



**WORK/STUDY AGENDA
SPRINGVILLE CITY COUNCIL MEETING
SEPTEMBER 20, 2016 AT 5:15 P.M.**

City Council Chambers
110 South Main Street
Springville, Utah 84663

[AMENDED September 16, 2016 at 3:25 p.m.](#)

CALL TO ORDER- 5:15 P.M.

COUNCIL BUSINESS

1. Calendar

- September 26-30 – Public Power Week
- October 04 – Work/Study Meeting 5:15 p.m., City Council Meeting 7:00 p.m.
- October 11 – Work/Study Meeting 5:15 p.m.
- October 18 – Work/Study Meeting 5:15 p.m., City Council Meeting 7:00 p.m.
- October 31 – Halloween (City Down Town Trick-or-Treat 3:00 p.m. – 5:00 p.m.)

2. **DISCUSSION ON THIS EVENING'S REGULAR MEETING AGENDA ITEMS**

- a) Invocation – Councilmember Child
- b) Pledge of Allegiance – Councilmember Creer
- c) Consent Agenda
 1. Approval of City purchase orders required to be signed per Springville City Purchasing Code.
 2. Approval of the minutes for the June 07, 2016 Regular City Council meeting.
 3. Approval of a Resolution amending the Comprehensive Fee Schedule for the City of Springville to establish and amend fees for overnight passport applications from the Springville City, Utah Acceptance Facility to Passport Services – John Penrod, Assistant City Administrator/City Attorney
 4. [Approval and authorization of Hogan Construction completing the earthwork portion of the Aquatic Center in advance of agreeing upon a Guaranteed Maximum Price in an amount not to exceed \\$650,000.00 – Troy Fitzgerald, City Administrator](#)

3. **DISCUSSIONS/PRESENTATIONS**

- a) Presentation on NEURA and the sale of Bayview Landfill – Terry Ficklin, SUVSWD General Manager
- b) Golf Course Restaurant RFP Update – Craig Norman, Golf Pro
- c) Introduction of the new Building and Grounds Director, Brad Neal – Troy Fitzgerald, City Administrator

4. **MAYOR, COUNCIL, AND ADMINISTRATIVE REPORTS**

5. CLOSED SESSION

The Springville City Council may temporarily recess the regular meeting and convene in a closed session to discuss pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated Section 52-4-205

ADJOURNMENT

CERTIFICATE OF POSTING

This meeting was noticed in compliance with Utah Code 52-4-202 on September 15, 2016. Agendas and minutes are accessible through the Springville City website at www.springville.org/agendasminutes. Council Meeting agendas are available through the Utah Public Meeting Notice website at <http://www.utah.gov/pmn/index.html>. Email subscriptions to Utah Public Meeting Notices are available through their website.

In compliance with the Americans with Disabilities Act, the City will make reasonable accommodations to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Recorder at (801) 489-2700 at least three business days prior to the meeting.

Meetings of the Springville City Council may be conducted by electronic means pursuant to Utah Code Annotated Section 52-4-207. In such circumstances, contact will be established and maintained by telephone or other electronic means and the meeting will be conducted pursuant to Springville City Municipal Code 2-4-102(4) regarding electronic meetings.

s/s - Kim Rayburn, CMC, City Recorder



**REGULAR AGENDA
SPRINGVILLE CITY COUNCIL MEETING
SEPTEMBER 20, 2016 AT 7:00 P.M.**

City Council Chambers
110 South Main Street
Springville, Utah 84663

[AMENDED September 16, 2016 at 3:25 p.m.](#)

CALL TO ORDER

INVOCATION AND PLEDGE

APPROVAL OF THE MEETING'S AGENDA

MAYOR'S COMMENTS

PUBLIC COMMENT

Audience members may bring any item not on the agenda to the Mayor and Council's attention. Please complete and submit a "Request to Speak" form. Comments will be limited to two or three minutes, at the discretion of the Mayor. State Law prohibits the Council from acting on items that do not appear on the agenda.

CONSENT AGENDA

The Consent Agenda consists of items that are administrative actions where no additional discussion is needed. When approved, the recommendations in the staff reports become the action of the Council. The Agenda provides an opportunity for public comment. If after the public comment the Council removes an item from the consent agenda for discussion, the item will keep its agenda number and will be added to the regular agenda for discussion, unless placed otherwise by the Council.

1. Approval of City purchase orders required to be signed per Springville City Purchasing Code.
2. Approval of the minutes for June 07, 2016 Regular City Council meeting.
3. Approval of a Resolution amending the Comprehensive Fee Schedule for the City of Springville to establish and amend fees for overnight passport applications from the Springville City, Utah Acceptance Facility to Passport Services. – John Penrod, Assistant City Administrator/City Attorney
4. [Approval and authorization of Hogan Construction completing the earthwork portion of the Aquatic Center in advance of agreeing upon a Guaranteed Maximum Price in an amount not to exceed \\$650,000.00 – Troy Fitzgerald, City Administrator](#)

REGULAR AGENDA

5. Consideration of an Ordinance amending Section 11-4-406 of Springville City Development Code in regards to community use height regulations in residential zones – Jason Van Ausdal, Chief Building Official
6. Consideration of an Ordinance amending the Official Zone Map from the BP-Business Park Zone to the L-IM –Light Industrial Manufacturing Zone in the area of 700 West 1200 North – Jason Van Ausdal, Chief Building Official

7. Consideration of awarding a contract to Landis+Gyr (L+G) to provide a Radio Frequency (RF) Automated Metering Infrastructure (AMI) system that will provide remote readings of the City electric meters – Leon Fredrickson, Power Director

MAYOR, COUNCIL AND ADMINISTRATIVE REPORTS

CLOSED SESSION

8. *The Springville City Council may temporarily recess the regular meeting and convene in a closed session to discuss pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated Section 52-4-205*

ADJOURNMENT

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s/s - Kim Rayburn, CMC, City Recorder



MINUTES OF THE REGULAR MEETING OF THE SPRINGVILLE CITY COUNCIL HELD ON
TUESDAY, JUNE 07, 2016, AT 7:00 P.M. AT THE CIVIC CENTER, 110 SOUTH MAIN STREET,
SPRINGVILLE, UTAH.

Mayor Wilford W. Clyde presided. In addition to Mayor Clyde, the following were present:
Councilmember Rick Child, Councilmember Craig Conover, Councilmember Jason Miller,
Councilmember Chris Sorensen, Assistant City Administrator/City Attorney John Penrod, Assistant City
Administrator/Finance Director Bruce Riddle and City Recorder Kim Rayburn.

Also present were: Public Safety Director Scott Finlayson, Buildings and Grounds Director Alex
Roylance, Public Works Director Brad Stapley, Recreation Director Corey Merideth, Power Director
Leon Fredrickson, Library Director Pam Vaughn, Operations Manager Rod Oldroyd and Museum of Art
Director Dr. Rita Wright. Excused from the meeting: City Administrator Troy Fitzgerald

CALL TO ORDER

Mayor Clyde welcomed everyone and called the meeting to order at 7:00 p.m.

INVOCATION AND PLEDGE

Councilmember Sorensen offered the invocation, and Councilmember Conover led the Pledge of
Allegiance.

APPROVAL OF THE MEETING'S AGENDA

COUNCILMEMBER CONOVER MOVED TO APPROVE THE MEETING'S AGENDA AS
WRITTEN. COUNCILMEMBER MILLER SECONDED THE MOTION, AND ALL VOTED AYE.

MAYOR'S COMMENTS

Mayor Clyde welcomed the Council, staff and audience. He observed scouts and students in the
audience and asked them to stand and introduce themselves. Scouts from Troops #1499, 1946; were in
attendance.

PUBLIC COMMENT

Mayor Clyde introduced the Public Comment section of the agenda. He asked if there were any
requests.

