

RESOLUTION NO. 2913

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE SOLE SOURCE PROCUREMENT RENEWAL OF A THREE-YEAR SERVICE AGREEMENT WITH METEREADERS LLC.

WHEREAS, the City of Wilsonville purchasing policy states that contract amounts exceeding \$100,000 must be approved by the City Council; and

WHEREAS, the City has contracted with Metereaders LLC for utility water meter reading services for the purposes of utility billing since 1984 and that they have performed that service; with particular ability, knowledge and expertise, to the satisfaction of the City; and

WHEREAS, after market research the City has determined that there is only one known local area water meter reading service capable source in the current market conditions; and

WHEREAS, in the public interest, the City Council, acting as the local Contract Review Board, has determined that Metereaders LLC. is qualified and capable of performing the services as required, under the terms and conditions set forth; and

WHEREAS, the City's FY 2021/22 budget includes \$59,000 appropriated for meter reading services, and the City's FY 2022/23 and FY 2023/24 budgets will have comparable appropriations for meter reading services, which appropriations will be sufficient to pay for meter reading services.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager is authorized to sign the contract with Metereaders LLC. for meter reading services, any subsequent amendments for fiscal years ending 2022, 2023, 2024 as provided in the contract, and any options exercised under the contract.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 19th day of July 2021, and filed with the Wilsonville City Recorder this date.

DocuSigned by:

8A974AF3ADE042E...

JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Excused

EXHIBIT:

A. Meter Reading Services Contract

**CITY OF WILSONVILLE
METER READING SERVICES CONTRACT**

This Meter Reading Services Contract (“Contract”) is made and entered into on this ____ day of _____, 2021 (“Effective Date”), by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Metereaders, LLC**, an Oregon limited liability company (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City has need for the services by Contractor, with the particular training, ability, knowledge, and experience possessed by Contractor, for water meter reading services; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services and has localized expertise described herein on the basis of specialized experience; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below and as the City does hereinafter require;

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Services To Be Provided

1.1. Contractor shall diligently perform the meter reading services (“Services”), as more particularly described in the Scope of Work, including the General Requirements, set forth in **Exhibit A**, attached hereto and incorporated by reference herein, for the Water Utilities Meter Reading Services Project (“Project”). Contractor shall provide and bear the expense of all equipment, work, and labor, of any sort whatsoever, that may be required to complete the Services provided for in this Contract, unless otherwise specified. Contractor shall perform all Services in accordance with all applicable federal, state, and local laws, rules, and regulations.

1.2. The existence of this Contract between the City and Contractor shall not be construed as the City’s promise or assurance that Contractor will be retained for future services beyond the Services described herein.

1.3. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor’s employees assigned to perform any of the Services provided for in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

Section 2. Term

2.1. The term of this Contract shall be from July 1, 2021 through and including June 30, 2024, unless earlier terminated in accordance herewith. All Services under this Contract shall be completed prior to the expiration of this Contract.

2.2. The City has the option to renew this Contract for up to two (2) additional one (1) year periods.

Section 3. Compensation Amount and Payment

3.1. The City agrees to retain Contractor to provide the services, materials, and equipment to do and cause to be done the Services described in the Scope of Work, including the General Requirements, set forth in **Exhibit A**, and to complete and finish the same according to the terms and conditions contained in this Contract.

3.2. Except as otherwise set forth in this **Section 3**, the City agrees to pay Contractor for the actual Services completed, as identified in this Contract (“Services To Be Provided”) at a rate of SEVENTY-THREE HUNDREDTHS OF ONE DOLLAR (\$0.73) for each water meter read (“Compensation Amount”) for the first three (3) years of the Contract.

3.3. Contractor’s Compensation Amount is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

3.4. Contractor will be paid for completed Services for which an itemized invoice has been received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible.

3.5. Contractor shall complete and return to the City **Exhibit B** – Taxpayer Identification Number, prior to or along with the first invoice submittal.

