect, except for those third party products specifically approved by Provider, (iii) were other than the most current version of the Software (but only to the extent that any failure of the Software would have been avoided by the use of the most current version), (iv) have been damaged by improper environment, abuse, misuse, accident, negligence, act of God, excessive operating conditions, or unauthorized attachments or modifications, (v) have not been properly installed and operated in accordance with the Documentation, or as otherwise instructed by Provider, or (vi) any other exclusion set forth in any Appendix hereto.

f. DISCLAIMERS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES AND REMEDIES STATED ABOVE ARE EXCLUSIVE AND NO OTHER WARRANTIES OR REMEDIES EXPRESS, IMPLIED OR STATUTORY, APPLY TO THE DOCUMENTATION, THE SOFTWARE, THE EQUIPMENT OR ANY SERVICES TO BE

PROVIDED BY PROVIDER UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OR PERFORMANCE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH PROVIDER EXPRESSLY DISCLAIMS.

9. **INDEMNIFICATION** Provider will indemnify and defend Customer from any third party claim that the Software and Equipment infringe on another person's or company's patent, copyright or other intellectual property right as specified in this Section. This Indemnity does not cover and specifically excludes (a) intellectual property rights recognized in countries and jurisdictions other than the United States, and (b) claims relating to third party products and software. Provider has no obligation under this Section for any claim to the extent it results from or arises out of Customer's modification of the Equipment or Software or from any combination, operation or use of the Software or Equipment with other third party products or services. Provider's duty to indemnify under this Section is contingent upon Provider receiving prompt notice of a claim and Provider's right to solely control resolution of a claim. Customer's sole remedy for an indemnified claim under this Section is as follows: Provider will, at its expense and in its discretion either (a) resolve the claim in a way that permits Customer's continued ownership and use of the affected Software and Equipment, (b) provide a comparable, non-infringing replacement at no cost to Customer, or (c) accept return of the Software and Equipment, provide a reasonable depreciated refund and terminate this Agreement and all licenses herein. This Section is the exclusive statement of Provider's liability and responsibility for indemnifying Customer for infringement of intellectual property rights

10. **LIMITATION OF LIABILITY.**

a. **IN NO EVENT WILL PROVIDER BE LIABLE FOR ANY LOSS OF PROFIT OR OTHER COMMERCIAL DAMAGE, INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES UNDER**

ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS ARISING FROM MALFUNCTION OR DEFECTS IN THE SOFTWARE OR EQUIPMENT. THESE LIMITATIONS WILL APPLY FOR ANY CLAIMS, INCLUDING WITHOUT LIMITATION, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT LIABILITY EVEN IF PROVIDER OR ITS REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PROVIDER'S MAXIMUM LIABILITY HEREUNDER IS EXPRESSLY LIMITED TO THE TOTAL AMOUNT PAID FOR THE SOFTWARE, SERVICES, AND EQUIPMENT IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS AND WILL UNDER NO CIRCUMSTANCE EXCEED THE AMOUNT PAID BY CUSTOMER IN THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS FOR THE SOFTWARE, SERVICES AND EQUIPMENT PROVIDED BY PROVIDER UNDER THIS AGREEMENT. Some states do not allow the limitation and/or exclusion of liability for incidental or consequential damages, so the above limitation may not apply.

b. The provisions of this Agreement allocate the risks between Customer and Provider. Provider's pricing reflects this allocation of risk and the limitations of liability specified herein.

8. **NOTICE.** All notices required to be given hereunder shall be in writing. Notice shall be considered delivered and effective upon receipt when sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above. Either party, upon written notice, may change any name or address to which future notice shall be sent.

11. **GENERAL.** The Software will not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction. The rights and obligations of this Agreement are personal rights granted to the Customer only. The Customer may not transfer or assign any of the rights or obligations granted under this Agreement to any other person or legal entity. Any such purported transfer or assignment shall be null and void. Provider will be free of liability to the Customer where Provider is prevented from executing its

obligations under this Agreement in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable. Any modification or amendment to any of the provisions of this Agreement will be in writing and signed by an authorized officer of each party. This Agreement does not create or imply any relationship in agency or partnership between the parties. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. The validity of this Agreement and the rights, obligations, and relationship of the parties resulting from same will be interpreted and determined in accordance with the law of the State of Texas, and applicable federal law, without regard to its choice of law provisions. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement is contrary to and in violation of any applicable law, such provision will be considered null and void to the extent that it is contrary to such law, but all other provisions will remain in effect. The waiver or failure of either party to exercise any right herein shall not be deemed a waiver of any further right hereunder. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, and commitments between the parties regarding the subject matter of this Agreement.