Mike Ellis reported he is currently developing the area at approximately 700 South to 1000
South and 400 West to 950 West. Mr. Ellis stated currently City Code does not allow for basements
below the curb line in the area and he would like to amend the code and put in waterproof basements.
He explained he has been in the construction business all his life and has built many water tanks, lift
stations and tunneling with no leaks. As well as waterproofing shafts over a 110 feet deep installed
below water. He stated there are many techniques that prevent water from going into the basements. He
asked what the process would be to go before the Council and make a presentation.

42 Mayor Clyde replied the proper process would be to go to the Planning and Zoning Department.
Mr. Ellis replied he did and they suggested he go to the City Council.

44 Attorney Penrod explained this is something different than a regular zoning ordinance; it is a
process in the City's building code. The Council would need to give staff direction on how they would
like to proceed, where this is outside of the zoning ordinance.

46 Mayor Clyde stated it is assumed the ban on basements was because there was a problem with
water coming into the homes and complaints coming to the City asking why it was allowed. City
48 Attorney Penrod explained years ago there was a lawsuit over this very issue. Mayor Clyde requested it
be studied and discussed in a future work session.

50 Mr. Ellis commented the challenge would be to structure the regulations so that a certain process
is required to make the basements waterproof. Mayor Clyde asked Mr. Ellis to give his contact
52 information to Director Aegerter so when the Council discusses this item he can be present.

54 Steven Stanco; Mr. Stanco introduced himself as the Apiary Inspector with Utah Agriculture and
Food and he was here in regards to the bee keeping ordinance in the City. He would like to encourage
residential bee keeping. He explained his department encourages residential beekeeping using common
56 sense rules and noted his department conducts inspections, and have not seen any significant issues with
colonies.

58 Terry Burger, 1633 East Center; Mr. Burger commented he is a beekeeper and has been for five
years, not realizing there was a regulation on beekeeping in the City. He explained he has followed the
60 State regulations and is registered with the State. He stated he has not received any complaints and
manages his bees well. He explained he is a member of the Beekeepers Association where they learn,
62 mentor, and teach about beekeeping. They also sponsor seven youth to become bee keepers in Utah
County. He encourages the Council to allow residents to keep bees, as long as you are responsible. He
64 would help in anyway with bees or swarms and encourages the City to adopt a good regulation.

66 Denise Hunsaker, lives in Salt Lake City; Ms. Hunsaker stated she understands why there are
ordinances because it is overlooked. She is a beekeeper and would like her grandkids to learn and know
about beekeeping. She explained it is a hobby and an expensive hobby; she encourages beekeeping
68 within the City.

70 Parker Boyack; Mr. Boyack stated he recently purchased a home and started beekeeping. He
checked the laws within the State and noted Springville only allows beekeeping in a small portion of the
City. He stated he checked minutes and ordinances within the City and the Police Department for any
72 issues. There was only one with a natural swarm. He explained a bee issue at the Flying J, where he and
other beekeepers helped to contain the bees. He explained the need for bees and provided a copy of a
74 petition.

76 Councilmember Conover commented he would like to review the beekeeping ordinance,
Councilmember Creer concurred.

78 **CEREMONIAL AGENDA**

80 **1. Presentation by the Springville Art Royalty**

82 Dr. Rita Wright, Museum of Art Director introduced the 2016 Art Royalty and presented the
Council with a small gift.

86 2. **Presentation of CMC Designation to City Recorder** – Utah Municipal Clerks Association
UMCA Board Members Colleen Mulvey and Leigh Ann Warnock presented City Recorder Kim
Rayburn with her Certified Municipal Clerk Designation.

88
89 3. **Mayor’s Recognition of Craig Miner, Senior Bronze Medalist and Wrestling Coach**

90 Mayor Clyde welcomed Mr. Craig Miner and some of his wrestling team to the meeting. Mayor
Clyde reported Mr. Miner is being honored for his dedicated service as a wrestling coach and competitor
92 at age 64 in the U.S. Veterans Wrestling Circuit and has competed in the US Open Veterans Wrestling
tournament over the last several years winning his second bronze medal in 2015, qualifying him to be an
94 All American.

95 Mayor Clyde read the Proclamation and presented it to Mr. Miner and asked him to introduce his
96 team.

98 **CONSENT AGENDA**

- 99 4. Approval of City purchase orders required to be signed per Springville City Purchasing Code.
100 5. Approval of the minutes for the April 5, 2016 City Council Regular and Work/Study meetings
101 6. Approval of the appointment of Doug Stringham to the Landmark Preservation Commission.

102
103 COUNCILMEMBER CREER MOVED TO APPROVE THE CONSENT AGENDA AS
104 WRITTEN.

105 COUNCILMEMBER CONOVER SECONDED THE MOTION. ALL PRESENT VOTED IN
106 FAVOR OF THE MOTION. THE MOTION PASSED UNANIMOUSLY.

108 **REGULAR AGENDA**

- 109 7. **Consideration of a proposed amendment to the General Plan Land Use Map and the**
110 **Official Zone Map from Medium Density Residential to Commercial for the property at**
111 **341 South 300 East** – Fred Aegerter, Community Development Director (Continued from May
112 17, 2016)

113 Mayor Clyde commented for clarification this would not be a Public Hearing. He received
114 written requests to speak prior to the meeting regarding this item. He stated he would allow the
comments. Mayor Clyde asked everyone to limit their comments to three-minutes due to the large
116 number of requests. He turned the time over to the first requester.

117 Genevieve Baker; Ms. Baker stated the proposed item goes against the Community Plan. The
118 area should remain residential and not allow commercial encroachment. By changing the zoning it will
make further encroachment easier throughout the City. The reduction of parking on 400 south will not
120 affect the Corn Wagon Quilt Company. The petitioner owns property on 400 south that would allow for
parking. Ms. Baker read a prepared statement and asked should the neighborhood be subject to a zone
122 change that will be a breach of trust; the community should not have to pay the price. Ms. Baker
submitted a petition to the City Council.

123 Dan Workman; Mr. Workman stated he was a member of the Ad-Hoc Committee for the
124 Historic Community Plan. He commented the plan passed with a unanimous vote by the Council. He
125 expressed the area is on the National Register; and with fewer historic buildings in the area it will put
126 this in danger. Mr. Workman emphasized this would be a breach of trust to the community and flies in
the face of the Community Plan that was approved by the body. He stated it will be settling for increased
128

130 gray space, and commented the Applicant painted all the proponents as an angry mob. This was
disingenuous. The location he is losing is a bonus space and the business behind it has adequate space.

Mayor Clyde allowed Mr. Judd Harward the applicant of the item in question to comment.

132 Judd Harward; Mr. Harward gave a presentation and explained the parking is going away and the
old Danny Clay home he purchased, he would like to convert to parking and declared there would never
134 be a building on this property. Mr. Harward gave an example and provided pictures of Dr. Fullmer's
Dental Office parking lot and what he expects for his parking lot.

136 Curtis Eppley; Mr. Eppley commented he is a resident of the historic district and was on the
Historic Ad-Hoc Committee. He expressed we are concerned citizens and not vigilantes as Mr. Harward
138 previously stated. Mr. Eppley stated Mr. Harward knew the parking was going away some time ago. Mr.
Eppley expressed he lives next to a historical home that was converted to a commercial business and a
140 family can longer occupy the home. He stated there is a need to maintain the historic nature and he
would like to keep it, once it is lost it is gone forever. He decided to maintain his home and keep it
142 historic. He also hopes the procedure for bees is changed.

Councilmember Sorensen stated he motioned at the last meeting to discuss other options on this
144 item. He now feels other options would take longer and there is not a need to change it to commercial.

Councilmember Conover commented the decision at this time is whether to approve the zoning
146 or not.

148 COUNCILMEMBER CONOVER MOVED TO ***DENY ORDINANCE #08-2016*** AMENDING
THE LAND USE MAP ELEMENT OF THE GENERAL PLAN FROM MEDIUM DENSITY
150 RESIDENTIAL TO COMMERCIAL FOR THE PROPERTY AT 341 SOUTH 300 EAST.