3.6. If the City exercises its option(s) under **Section 2.2**, the Compensation Amount will be escalated using the Annual Portland-Salem, OR-WA, Consumer Price Index-Urban (CPI-U) for all items, not seasonally adjusted for the twelve (12) month period ending in May.

Section 4. City’s Project Manager

The City’s Project Manager is Keith Katko. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 5. Contractor's Project Manager

Contractor's Project Manager(s) are Greg Reynolds and Michael Hamberg. In the event that Contractor's Project Manager(s) is/are changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 6. Subcontractors and Assignments

Contractor shall not subcontract with others for any of the Services prescribed herein nor assign this Contract or delegate any duties hereunder without the prior written consent of the City, which consent may be withheld by the City in its sole subjective discretion, for any cause whatsoever or for no cause. Any attempted assignment of this Contract without the written consent of the City shall be void. If the City agrees to assignment of tasks to a subcontractor, Contractor shall be fully responsible for the acts or omissions of any subcontractor and of all persons employed by them, and neither the approval by the City of any subcontractor nor anything contained herein shall be deemed to create any contractual relationship between the City and the subcontractor. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

Section 7. Independent Contractor

Except as otherwise mandated by state law, the performance of Services under this Contract is at Contractor's sole risk. All damages or loss to work, equipment, or materials incurred during the performance of the Services shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 3** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Contractor's Services so such Services meet the requirements of the Project. Contractor hereby represents that no subcontractors will be used on the Project.

Section 8. Contractor Responsibilities

8.1. Contractor must comply with all applicable Oregon and federal wage and hour laws. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Contractor's

responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

8.2. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing this Contract.

8.3. No person shall be discriminated against by Contractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, national origin, or political affiliation. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

8.4. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor.

8.5. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

8.6. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

8.6.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

8.6.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

8.6.3. All work performed on the days specified in ORS 279B.020(1)(b) for public contracts.

8.7. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Services on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

8.8. The hourly rate of wage to be paid by any Contractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

8.9. Contractor, and all employers working under the Contract, are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 unless otherwise exempt under ORS 656.126.

8.10. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. If new or amended statutes, ordinances, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection, which requires compliance with federal, state, or local laws or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

8.11. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any suppliers.

8.12. COVID-19 Safety Measures. Contractor must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Contractor's employees and/or subcontractors, City employees, and the public. Contractor must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Contractor is required to stop or delay work due to a COVID-19 related event, Contractor shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 9. Indemnity

9.1. In the performance of the Services, Contractor agrees to use that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession, practicing in the Portland metropolitan area. Contractor will re-perform any Services not meeting this standard without additional compensation. Contractor's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in

accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

9.2. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 9.1**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor.

Section 10. Insurance

10.1. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or services hereunder. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

10.1.1. Commercial General Liability Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$5,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

10.1.2. Professional Errors and Omissions Coverage. Contractor agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$1,000,000** per claim. Contractor shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Contractor. Such policy shall have a retroactive date effective before the commencement of any work by Contractor on the Services

covered by this Agreement, and coverage will remain in force for a period of at least three (3) years thereafter.

10.1.3. Business Automobile Liability Insurance. If Contractor will be using a motor vehicle in the performance of the Services herein, Contractor shall provide the City a certificate indicating that Contractor has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

10.1.4. Workers Compensation Insurance. Contractor and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

10.2. Insurance Carrier Rating. Coverages provided by Contractor must be underwritten by an insurance company deemed acceptable by the City with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

10.3. Additional Insured & Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder.

10.4. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective and Services shall not be performed hereunder until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

10.5. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are “Claims Made” policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 11. Warranties/Guaranty

11.1. Contractor warrants to the City that any materials and equipment furnished under this Contract will be new and of good quality, unless otherwise required or permitted by the Contract Documents, that the Services will be free from defects, and that the Services will conform to the requirements of this Contract. Services not conforming to these requirements, including substitutions not properly approved and authorized in writing by the City, may be considered defective.