[Signature Block Follows]

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Provider Mueller Systems, LLC

By: 

K. Anita Short
Name (Print or Type)

RFP Manager
Title

3/16/17
Date

Customer

By: _____

Name (Print or Type)

Title

Date

Appendix A

Software / Equipment

1. AMR / AMI Products¹:

Software – Mi Host, Mi Data, EZReader and other software products are covered by a one (1) year warranty on material and workmanship and shall perform substantially as described with Provider then current Documentation

Hardware – Mi Node electric (Smart Meter), Mi Hub Data Collector, Street Machine RF Receiver, PitStop handheld receivers, TRuRead™ remotes, laptops PC's, Server Hardware and all other peripheral electronic products are covered by a one (1) year warranty on material and workmanship.

Radio Modules – Mi Node Water Modules and Hot Rod™ Modules are covered by a ten (10) year warranty on material and workmanship. Additionally, Mi Node Water Modules and Hot Rod™ Modules are covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. Mi Hydrant and Repeater Transceivers are covered by a ten (10) year warranty on material and workmanship. 420RDM (Remote Disconnect Valve) are covered by a five (5) year warranty on material and workmanship. Additionally, the unit is covered by a prorated warranty for years six (6) through ten (10) at a fifty-percent (50%) discount. All prorated warranty credit listed will apply to list pricing in effect at the time of the return.

Encoder Register Products – Hersey Translator™ Encoder registers, Hersey SSR Solid State Register, Wall Pads and Pit Pads are covered by a ten (10) year warranty on material and workmanship. Additionally, the complete unit is covered by a prorated warranty for years eleven (11) through fifteen (15) at a fifty-percent (50%) discount, years sixteen (16) through twenty (20) at a twenty-five-percent (25%) discount. The prorated warranty credit listed will apply to list pricing in effect at the time of the return.

2. Water Metering Products:

Models 400, 500, MYR, RFM, FM3, HM, and HbMag cold-water meters and detector check models, EDCIV are covered against defects in material and workmanship for a period of one (1) year from the date of installation.

Maincases for the above listed meters are guaranteed to be free from defects in material and workmanship for a period of twenty-five (25) years from the date of installation.

Standard Registers for the above listed meters are guaranteed to be free from defects in material and workmanship for a period of fifteen (15) years from the date of installation.

Models 400 and 500 meters are guaranteed to perform to AWWA new meter accuracy standard as defined in the most current revision for a period of five (5) years from the date of installation.

Models MYR, RFM, FM3, HM and HbMag meters are guaranteed to perform to AWWA new meter accuracy standard as defined in the most current revision for a period of one (1) year from the date of installation.

Models 400 and 500 meters are guaranteed to perform to AWWA repaired meter accuracy standards for the following time periods:

5/8" – Fifteen (15) years from the date of installation, or the registration of 1,750,000 U.S. gallons, whichever comes first;

3/4" – Fifteen (15) years from the date of installation, or the registration of 2,000,000 U.S. gallons, whichever comes first;

1" – Fifteen (15) years from the date of installation, or the registration of 3,000,000 U.S. gallons, whichever comes first;

1-1/2" – Fifteen (15) years from the date of installation, or the registration of 5,500,000 U.S. gallons, whichever comes first;

2" – Fifteen (15) years from the date of installation, or the registration of 8,500,000 U.S. gallons, whichever comes first.

If the above listed meters do not perform as specified, Provider will repair or replace them, at Provider's option, subject to the following:

- a) Provider shall be determined to not be performing as guaranteed if it fails to pass an accuracy test, conducted by the customer according to AWWA standards. If the meter is inoperative because of foreign material, all such material must be removed prior to testing. A copy of the customer's test results must accompany the Hersey meter being returned. If the customer chooses not to test a Hersey meter before returning it, Provider will repair or replace the meter at Provider's option after the meter has been tested by Provider. When test is conducted by Provider, the customer will be charged a reasonable testing fee.]

¹ Unless otherwise expressly stated herein, all warranty terms are provided from the date of this Agreement.