COUNCILMEMBER MILLER SECONDED THE MOTION. THE VOTE IS RECORDED AS
152 FOLLOWS:

154	COUNCILMEMBER CHILD	AYE
	COUNCILMEMBER CONOVER	AYE
	COUNCILMEMBER CREER	AYE
156	COUNCILMEMBER MILLER	AYE
	COUNCILMEMBER SORENSEN	AYE

158 **ORDINANCE #08-2016 DENIED**

160
DENIED **ORDINANCE #09-2016** BY PREVIOUS MOTION AMENDING THE OFFICIAL
162 ZONE MAP FROM THE R1-5 SINGLE-FAMILY RESIDENTIAL ZONE TO THE CC-
COMMUNITY COMMERCIAL ZONE FOR THE PROPERTY AT 341 SOUTH 300 EAST.

164 COUNCILMEMBER ___ SECONDED THE MOTION. THE VOTE IS RECORDED AS
FOLLOWS:

166	COUNCILMEMBER CHILD	AYE
	COUNCILMEMBER CONOVER	AYE
168	COUNCILMEMBER CREER	AYE
	COUNCILMEMBER MILLER	AYE
170	COUNCILMEMBER SORENSEN	AYE

172 **ORDINANCE #09-2016 DENIED BY PREVIOUS MOTION**

8. **Consideration of amending the fencing requirements found in Section 11-6-213 of the Springville City Development Code** – Fred Aegerter, Community Development Director

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Community Development Director Aegerter addressed the requested amendment. He explained Staff reviewed information from several state extension services. All of the extension services talked about use of the eight foot fence and how it should be constructed to exclude deer, while helping to make them safe. A couple of suggestions included the option of architecturally solid fencing of six feet in height, explaining that deer typically won't jump a fence when they don't know what is on the other side. Director Aegerter explained various different types of fencing materials were discussed by the Planning Commission. After researching deer fencing ordinances the only one specifically found in Utah was in North Logan. He referred to the North Logan deer fencing requirements and described the requirement of fence setbacks.

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Councilmember Creer asked about the two opposing votes on the Planning Commission. Director Aegerter stated they were concerned with the height. State standard requires a building permit for an eight foot fence.

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190
COUNCILMEMBER SORENSEN MOVED TO APPROVE **ORDINANCE #10-2016** AMENDING THE FENCING REQUIREMENTS FOUND IN SECTION 11-6-213 OF THE SPRINGVILLE CITY DEVELOPMENT CODE.

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COUNCILMEMBER CONOVER SECONDED THE MOTION. THE VOTE IS RECORDED AS FOLLOWS:

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COUNCILMEMBER CHILD AYE
COUNCILMEMBER CONOVER AYE
COUNCILMEMBER CREER AYE
COUNCILMEMBER MILLER AYE
COUNCILMEMBER SORENSEN AYE

198 **ORDINANCE #10-2016 APPROVED**

200 **MAYOR, COUNCIL AND ADMINISTRATIVE REPORTS**

202
City Attorney Penrod gave an update on the Aquatic and Activities Center. He provided information regarding parking and some of the changes from the last update.

204
Councilmember Sorensen commented future expanding can be done for the dry space therefore do as much wet space as possible now.

206
Council discussed the windows in the pool area and how to eliminate reflection on the water and heat in the summer. Attorney Penrod gave an example of a "cowl" wall instead of windows that could have art work added. Council discussed the color of block to be used on the outside.

208
210
Councilmember Sorensen asked if there have been discussions regarding the pricing. Attorney Penrod replied there has been some discussion. Councilmember Sorensen commented if it goes up we are not hurt by rebidding.

212
Councilmember Conover stated he would like to revisit the Carnival contract. Attorney Penrod explained a 30 day notice is required.

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CLOSED SESSION

218 9. *The Springville City Council may temporarily recess the regular meeting and convene in a*
220 *closed session to discuss pending or reasonably imminent litigation, and the purchase,*
exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205

There was no closed session.

222

ADJOURNMENT

224 COUNCILMEMBER CONOVER MOVED TO ADJOURN THE CITY COUNCIL MEETING
AT 8:25 P.M. COUNCILMEMBER CREER SECONDED THE MOTION, AND ALL VOTED AYE.

226

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230 *This document constitutes the official minutes for the Springville City Council Regular meeting held on Tuesday,*
232 *June 07, 2016.*

232 *I, Kim Rayburn, do hereby certify that I am the duly appointed, qualified, and acting City Recorder for Springville*
234 *City, of Utah County, State of Utah. I do hereby certify that the foregoing minutes represent a true and accurate, and*
complete record of this meeting held on Tuesday, June 07, 2016.

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Kim Rayburn, CMC
City Recorder

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STAFF REPORT

DATE: September 20, 2016
TO: Mayor and City Council
FROM: Kim Rayburn, City Recorder
SUBJECT: OVERNIGHT FEE FROM SPRINGVILLE CITY TO THE PASSPORT PROCESSING CENTER

RECOMMENDATION

Move to adopt resolution _____, which amends the Comprehensive Fee Schedule for the City of Springville to establish and amend fees for overnight passport applications from the Springville City, Utah Acceptance Facility to Passport Services.

BACKGROUND

When the Overnight Passport Fee was submitted for the Fiscal 2016-2017 Budget Fee Schedule it did not reflect the actual postage to overnight the Passport Application or any processing expenses.

By amending the Fee Schedule for Overnight Passport Fees to \$30.00 per application it will reflect the actual overnight postage fees and processing for Passport Applications. It is anticipated that the request for the overnight service will be minimal and the fee will cover the expenses incurred by the City.

The proposed amendment will take into account the current overnight fee for the Springville Post Office of \$22.95 and \$7.05 for the cost of staff time by an employee and to deliver the necessary paperwork to the post office.

CURRENT FEE SCHEDULE FOR PASSPORT OVERNIGHT FEE

Fiscal 2016-2017 Comprehensive Fee Schedule

	<u>Current Approved Fee</u>	<u>Additional Conditions</u>	<u>Reference</u>
Overnight Fee	20.00		

NEW FEE SCHEDULE FOR PASSPORT OVERNIGHT FEE

	<u>Fee</u>	<u>Additional Conditions</u>	<u>Reference</u>
Overnight Fee	30.00	Per application	

FISCAL IMPACT

The updated fee is anticipated to cover the expenses incurred by the City.

RESOLUTION #2016-

A RESOLUTION AMENDING THE COMPREHENSIVE FEE SCHEDULE FOR THE CITY OF SPRINGVILLE TO ESTABLISH AND AMEND FEES FOR OVERNIGHT PASSPORT APPLICATIONS FROM THE SPRINGVILLE CITY, UTAH ACCEPTANCE FACILITY TO PASSPORT SERVICES.

WHEREAS, the Springville City Civic Center was approved by the U.S. Department of State to be a Passport Acceptance Agency, as a public sector office it will be designated to accept passport applications on their behalf, to include all minor and first-time applicants; and,

WHEREAS, most U.S. Citizens traveling internationally need a passport. The vast majority of customers who apply for a passport prefer to do so in-person at a passport acceptance facility near where they live or work; and,

WHEREAS, qualified and trained personnel will be able to provide this service to the community and surrounding area; and,

WHEREAS, by amending the Fee Schedule for Overnight Passport Fees to \$30.00 per application it will reflect the actual overnight postage fees and processing expense for Passport Applications. It is anticipated that the request for the overnight service will be minimal and the fee will cover the expenses incurred by the City.

NOW, THEREFORE, be it resolved by the City Council of Springville, Utah as follows:

PART I:

The Finance Director is hereby authorized and directed to amend the Comprehensive Fee Schedule for the City of Springville, Utah as outlined in Exhibit A.

PART II:

This resolution shall take effect immediately, as allowed by law.

PASSED AND APPROVED this ___ day of ____, 2016.