11.2. Contractor, for itself, and for its heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of Contractor. Contractor shall be responsible for, and shall indemnify and hold the City harmless from, any damage or expense by reason of failure of performance, as specified in this Contract. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours.

Section 12. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor’s control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 13. Early Termination; Default

13.1. This Contract may be terminated for convenience at any time by the City. Upon such termination, Contractor will be paid to complete any Services in process and, thereafter, this Contract shall be deemed terminated.

13.2. This Contract may be terminated prior to the expiration of the agreed upon terms:

13.2.1. By mutual written consent of the parties;

13.2.2. By the City, for any reason and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person; or

13.2.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

13.3. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Services in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract, without further notice to Contractor, and seek remedies for the default, as provided above.

13.4. If the City terminates this Contract for its own convenience and not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

13.5. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination.

Section 14. Property of the City

Meter reading records shall be the exclusive property of the City and shall be delivered to the City prior to final payment.

Section 15. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court.

Section 16. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Keith Katko, Assistant Finance Director
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Contractor: Metereaders, LLC
Attn: Greg Reynolds/Michael Hamberg
Mailing Address: PO Box 1902
Lake Oswego, OR 97035
Physical Address: 18167 SW Boones Ferry Road
Portland OR 97224

Section 17. Miscellaneous Provisions

17.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

17.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

17.3. No Assignment. Contractor may not assign this Contract, nor the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

17.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Services described in this Contract shall be obtained and maintained throughout the term of this Contract.

17.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapters 279A and 279B to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

17.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

17.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on

any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

17.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

17.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

17.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

17.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

17.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

17.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

17.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

17.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

17.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in

order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

17.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

17.18. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

17.19. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

17.20. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

METEREADERS, LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Ryan Adams, Assistant City Attorney
City of Wilsonville, Oregon

EXHIBIT A
City of Wilsonville

SCOPE OF WORK

Contractor shall provide meter reading services for the City of Wilsonville, as outlined below:

1.0 Contractor's Services

1.1. The City shall provide Contractor a monthly list of meters to be read. This list, in a text file format, may vary each month based on additional meter installations or meter removals. The list shall be submitted to the Contractor on or before the 20th of each month.

1.2. Contractor will read all manually read water meters designated by the City to be read ("Services"). Contractor agrees that it shall commence reading meters no sooner than the 22nd of each month, and no later than the 25th of each month ("Reading Period"). Contractor shall be required to submit meter reading data to the City's Finance Department electronically no later than the first working day of the month following the collection of the data. Meter reading data shall be submitted via e-mail to utility@ci.wilsonville.or.us.

1.3. The City will be migrating to a new software system in the term of this agreement. The Contractor will work with, assist, and/or cooperate with changes required during its migration to the MUNIS software system.

1.4. In addition to monthly meter reading data, separate electronic files of Contractor shall provide the following information for City staff no later than the first working day of the month following the collection of data:

- Meter maintenance items (meter lid replacement, trim, etc.)
- Meter problems (fogged/damaged register, dead meter)
- Misread meters from prior month
- Potential leaks
- Unreadable meters, along with reasoning
- Meter not found in City's file

1.5. Contractor shall read all meters included in the City's file unless Contractor determines that the meter is not reasonably accessible or safe for reading. In such case, Contractor shall immediately notify the City of which meters Contractor cannot read and the reasons why. Contractor shall not be held responsible for, or liable for, any defective or faulty meter unless the meter was intentionally or negligently damaged by Contractor and, in that case, Contractor shall reimburse the City for any such damage, and if Contractor fails to reimburse the City, the City may deduct the reimbursement amount from the next payment due to Contractor by the City.

1.6. Contractor shall not be responsible for readings associated with an opening or closing of customer accounts with the City, nor shall Contractor be responsible for rereads,

checking for vacancies, verifying whether meters are on or off, reading meters inside buildings, pumping flooded vaults, or reading meters inside vaults that are not readable without entering. Further, Contractor shall not be responsible for reading meters the access to which is obstructed in such a manner that more than due diligence is required to read the meter, which is inclusive of extreme weather conditions caused by an act of God that would make it impossible for Contractor to perform said contracted service during the current Reading Period. If reading is delayed beyond the Reading Period, both parties shall decide when the readings shall be completed by Contractor for that certain Reading Period.