Appendix B

Services

1. Software Services and Support Obligations

a. "Update" to the Software means a subsequent release of the Software that Provider makes generally available to its current customers for the Software. Updates include changes and corrections to the Software as are required to keep the Software in substantial conformance with the applicable Documentation and that are created by Provider as corrections for defects in the Software. Updates shall not include any release, option or future product that Provider licenses separately. Provider shall in its sole discretion determine the nature, content, timing and release of any Updates.

b. Web-based support, consisting of information on the most current release of the Software through Provider's web site.

c. Phone support in the form of advice and counsel via telephone regarding Customer's use of the most current release of the Software, as well as Customer's connectivity and ability to access Content. Phone Support shall be provided from 8:00 AM to 5:00 PM (Eastern Standard Time), Monday through Friday, exclusive of holidays observed by Provider.

2. Software Hosting Services

a. Except as specifically permitted in this Agreement, Customer shall have web-based access the Software hosted by Provider pursuant to this Agreement.

b. Provider shall provide Customer with access and related hosting services to the Software installed on Provider's servers. Provider will also install the Content provided by Customer. Provider will define the appropriate performance specifications and will host the server at a Provider's location. Provider will monitor and perform routine maintenance on the server, and if the server is not operating properly, will make a good faith effort to operate Customer's system on a backup server, if available. Access to Customer's server is restricted to authorized Provider information technology and support personnel only. Differential and full server backups are performed when reasonably practicable.

c. Customer shall be responsible for installing, operating and maintaining the equipment, software, and/or facilities at Customer location recommended by Provider for effective access to and use of the Software installed on the Provider server. Customer shall be responsible for providing and maintaining its own Internet access and all necessary telecommunications equipment at Customer's location necessary for accessing the Software.

d. Upon termination, for any reason, of the Agreement or any license(s) granted herein, Provider shall immediately cease providing access to the Software and Hosting Services. Customer shall (i) immediately stop access and use of all such Provider confidential information (including Software); (ii) shall return all copies of the Software, Documentation, and any Provider confidential information to Provider; and (iii) delete all Software, Documentation, and other confidential information off of any and all storage media possessed or controlled by Customer. Customer shall provide Provider with written certification signed by an officer of Customer that Customer has complied with the provisions of this Section. Customer shall immediately pay all amounts due to Provider.

Appendix C

Confidential Information

For purposes of this Attachment, "party" or "parties" shall mean Provider and Customer, including their respective subsidiaries and affiliates who are providing information under this Agreement. The parties agree to maintain confidential information as follows:

1. **Definition of Confidential Information.** The parties understand and agree that confidential information is any and all current and future Equipment, Documentation and/or Software information, roadmap, technical or financial information, customer names, addresses and related data, contracts, practices, procedures and other business information, including software reports, strategies, plans, documents, drawings, machines, tools, models, patent disclosures, samples, materials and requests for proposals that may be disclosed between the parties, whether written, oral, electronic or otherwise, however and wherever acquired ("Confidential Information"). Confidential Information excludes any information which would otherwise fall in the definitions above, but which was (a) known to the recipient of the Information ("Recipient") before receipt from the disclosing party; (b) publicly available through no fault of Recipient; (c) rightly received by Recipient from a third party without a duty of confidentiality; (d) disclosed by disclosing party to a third party without a duty of confidentiality on the third party; (e) independently developed by Recipient without breach of this or any other confidentiality agreement; or (f) disclosed by Recipient after prior written approval from the disclosing party.
2. **Obligations of Confidentiality and Remedies.** Recipient agrees to protect the disclosing party's Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Recipient uses with respect to its own Confidential Information. Neither party has any obligation to exchange Confidential Information. Both parties acknowledge and agree that the disclosure of the other party's Confidential Information could cause irreparable harm. Therefore, an injured party is entitled to applicable equitable relief, including injunctions, in addition to other remedies, for such wrongful disclosure of Confidential Information. In addition, disclosure of Confidential Information required by a government body or court of law is not a violation of this Section if the Recipient gives prompt notice of the required disclosure to the disclosing party.
3. **Term of Confidentiality Obligations.** Recipient's duty to protect Confidential Information expires three (3) years from the date of disclosure of the particular Confidential Information.
4. **No Warranties on Confidential Information.** Neither party warrants or guarantees the accuracy of any Confidential Information transferred between the parties.