Wilford W. Clyde, Mayor

Attest:

Kim Rayburn, City Recorder

EXHIBIT A

Comprehensive Fee Schedule (Passport Acceptance Fee Schedule)

Passport Application Fee (Payable to “Department of State”)

	Proposed Fee
Passport Book – Age 16 & Older	Fee set by the U.S. Department of State
Passport Book – Under Age 16	Fee set by the U.S. Department of State
Passport Card – Age 16 & Older	Fee set by the U.S. Department of State
Passport Card – Under Age 16	Fee set by the U.S. Department of State
Execution Fee	Fee set by the U.S. Department of State
Overnight Fee	\$20.00 \$30.00
Passport Photos	\$13.00



STAFF REPORT

DATE: September 16, 2016
TO: Honorable Mayor and City Council
FROM: Troy K. Fitzgerald, City Administrator
SUBJECT: AQUATIC CENTER EARTHWORK

RECOMMENDATION:

A Motion to Authorize Hogan Construction to complete the Earthwork portion of the Aquatic Center in advance of agreeing upon a Guaranteed Maximum Price in an amount not to exceed \$650,000.

BACKGROUND:

The City is prepared to start construction on the Aquatic Center. Hogan Construction opened bids on Friday for the Earthwork Portion of the construction. The low bidder came in at \$625,000.

DISCUSSION:

The City will enter into an agreement with Hogan Construction in October to build an Aquatic Center at a guaranteed maximum price. Bids for the entire facility will come back in mid-October. Until then, the architect, contractor and City would like to have the earthwork completed. Four bids were received and the low bid came in at \$625,000 – well below the builder's estimate.

The motion herein is simply an acknowledgement that the parties plan to start work. Amounts are budgeted to cover this expense.

ALTERNATIVES:

The City Council may choose to not allow construction to start until we have a guaranteed maximum price for the entire project.

FISCAL IMPACT:

It is anticipated that the earthwork package will come in at \$625,000.

Troy K. Fitzgerald
City Administrator



STAFF REPORT

DATE: September 14, 2016

TO: Honorable Mayor and City Council

FROM: Laura Thompson, City Planner

SUBJECT: SPRINGVILLE CITY SEEKING A RECOMMENDATION TO AMEND SECTION 11-4-406 IN REGARDS TO HEIGHT REGULATIONS FOR COMMUNITY USES IN RESIDENTIAL ZONES.

RECOMMENDED MOTION

Move to approve Ordinance No. ____-2016, to amend Section 11-4-406 of Springville City Development Code in regards to community use height regulations in residential zones.

SUMMARY OF ISSUES/FOCUS OF ACTION

- Do the proposed amendments meet the requirements of the Springville City Code, particularly 11-7-1, Amendments to the Title and Zone Map?
- Is the request in the best interest of Springville City?

BACKGROUND

The proposed amendment is in regards to the height maximum allowed for a community use in residential zones. A community use is defined as “a publicly owned facility or office building which is primarily intended to serve the administrative, recreational, educational, and cultural or entertainment needs of the community as a whole. Community uses also include public parks and playgrounds.”

The City is in preparation of finalizing the architectural and site designs for the new Springville Aquatic and Recreation Center. The majority of the building will have a height of 38-feet to the roofline with portions extending up to 51-feet. The property is zoned R1-10, which has a height limit of thirty-feet (30’).

The site consists of 5.62 acres with the new Meadow Brook Elementary School behind the parcel. There could potentially be residential development to the south of the parcel in the future.



DISCUSSION

Current location requirements for all commercial zones require that any time a commercial building is constructed adjacent a residential zone and is greater than thirty-five (35) feet in height, for every foot of height above thirty-five (35) feet on the principal use structure, and additional one (1) foot of setback is required. This requirement is also being added for community uses in residential zones.

Section 11-4-406 – Height of Buildings

HEIGHT (in feet)	A1	R1-15	R1-10	R1-8	R1-5	R2	RMF-1	RMF-2
Primary Building, maximum	35	30	30	30	30	30	35	35
Primary Building, minimum	10	10	10	10	10	10	10	10
Accessory uses (Maximum in feet)	35	25	15	15	15	15	15	15
Accessory Structures not used for human occupancy, e.g., chimneys, steeples, flag poles, television antennas	None	None	None	None	None	None	None	None
<u>Community Uses</u>	<u>55</u>							

- (1) Uneven Elevations: Where the ground or the point at mid-gable of the building is uneven in height, the average elevation thereof shall apply.
- (2) Community Uses that are adjacent residential uses that exceed thirty-five (35) feet in height shall have one additional foot of rear and/or interior side yard setback for every foot of height above thirty-five (35) feet.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered the proposed amendment at the September 13, 2016 meeting, in which a public hearing was held and no one chose to comment.

Summary of discussion:

Commissioner Clay inquired if there was an architectural reason the building was so high. It was explained that the height is thirty-eight feet up to forty-five feet, with the mechanical screening extending to above fifty-feet. The building is one-story with a mezzanine that will accommodate the pool slides and track areas. Commissioner Baker questioned the setbacks adjacent residential and wanted to make sure adjacent residents would be protected.

COMMISSION ACTION: Commissioner Clay moved to recommend approval of adopting a height maximum of fifty-five feet for community uses in residential zones and amending Section 11-4-406 of Springville City Code. Commissioner Farrer seconded the motion. Approval was unanimous.

Commission Vote

<u>Commissioner</u>	<u>Yes</u>	<u>No</u>
Michael Farrer	X	
Frank Young	X	
Genevieve Baker	X	
Karen Ellingson	X	
Michael Clay	X	
Brad Mertz	Excused	
Carl Clyde	Excused	

ALTERNATIVES

1. Adopt the zoning text amendment(s) as proposed;
2. Amend and adopt the proposed amendment(s);
3. Reject the proposed amendment(s).

Laura Thompson
Planner II

Attachments

ORDINANCE NO. _____-2016

AN ORDINANCE AMENDING SECTION 11-4-406 OF SPRINGVILLE CITY DEVELOPMENT CODE IN REGARDS TO HEIGHT REGULATIONS FOR COMMUNITY USES IN RESIDENTIAL ZONES.

Be it ordained by the City Council of Springville, Utah:

SECTION 1: Section 11-4-406 of Springville City Code is hereby amended to read as follows:

HEIGHT (in feet)	A1	R1-15	R1-10	R1-8	R1-5	R2	RMF-1	RMF-2
Primary Building, maximum	35	30	30	30	30	30	35	35
Primary Building, minimum	10	10	10	10	10	10	10	10
Accessory uses (Maximum in feet)	35	25	15	15	15	15	15	15
Accessory Structures not used for human occupancy, e.g., chimneys, steeples, flag poles, television antennas	None	None	None	None	None	None	None	None
<u>Community Uses</u>	<u>55</u>							

(1) Uneven Elevations: Where the ground or the point at mid-gable of the building is uneven in height, the average elevation thereof shall apply.

(2) Community Uses that are adjacent residential uses that exceed thirty-five (35) feet in height shall have one additional foot of rear and/or interior side yard setback for every foot of height above thirty-five (35) feet.

SECTION 2: This ordinance will become effective one day after publication hereof in the manner required by law.

SECTION 3: The City Recorder shall cause this ordinance or a short summary hereof to be published in the *Daily Herald*, a newspaper published and of general circulation in the City.

ADOPTED by the City Council of Springville, Utah, this 20th day of September, 2016.

Wilford W. Clyde, Mayor

ATTEST:

City Recorder

DISCUSSION

The BP zoning district is intended to be an attractive campus environment for offices, research facilities and environmentally-appropriate uses, as well as appropriate amenities supporting employee activity. Uses receiving site plan approval for this zone should be compatible with surrounding uses, which should be accomplished through attractive architectural design, pedestrian trails and substantial, attractive landscaping.

The L-IM zoning district is intended to provide locations for manufacturing and industrial development of less intensive uses. The largest portion of these types of uses shall be contained inside of structures. These districts should be located near major arterial streets and be located so as to provide easy access to the Interstate Highway system. Because of the highly visible location of these uses, special attention shall be paid to visual aesthetics.