1.7. All meter reading records and documents provided to Contractor by the City shall remain the property of the City and will be immediately returned to the City upon completion of each Reading Period. Contractor agrees to keep strictly confidential all information provided by the City or obtained by Contractor through the performance of this Contract.

1.8. Contractor will not be responsible for damages or be deemed to be in default by reason of delays in performance due to reasons beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Contractor's direction and control ("Force Majeure"). Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

1.9. Contractor will maintain the confidentiality of any confidential information to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor's employees assigned to perform the Services will be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

2.0 Deliverables

2.1. An electronic comma delimited text file that meets the specifications of the City's utility billing software program shall be submitted by Contractor to the City each month. The text file shall include the following information:

- Meter reading
- Date of meter reading
- Account numbers
- Meter serial number

2.2. All water meters must be accurately read, and estimated reads will not be accepted. If Contractor is unable to read a meter then the reason must be included in the electronic file sent to the City. Acceptable reasons for an unread meter may include, but are not limited to, a buried meter, vehicle parked over meter, or meter under water.

GENERAL REQUIREMENTS

General Requirements are additions to, or revisions of, the City's standard contract. In the event of a conflict between the Contract Documents and the General Requirements, the more stringent requirements shall apply.

A. Errors. Contractor shall perform such additional services as may be necessary to correct errors in the services required under this Contract, without undue delay and without additional cost to the City.

B. Records. The City shall have access to such books, documents, papers, and records of Contractor as are pertinent to this Contract for the purpose of making audits, examination, excerpts, and transcripts. Contractor shall maintain records to assure conformance with the terms and conditions of this Contract, and to assure adequate performance and accurate expenditures during the term of this Contract. Contractor agrees to permit the City, the State of Oregon, the Federal Government, or their duly authorized representatives to audit all records pertaining to this Contract to assure the accurate expenditure of funds.

C. Contractor's Office. Contractor shall be required to maintain an office, which shall be provided with telephones and such personnel as may be necessary to address complaints or to receive any other instruction. Responsible management or supervisory persons shall be accessible at or through the office so as to assure the required performance under the Contract. When the office is closed, a telephone answering service shall be in operation to receive messages.

D. Contractor's Contact. Contractor agrees to designate one (1) primary and one (1) backup person who will be the responsible contact person for Contractor with respect to implementation of the Contract and communication of information necessary for the performance of the Contract.

E. Project Safety. Contractor agrees that, in performing the services contained within this Contract, it will meet all regulations in safety as required by OSHA. Contractor further agrees that it will bring to the attention of the City all conditions on the job site or contained within the specifications which appear to be in violation of the provisions of OSHA. Contractor further agrees that it will include within all subcontracts or contracts for purchase of materials provisions requiring said supplier or subcontractors to meet OSHA standards. All materials, components, and design elements of this Contract will be reviewed and an affirmative determination made by Contractor that they meet the requirements of OSHA.

F. Incidental Costs and Additional Compensation. Contractor shall be responsible for all miscellaneous and incidental costs associated with meter reading for the City of Wilsonville. Contractor assumes the risk of all conditions foreseen or unforeseen and agrees to continue to perform the services described in this Contract without additional compensation unless otherwise provided in this Contract.

EXHIBIT B
City of Wilsonville

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Wilsonville, you must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold twenty percent (20%) on reportable amounts paid to unincorporated persons who have not supplied the City with their correct Tax Identification Number or Social Security Number.

Please complete this information request form, or *IRS Form W-9*, and return it to the City of Wilsonville prior to or along with submittal of the first billing invoice.

Please check the appropriate category:

_____ Corporation _____ Partnership _____ Government
_____ Individual/Proprietor _____ other (explain) _____ Consultant

Tax Identification No. _____

-or-

Social Security No. _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (required)