Appendix D

Annual Fees

Hosting Services (with Maintenance & Support)					
Number of Metering End Points	1 - 1,000	1,001 - 5,000	5,001 - 25,000	25,001 - 50,000	50,001 - 100,000
AMI Software Module, Includes Two-Way Hosting for Water System		See Quote			
AMI Software Module, Includes Two-Way Hosting for Electric or Electric-Combo System <i>Incl. Outage Management System & TOU Rate Management Module</i>					
Additional Software Modules					
Homeowner Access Portal		See Quote			
Transformer Loading Manager		See Quote			
Demand Response Management		See Quote			
Hardware Maintenance					
Handheld PC	See Quote				
Mi.Hub Collector	See Quote				

EXHIBIT C
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below

City of Austin
Minimum Standard Non-Discrimination In Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 16th day of March, 2017

CONTRACTOR

Authorized
Signature

Title

Mueller Systems, LLC



RFP Manager

PRF QUESTIONNAIRE

CERTIFICATE OF EXEMPTION (SS) DOCUMENTS ONLY:

A detailed explanation must be included in #5 of the Certificate of Exemption form answering the following questions.

1. Why is this procurement a sole source? Why is the vendor the only viable solution? Provide a detail, "tell the story". **Mueller is the only company that makes a leak detection system that is AMI capable, is permanently installed on fire hydrant caps, and not only detects leaks but provides correlation of any leaks found.**
2. Include a manufacturer letter stating the justification of the sole source on company letterhead for all sole sources. If a distributor, include a manufacturer letter on company letterhead. **See attached.**
3. What analysis has been done to determine that this procurement is a sole source? (i.e. market research/knowledge, internet searches, evaluation of other companies, information from other municipalities, etc.) **We know that they are sole source due to market research and knowledge of the products available. We have spoken with multiple manufacturers both at water conferences and at our offices, and this is the only manufacturer that currently offers an AMI ready leak detection system with these features.**
4. Is this item available through any approved City of Austin cooperative? If so, which one? (TXMAS, US Communities, Buyboard, DIR, HGACBUY, NJPA, TCPN, TxSmartBuy) Link to complete list of City approved cooperatives: <http://purchaustintx.coacd.org/intranet/CoopPurch.cfm> **It is not available through any approved cooperative.**
5. Why is no other brand acceptable? Is there a concern regarding warranty, compatibility and/or safety/ health and public safety? **No other brand offers the features that we are looking for in this pilot.**
6. Has this procurement been competitively bid in the past? How have we been currently obtaining this item? (i.e. procard, spot purchases, through a cooperative, ect.) **No, this is the first purchase of this type of product.**
7. What are other acceptable brands? If not, what makes them unacceptable? **There are no other brands offering this product with these features.**
8. Are there territorial or geographic restrictions? What are they? **No.**
9. Are there resellers, distributors, or dealers in the market? If so, who? **No.**

10. What other suppliers or products/services were considered? What made them unacceptable? **Mueller is the only supplier of a leak detection product with these features. They do not provide it through third parties, as the software and data handling services are provided in house by Mueller.**
11. If the product is designed to be compatible with existing item, describe the age, value and useful life remaining of the current /item. **It is not compatible with any hardware or software currently owned by Austin Water.**
12. What is the estimated cost of buying a new item? What is the value of buying the addition versus buying all new? **The cost of the pilot is \$47,590 for the first year. It will all be new equipment, since Austin does not already own any compatible equipment.**
13. Is there a way to retrofit another brand? If so, what is the cost? **No.**
14. Is there specialized training or certifications required to maintain or repair the item? If so, explain. **Training to maintain the repeaters and collectors is part of the contract. Training to maintain the meters is not necessary. Any repairs to the leak detection units will have to be conducted by the vendor.**
15. What might the the estimated cost be of buying a different item? What is the cost comparison? **There is no comparable item with the same features available for purchase.**

FOR ALL PURCHASES (including SS requests):

1. If this is a repair and the equipment had to be disassembled at a repair shop, tell the story of what occurred; ie. cost for disassembly, estimate cost of repairs, was the vendor on a rotation list, was the vendor next in line for work. This type of purchase would not be a sole source. **N/A**
2. What is needing to be purchased? Explain in detail. This info needs to match the each line item on the PRF. **We are purchasing 33 leak detection units, mounted by the vendor inside of fire hydrant caps and designed to be permanently installed on the hydrants; 20 5/8" X 3/4" brass positive displacement AMI capable residential water meters; one data collector and two data repeaters to be mounted on poles that will gather the data from the leak detection units and AMI capable meters and transmit the data for analysis. To support the hardware, we are purchasing project management and set up services, including the installation of the repeaters and collector, and data hosting, analysis, and access through the Mi Host and Mi Data portals.**
3. Why is there a need to purchase this commodity/service? **We are exploring technologies that can help us find leaks while taking advantage of AMI. This pilot will help us decide if this technology warrants consideration when we make the decision to implement AMI.**