The minimum zoning requirements for developing a lot in the BP-Business Park Zone vs. the L-IM Light Industrial Manufacturing Zone are shown in the following table:

Minimum Requirements	BP Zone	L-IM Zone
Lot Size	15,000 sq. ft.	None
Front Yard Setback	30 feet	25 feet
Side Yard (interior)	5 feet	None
Side Yard (corner)	20 feet	20 feet
Rear Yard	10 feet	None
Between Bldgs on Same Lot	20 feet	0 feet
Lot Frontage	100 feet	100 feet
Building Height	75 feet	75 feet
Building Size	1000 sq. ft.	None
Maximum Lot Coverage (by buildings)	50%	60%
Minimum Landscaped Area	25%	10%

The problem the smaller lots are having within the BP zoning is with the maximum lot coverage and minimum landscaped area percentages utilizing a significant amount of the parcel.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered the zone change request at the September 13, 2016 meeting, in which a public hearing was held and no one chose to comment.

COMMISSION ACTION: Commissioner Clay moved to recommend approval to amend the Official Zone Map from BP-Business Park to L-IM Light Industrial Manufacturing in the area of 750 West and 1300 North as shown on the proposed Ordinance. Commissioner Farrer seconded the motion. Approval was unanimous.

Commission Vote

<u>Commissioner</u>	<u>Yes</u>	<u>No</u>
Michael Farrer	X	
Frank Young	X	
Genevieve Baker	X	
Karen Ellingson	X	
Michael Clay	X	
Brad Mertz	Excused	
Carl Clyde	Excused	

ALTERNATIVES

1. Approve the Official Zone Map amendment(s) as proposed;
2. Amend and adopt the proposed amendment(s);
3. Reject the proposed amendment(s).

Laura Thompson
Planner II

Attachments

cc: Chris Furstenau

ORDINANCE NO. ____-2016

AN ORDINANCE AMENDING THE OFFICIAL ZONE MAP FROM THE BP-BUSINESS PARK ZONE TO THE L-IM LIGHT INDUSTRIAL MANUFACTURING ZONE FOR PROPERTIES LOCATED IN THE AREA OF 750 WEST 1200 NORTH.

Be it ordained by the City Council of Springville, Utah:

Section 1: To the extent that the following area, as shown on Exhibit "A" is in any zone other than the BP-Business Park Zone, the following described area is hereby rezoned from its existing zone to the L-IM-Light Industrial Manufacturing Zone, and hereafter all rules and regulations applicable to the L-IM-Light Industrial Manufacturing Zone shall apply within said area.

Section 2: The Community Development Director shall cause the Official Zoning Map of the City to be amended to show the rezoning made by Section 1 above.

Section 3: The foregoing zone change was submitted to and considered by the Planning Commission on September 13, 2016, after a public hearing notice of which was given as required by law. The Planning Commission thereafter submitted the same to the City Council with its recommendation that the zone change be made. The City Council held a public meeting on the matter on _____, 2016, notice of which was given as required by law. At said hearings, all interested parties were given an opportunity to be heard.

Section 4: All ordinances, resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 5: This ordinance shall become effective one day after publication hereof in the manner required by law.

Section 6: The City Recorder shall cause this ordinance or a short summary hereof, to be published in the *Daily Herald*, a newspaper published and of general circulation in the City.

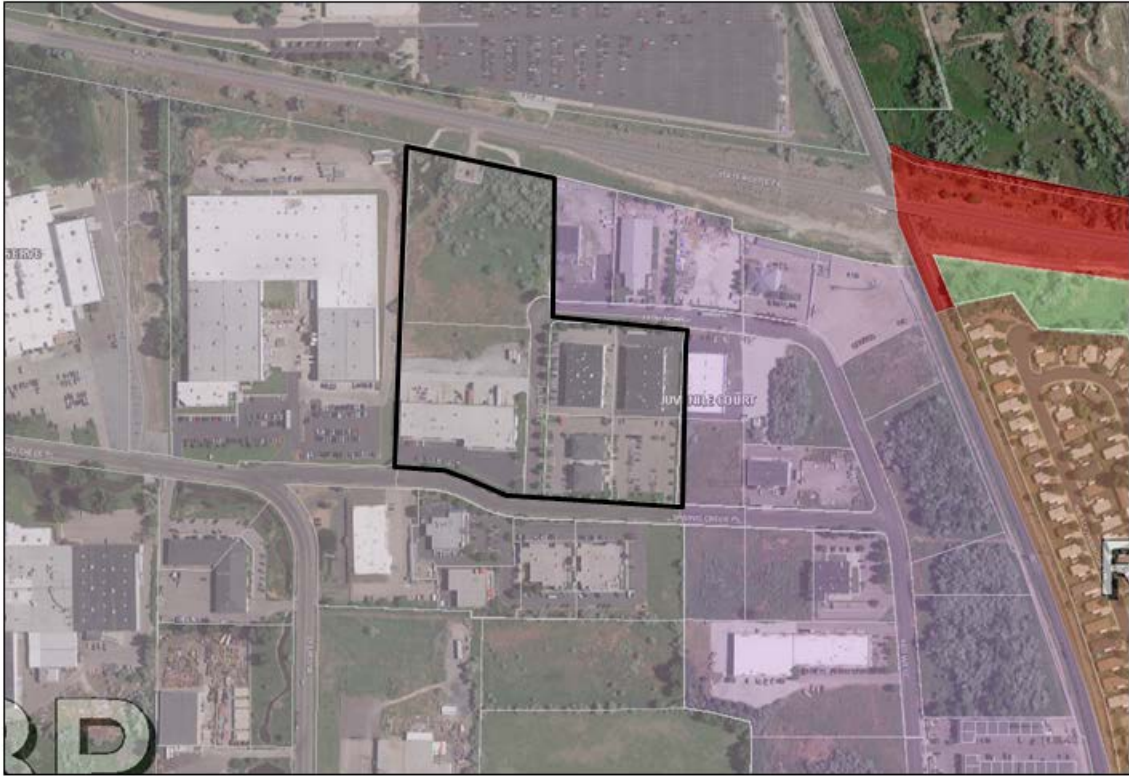
Adopted by the City Council of Springville, Utah, this ____ day of _____, 2016.

Wilford W. Clyde, Mayor

ATTEST:

City Recorder

EXHIBIT A





STAFF REPORT

DATE: September 14, 2016

TO: Honorable Mayor and City Council

FROM: Brandon Graham, Distribution Superintendent

SUBJECT: AUTOMATED METERING INFRASTRUCTURE (AMI)

RECOMMENDED MOTION

Staff recommends a motion to approve and sign the (1) Master Purchase, License and Service Agreement; (2) Software as a Service Agreement (SaaS) contracts with Landis & Gyr to provide a Radio Frequency (RF) Automated Metering Infrastructure (AMI) system that will provide remote readings of the City electric meters.

GOALS, OBJECTIVES AND STRETEGIES AT ISSUE

It is the goal of Springville City Power to “Provide Safe Reliable Power and Services to our customers in a Friendly Efficient and Professional Manner”. By continuing to use an automated meter reading system we can;

- Update technology in allowing parts and support.
- Allow for changes in billing structures that are being driven by the market such as decoupling, demand, and allowances for distributed generation.
- Reduce dispatching costs, cutoff list costs, and lower liability.
- Meet customer driven demand for energy awareness.
- Plan for our future regulation.

BACKGROUND

In 2001 Springville entered into an Automated Meter Reading (AMR) contract with Hunt Technologies. This was a Power Line Carrier (PLC) system called TS1. Hunt Technologies was subsequently purchased by Landis+Gyr (L+G). Technology has advanced since the original purchase. L+G no longer manufacture or support the meter module required for Springville’s one way PLC system. With the goal of maintaining a twenty (20) year ROI, Staff has created a plan to operate both systems. This will be accomplished by replacing failed original meters with new current technology meters, while operating both new and current meter information gathering systems concurrently. This would maximize the original investment.

DISCUSSION

CITY COUNCIL AGENDA
September 20, 2016

In 2013, Staff was notified that L+G ceased manufacturing the TS1 Module. This development removed the ability to replace or repair Springville's current automated meters. Eventual failure of the current powerline carrier meters will create the replacement choice between a manually read or AMI meter of current technology. In addition to meter failures, the substation processing unit which gathers meter information is obsolete. Motivated by these needs Staff started looking for other available types of AMI systems (PLC, RF, Cellular, and Single Antenna).

Staff recommends purchasing new electronic AMI meters as the old technology meters fail. Staff also recommends the purchase of updated technology to gather the metering information. Staff also acknowledges the additional information and functionality provided by the AMI meters will allow for a better customer service experience and lower overall costs. (i.e.: instant outage alert system, remote meter disconnect, time-of-use billing and demand usage, power factor and voltage readings, fifteen (15) minute read intervals, etc.)

Through the RFP process and review of the bid proposals, Staff has selected Landis+ Gyr (L+G) from the five (5) vendor submissions. The RF system is the best choice for Springville City because of the utility systems small geographical area. Concurrent operation of both L+G systems (power line carrier and radio frequency) will allow us to mesh old technology meters and deploy new meters, with the goal of gradual replacement of all old meters, reaching full deployment by 2028. See attachments as listed.

ALTERNATIVES

Alternatives include; 1.) Install manually read meters on all new construction and provide sufficient staff to read the meters. 2.) Use our old system until it quits working, then install manually read meters on all existing meters locations as failures occur. (Sufficient staff will be needed to read the meters).

TS1 parts for the existing meters are no longer available. New stock meters have been depleted and are no longer available. To avoid purchasing manual read meters, Staff would recommend that the deployment of the new system begin as soon as possible. The department has a current stock of seventy six (76) TS1 meters.

FISCAL IMPACT

There would be an upfront cost of \$134,630 for hardware and software. There would also be a re-occurring yearly cost for the hosting of the offsite server at a cost of \$12,000 per year. Over the eleven (11) year deployment of the project, the total project cost, which includes replacement of all TS1 meters, will be approximately \$1,489,280.

New construction meter fees will pay for meter sets on new residential and commercial projects. Rate revenue will pay for existing meters as failures occur and scheduled meter changes as projected through 2028.

Brandon Graham
Distribution Superintendent

Attachments

- Master Purchase, License and Service Agreement
- Software as a Service Agreement (SaaS)

MASTER PURCHASE, LICENSE AND SERVICES AGREEMENT

THIS MASTER PURCHASE, LICENSE AND SERVICES AGREEMENT is effective as of the last signature date below (“**Effective Date**”) and is between City of Springville, a Utah municipal (“**Customer**”) with its principal offices located at 110 South Main Street, Springville, UT 84663 and Landis+Gyr Technology, Inc., a Delaware corporation (“**Landis+Gyr**”) with its principal place of business at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022.

WHEREAS, Customer desires to engage Landis+Gyr to perform Services and to provide Products to Customer for the provision of a Gridstream RF solution as described in this Agreement for Customer’s deployment and implementation of the Gridstream RF AMI system.

WHEREAS, Landis+Gyr will supply to Customer the Products and perform the Services as set forth herein and as described in the attached Exhibit(s) to this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1.0 Definitions

The terms listed below are defined as follows:

- 1.1 “**Agreement**” means, collectively, the Landis+Gyr Response 2/1/16 to Springville City’s “Advanced Metering Infrastructure (AMI) System Request for Proposal #2015-14” and all follow up responses to inquiries submitted to Customer from Service Provider (“RFP Response”), which RFP Response is incorporated herein and made part of this Agreement by this reference, and this document entitled Master Purchase, License and Services Agreement, including all exhibits attached hereto and statements of work by and between Customer and Landis+Gyr that are entered into pursuant to the terms hereof. In the event there are any conflicting provisions or requirements among the Agreement documents, the provision and requirements of the Agreement document shall be enforced in the following order of descending priority: (i) any amendment to this document; (ii) the body of this document; (iii) exhibits to this document; (iv) statements of work entered into pursuant to the terms hereof; and (v) RFP Response.
- 1.2 “**Collector**” means the Landis+Gyr two-way radio base station that transmits data between the Meters, Routers and the data center.
- 1.3 “**Customer Data**” means (i) any and all information of an End User relating to electricity consumption, load profile, billing history, or credit history that is or has been obtained or compiled by Customer in connection with supplying electric services to that End User or group of End Users (“**Personal Information**”) (regardless of the media in which it is contained) that may be disclosed at any time to Landis+Gyr or to the Field Tools by Customer or its employees, agents, consultants, contractors, suppliers or End Users in anticipation of, in connection with, or incidental to Landis+Gyr’s performance of the Services for or on behalf of Customer; (ii) any and all Personal Information created, obtained, used or accessed by Landis+Gyr (or the Field Tools) in its performance of the Services, or derived from such information or materials; and (iii) all data and information of Customer, its employees or customers.
- 1.4 “**Endpoint**” means a sensory-type device, e.g., electric meter, DA device, load control switch, etc., that is equipped with an AMI communication module.
- 1.5 “**End User**” means an end customer of Customer.
- 1.6 “**Equipment**” means Network Equipment, Endpoints and/or hardware that Customer purchases or licenses from Landis+Gyr.
- 1.7 “**Event of Bankruptcy**” means any of the following events or circumstances with respect to a

party:

- a) That party makes a general assignment for the benefit of creditors;
 - b) That party institutes proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it;
 - c) That party is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent;
 - d) That party seeks reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or
 - e) That party has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs.
- 1.8 “**Field Tools**” means the Landis+Gyr proprietary field tools named RadioShop and Endpoint Test Manager for RF.
- 1.9 “**Firmware**” means software embedded in and provided with the Equipment.
- 1.10 “**Network Equipment**” means the Collectors, Routers, and radios that are in these devices for RF that are or will be under this Master Agreement physically deployed in the Customer service territory. The term does not include the system backhaul, the network operations center, any system equipment that is not located in the Customer service territory, Meters, or any aspect or component of the system components that is not used by Customer.
- 1.11 “**Meter**” means a device purchased by Customer that measures the supply of electricity consumed by the End User.
- 1.12 “**Products**” means any Equipment, Firmware, Software, and/or any other items purchased or licensed from Landis+Gyr as described on Exhibit A attached hereto, or that Customer has purchased or licensed or purchases or licenses from Landis+Gyr and is not described on Exhibit A.
- 1.13 “**Purchase Order**” means a Customer order, including, without limitation, a purchase order offered by Customer, to purchase Products from Landis+Gyr that Landis+Gyr accepts. Each Purchase Order will be deemed to include the terms and conditions of this Agreement even if not referenced in a Purchase Order.
- 1.14 “**Router**” means Landis+Gyr-furnished Network Equipment that provides intermediate communication and data processing between Endpoints and Collectors. Routers may also communicate with other Routers.
- 1.15 “**Services**” means project management services, training, project delivery services, commissioning services, and/or other services described in Exhibit A.
- 1.16 “**Software**” means computer application and programs in any form that Customer licenses from Landis+Gyr, including Field Tools, referenced in Exhibit A.
- 1.17 “**System**” means Landis+Gyr's Equipment, Firmware, Field Tools and Software used by the Customer to monitor and manage its consumer's usage of Customer offerings.
- 1.18 “**Third Party Products**” means, if any, goods and software that Customer purchases or sub-licenses from Landis+Gyr that are not manufactured or provided by Landis+Gyr that display the logo or copyright of another manufacturer, or that are not proprietary to Landis+Gyr.