4. Is this a replacement? If so, what it is replacing? **No.**
5. Where will it be used and for what purpose? **It will be installed in the Brenwood neighborhood and along North Lamar between Koenig Ln and Airport Blvd. There it will be used to detect and correlate leaks on an AMI system that also is handling water meter data.**
6. Is it critical for AWU operations? **If so, please explain. No.**
7. Could the AWU do without it? If not, why not? **Yes.**
8. Can the old equipment be repaired? If not, why not? **N/A**
9. How frequent is the usage to merit this purchase? **It is an upgrade to current leak detection technologies that are currently in daily use.**
10. How did we operate before this purchase? **We are using "lift and shift" leak detection devices that require field crews to install them for a period of time, retrieve them, and then download their data to see if a leak was detected. Correlation is performed manually.**
11. Is this a new process requiring new equipment? If so, please explain. **It is a modification of an existing process, and an evaluation of the new equipment to see if that modification is worthwhile.**
12. Was the commodity/service identified in the approved FY budget of the Division requesting the purchase? **Yes.**



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 11/07/2016

DEPT: Pipeline Operations

TO: Purchasing Officer or Designee

FROM: Dan Strub

BUYER:

PHONE: (512) 972-0349

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

We are exploring technologies that can help us find leaks while taking advantage of AMI. This pilot will help us decide if this technology warrants consideration when we make the decision to implement AMI. Failing to properly explore the benefits of this technology risks missing an opportunity to improve leak detection operations in a more efficient, more timely, and less labor intensive manner than is currently the case.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

Mueller is the only company that makes a leak detection system that is AMI capable, is permanently installed on fire hydrant caps, and not only detects leaks but provides correlation of any leaks found. I have spoken with David Hughes at American Water, who has piloted the Mueller system to great success. Mueller is a well-established company with whom Austin Water has done business for many years, including our current hydrant contract.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Mueller Systems
which will cost approximately \$47,590.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification


Originator

Dan Strub 11/7/2016
Date

Approved
Certification


Department Director or designee

11/8/2016
Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Buyer

Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

Mueller SYSTEMS

10210 Statesville Blvd.
P.O. Box 128
Cleveland, NC27013
Ph: 704.278.2221
Fx: 704.278.9616
www.MuellerSystems.com

July 19, 2016

To whom it may concern:

RE: Sole Source Vendor for Mi.Net®

Thank you for your interest in the Mueller Infrastructure System (Mi.Net). The Mi.Net system links water meters, Mi.Echo leak detection sensors, and other control devices in an efficient wireless network for real-time access. This smart, migratable solution provides the ultimate in flexibility and scalability for water utilities.

Mueller Systems is the sole source of the Mi.Net System and no other company or firm sells or distributes directly to Austin Water. Competition in providing many of the Mi.Net System products are precluded by the existence of multiple patents and patents pending. As a few examples:

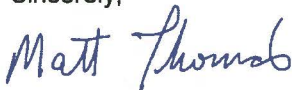
- US Patent: 9291502 – Acoustic Leak Sensor in a Fire Hydrant
- US Patent: 8660134 – Systems and Methods for Time-Based Hailing of Radio Frequency Devices
- US Patent: 8833390 – Remote Disconnect Water Meter
- US Patent: 8047072 – Composite Water Meter with Metal Threads
- US Patent: 8994551 – Systems and Methods for Remote Utility Metering and Meter Monitoring
- US Patent: 6453247 – PC Multimedia-Based Leak Detection System for Water Transmission Pipes
- US Patent: 8931505 – Infrastructure monitoring devices, systems, and methods

There are no other like System's available for purchase that would serve the same purpose or function and there is only one price for the Mi.Net System because of exclusive distribution and marketing rights.

Mueller Systems provides Smart Metering solutions to optimize the delivery and use of water. Municipalities that supply water need innovative ways to increase efficiencies, reduce costs, conserve water, and improve customer service.

For more than 150 years, the most practical, respected and intuitive products in the water industry have been built by the company now known as Mueller Systems.

Sincerely,



Matt Thomas
District Manager