2.0 Orders; Cancellations and Modifications

- 2.1 Equipment Forecasts. Within thirty (30) days after the Effective Date of this Agreement, Customer shall supply to Landis+Gyr a written forecast of total anticipated Landis+Gyr Equipment needs by month. Any changes to the Equipment forecast should also be furnished to Landis+Gyr. Failure to provide an accurate forecast, within reason, may negate the stated Landis+Gyr equipment lead times and may adversely impact delivery of product to Customer.
- 2.2 Written Orders. Customer may issue Purchase Orders to Landis+Gyr by mail, facsimile communication or electronic mail. Landis+Gyr may accept Customer's Purchase Order by signing it, acknowledging it using facsimile or electronic mail, or by delivering the Products which Customer ordered. Customer's Purchase Order will be accepted solely for purposes of establishing the items and quantities ordered and the desired shipment dates and shipment method. Customer's desired shipment dates shall take into account Landis+Gyr's current lead times at the time of the Purchase Order. Lead times will be provided to Customer by a Landis+Gyr representative and are defined as the cycle time from acknowledgement of Order to fulfillment of Order, assuming the Equipment was initially forecasted in accordance with Section 2.1. It is acknowledged by the parties that all instrument and documents issued or delivered pursuant to this Agreement, including all Purchase Orders, order acceptance, order acknowledgements, invoices and other instruments ("**Order Documents**") shall incorporate the terms and conditions of this Agreement, irrespective of whether any such Order Document expressly references this Agreement, and shall be subject to the terms and conditions contained in this Agreement. Any terms and conditions contained in an Order Document now or hereafter delivered by a party pursuant to this Agreement other than quantities, service description and other required details and shipping instructions, will not apply and each Party hereby waives and rejects all such terms and conditions.
- 2.3 Cancellation and Modifications. Customer may, without penalty, cancel or reduce an Equipment Order on written notice to Landis+Gyr no later than sixteen (16) weeks prior to scheduled delivery of the Equipment Order. Customer may not cancel or modify an Equipment Order within sixteen (16) weeks prior to delivery. Notwithstanding the foregoing, cancellation charges do not apply to Software or Services Orders.
- 2.4 Equipment Intellectual Property. Landis+Gyr retains ownership of all intellectual property rights in the Equipment. Customer agrees that Customer shall not, and that Customer shall not allow any third party, to attempt to reverse engineer, de-compile, or disassemble the Equipment or the Firmware or otherwise discover the trade secrets in the Firmware for any reason.

3.0 Shipment

- 3.1 Shipments. Landis+Gyr will ship or deliver Equipment to Customer's warehouse or other designated location. All Equipment will be shipped to Customer D.A.P. origin in accordance with INCOTERMS 2010. Customer agrees to inspect Equipment within two (2) weeks upon receipt and to promptly notify Landis+Gyr of any defects. Customer will be deemed to have accepted the Equipment unless Customer notifies Landis+Gyr within two (2) weeks after receipt of the Equipment that the Equipment is rejected. The acceptance of any Equipment by Customer shall not preclude the subsequent removal thereof if such Equipment shall be found to be defective after installation; in such event, the Agreement's warranty terms shall apply.

4.0 Prices and Taxes

- 4.1 Prices. Customer's Purchase Order will state Product prices. If the ordered Product is a Product described on Exhibit A hereto, the Purchase Order will state the applicable price set forth thereon. If the Purchase Order is for a Product not set forth on Exhibit A, the price will be Landis+Gyr's then-current price. Landis+Gyr may increase Customer's price for items ordered by Customer but

not included in Exhibit A if it increases its price after it accepts the Purchase Order, and the Purchase Order specifies delivery more than one hundred twenty (120) days after the price increase becomes effective. Landis+Gyr shall notify Customer of the price increase, and Customer shall have the option of cancelling or otherwise modifying its order, without penalty. Also, price increases for Services or Software licensed for a periodic fee will apply to subsequent billing periods. Set forth in Exhibit A are unit prices for Products contemplated in the event Customer expands its system. Notwithstanding the provisions in this Subsection 4.1, the Landis+Gyr shall honor throughout the duration of this Agreement the pricing for meters and other items found in those letters from Doug J. Schmidt, President of Hamilton Associates, to Steward Bird, Metering Supervisor, and from Kevin a. Pochocki, Outside Sales for Hamilton Associates, to Bruce Riddle, Finance Department, dated January 29, 2016, which letters are attached hereto as Exhibit B.

- 4.2 Price Adjustment for Pricing in Exhibit A. Pricing by Landis+Gyr set forth in Exhibit A will remain firm for two (2) years from the Effective Date. Thereafter, pricing set forth in the pricing table in Exhibit A shall be subject to an annual increase equal to the percentage annual adjustment in the CPI. The CPI will be obtained from U.S. Bureau of Labor Statistics (www.bls.gov/cpi) and is designated as of the June-to-June twelve-month percentage change to the Consumer Price Index – Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, all items, not seasonally adjusted.
- 4.3 Taxes and Other Charges. Unless otherwise stated, Product and Services prices do not include shipment and installation charges, charges associated with preparing the Customer site; and all taxes that relate to Customer's acquisition or use of Products and Services, including sales, use, VAT and property (ad valorem) taxes, other governmental charges and taxes, and assessments after audit. Customer agrees to pay those charges and taxes, except for taxes based on Landis+Gyr's net income. If Customer qualifies for tax exemptions, Customer must provide Landis+Gyr with appropriate exemption documentation.

5.0 Invoice and Payment

- 5.1 Invoice and Payment. Landis+Gyr will issue invoices to Customer for all amounts owed to Landis+Gyr hereunder. Invoices (i) for Equipment will be issued upon shipment of the Equipment, (ii) for Services shall be issued upon performance of the Services; and (iii) for Software license and maintenance fees in advance of delivery. Payment is due within thirty (30) days of the invoice date. Late payments will be subject to interest from the due date at the lesser of one percent (1%) per month or the maximum rate allowed by law.

6.0 Firmware and Software

- 6.1 Firmware License. The Firmware is licensed to Customer, not sold. Customer is granted a non-transferable, non-exclusive license to use the Firmware solely in connection with Customer's use of the Equipment and for use solely in connection with Gridstream communication network. Customer understands and agrees that it is not permitted to distribute the firmware in any form, or to use the Firmware except as it is embedded in the Equipment.
- 6.2 License to Field Tool Software and Software. Landis+Gyr hereby grants to Customer a non-exclusive, non-sub licensable, non-transferable limited license to use the Software in object code form only in the Customer service territory and those other areas that Customer provides electrical services pursuant to the terms of this Agreement. Landis+Gyr hereby licenses the use of Software solely for use in conjunction with the System. Customer agrees that Customer shall not and that Customer shall not allow any third party (i) to attempt to reverse engineer, de-compile, or disassemble the Software or otherwise discover the trade secrets in the Software for any reason, (ii) to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other

programs without express permission from Landis+Gyr. Software is also subject to the license terms included in schedules or agreements executed for specific Software if any. Customer agrees not to copy Software without express written authorization from Landis+Gyr, except that Customer may copy Software (except to the extent a copy is made during the use of the Software contemplated hereunder) as a part of file backups or archives. Customer must reproduce and include the copyright notices on any such copies. Landis+Gyr (and/or its third party licensors) retains title to the original Software provided to Customer and any copies made from it. Customer's employees, consultant and contractors (if any) shall be deemed authorized users of the Software provided that each such employee, consultant and/or contractor has agreed to comply with the terms hereof.

- 6.3 Intellectual Property Rights. All proprietary and intellectual property rights in and to the Firmware and Software provided hereunder are owned by Landis+Gyr (or its third party licensors) and Landis+Gyr (and/or its third party licensors) retains title to the original Firmware and Software provided to Customer and any copies made from it.

7.0 Services

- 7.1 Services. Landis+Gyr will provide the Services as set forth in Exhibit A or in a separate statement of work subsequently executed between the parties pursuant to this Agreement. Exhibit A sets forth the description of the Services, pricing, duration and any other terms specific to the Services described therein. The project services start at the project kickoff meeting mutually agreed upon and will conclude approximately (2) months after the initial Collector, initial Route, and the initial meter orders are fulfilled . Additional services beyond six (6) months can be performed on a time and materials basis.

8.0 Limited Warranties

- 8.1 Equipment Limited Warranty. Landis+Gyr warrants that on the date of shipment and for two (2) years thereafter, Equipment, will (a) be new, (b) conform in all material respects to their specifications, (c) be free from all liens, claims and encumbrances and (d) not fail when Deployed in the field as a result of a material Defect. Customer's exclusive remedy for each Defective Equipment will be repair or replacement (at Landis+Gyr's option) of the Defective Equipment. The warranty for any replaced or repaired Equipment will be the longer of the balance of the original warranty period or six (6) months from completion of repair or replacement. "**Defect**" or "**Defective**" as used in this Agreement means: a material failure of Equipment or Software, as applicable, to comply with its warranty during the applicable warranty period. "**Deployed**" means Equipment, as applicable, that has been commissioned in the field and properly installed by the installation contractor, or Customer, and signed off by Customer as ready for use.
- 8.2 RMA Process. Customer shall provide Landis+Gyr with notice of Defective Equipment within sixty (60) Days of first becoming aware of such Defect by contacting Landis+Gyr's customer support and requesting a return materials authorization form ("**RMA**"). After a RMA is issued, Landis+Gyr will provide Customer with shipping instructions via email for the warranted Equipment. Landis+Gyr shall repair or replace the Defective Equipment, as applicable, within sixty (60) days of receipt of such returned Defective Equipment subject to the terms herein. Customer will remove and ship to Landis+Gyr, at Customer's expense, any such Defective Equipment and will reinstall the repaired or replaced Defective Equipment, at Customer's expense. Landis+Gyr will ship repaired or replaced Defective Equipment under the applicable warranty back to Customer, at Landis+Gyr's expense. If Landis+Gyr is unable or unwilling to repair or replace, or if repair or replacement does not remedy the Defect, Landis+Gyr will refund the amount paid for the Defective Equipment. If more than three percent (3%) of Equipment returned by Customer for the prior twelve (12) month period computed on the first day of each month has no Defect ("**Non-Defective Equipment**"), then Customer will pay ten dollars (\$10.00) per Equipment above that three percent (3%) threshold to cover Landis+Gyr's costs of handling

and testing the Non-Defective Equipment. ALL CLAIMS FOR BREACH OF WARRANTY MUST BE RECEIVED BY LANDIS+GYR NO LATER THAN THIRTY (30) DAYS AFTER THE EXPIRATION OF THE WARRANTY PERIOD.

- 8.3 Software Limited Warranty and Software Remedy. Landis+Gyr warrants that all Software will materially comply with its specifications, Documentation and functional requirements for a period of ninety (90) days from delivery. As sole remedy for Defective Software, Landis+Gyr will use commercially reasonable efforts to remedy the performance issue associated with the Software. If Landis+Gyr is unable to remedy any failure of the Software to meet the warranties set forth in this Section 8.3 within forty-five (45) days after written notice from Customer, unless such notice period is otherwise mutually extended, then Landis+Gyr's sole obligation shall be to refund the license fee that Customer paid for the Defective Software. The limited warranties set forth in this Section 8.3 apply only if Customer: (a) notifies Landis+Gyr in writing of the warranty breach within 30 days after the expiration of the Software Warranty Period; (b) has promptly installed all maintenance releases to the Software that Landis+Gyr previously made available to Customer; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).
- 8.4 Services Warranty and Services Remedy. Landis+Gyr warrants that it will provide Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with the prevailing standards of its industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. The Services warranty period shall be ninety (90) days after performing a service. Customer's sole remedy for breach of this warranty is to have Landis+Gyr re-perform the Services in a manner consistent with this warranty and cure such breach within thirty (30) days after written notice or if Landis+Gyr is unable or unwilling to cure such breach within such period, to receive a refund of any fees paid. Landis+Gyr may also provide additional warranties in individual service schedules or agreements.
- 8.5 Warranty Limitations and Exclusions. Landis+Gyr's warranty obligations with respect to the Equipment and Software comprising the System do not apply to the extent a failure or warranty non-conformity is caused by: Customer's or a third party's infrastructure or data; Customer's or a third party's misuse of the equipment or software comprising the System; installation by Customer or a third party not in compliance with training or manuals provided by Landis+Gyr; operation, maintenance or use by Customer or third parties not in compliance with applicable training, manuals or specifications provided by Landis+Gyr; Customer's or a third party's neglect, modification, accident, vandalism or other intentional damage; exposure to adverse conditions exceeding performance levels required by applicable specifications; or any other limitation or exclusion described herein; data provided by Customer.
- 8.6 DISCLAIMER. OTHER THAN THE EXPRESS WARRANTIES SET FORTH HEREIN, IN ANY EXHIBITS HERETO, OR IN ANY SEPARATE STATEMENTS OF WORK ENTERED INTO PURSUANT TO THE TERMS HEREOF, LANDIS+GYR MAKES NO REPRESENTATIONS OR IMPLIED WARRANTIES TO CUSTOMER WITH RESPECT TO ANY EQUIPMENT, NETWORK EQUIPMENT, FIELD TOOLS, SOFTWARE, FIRMWARE AND/OR SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR WARRANTIES THAT MAY BE IMPLIED BY TRADE USAGE OR CUSTOM.
- 8.7 Third Party Products. The warranties provided by Landis+Gyr do not extend to third party products that are manufactured by a third party. For avoidance of doubt, Landis+Gyr makes no representations or warranties with respect to any third party product. Landis+Gyr will use commercially reasonable efforts to assign to Customer the warranties provided by such third party.

8.8 Customer Service Area Warranty. Landis+Gyr represents and warrants that the Gridstream RF Solution designed by Landis+Gyr pursuant to this Agreement and all Field Tools, Firmware, Network Equipment, Meters, Products, Routers, Services, Software, Systems, and all other equipment and products provided by Landis+Gyr pursuant to this Agreement will fully work and properly perform as stated in this Agreement throughout the entire area that Customer provides power services, including, without limitation, the entirety of Hobble Creek Canyon. In the event Landis+Gyr's breaches this representation and warranty, Landis+Gyr shall refund Customer all amounts paid by Customer pursuant to this Agreement and any other Agreement entered into between Landis+Gyr and Customer and shall pay Customer any and all amounts Customer incurs, or may be required to incur, to make a Gridstream RF Solution work throughout Customer's entire service area, including, without limitation, Hobble Creek Canyon.

8.9

8.10 System Life Expectancy. The System purchased from Landis+Gyr shall be supported as detailed herein for a minimum of fifteen (15) years from the date of the System Acceptance (said term being the "Life Expectancy"). Landis+Gyr shall make available compatible spare parts for all Equipment purchased under this Agreement and corrections under the terms of the Software as a Service Agreement ("SaaS Agreement"), incorporated herein by reference for all purposes, for any Software hosted as Software as a Service during the Life Expectancy and so long as Purchaser pays for the hosting of the Software. In the event System support is terminated by Landis+Gyr during the term of the Life Expectancy, other than for Force Majeure, or Landis+Gyr termination for cause, the Purchaser shall receive compensation pro-rated based on the initial cost of the contracted Work. The pro-rated compensation shall not apply if System support is terminated for Purchaser's failure to pay amounts due.

Landis+Gyr is committed to a single head-end, Command Center, for its AMI technologies and extends the life of the hardware by offering remote firmware upgrades for the communication modules and network equipment. Should, at some point in the future, Landis+Gyr becomes unable to acquire components for aging hardware, Landis+Gyr will provide Purchaser adequate notice and offer a last-time buy opportunity or offer a similar newer replacement product that allows the utility to determine their path forward. Landis+Gyr makes every effort to make the migration to new AMI technologies simpler by allowing previously installed technology to co-exist on the Purchaser's distribution system during the migration process.

8.11 Exclusive Remedies. Each party's rights and remedies set forth in this Section are exclusive and in lieu of all other rights and remedies.

9.0 General Indemnity; Infringement Indemnity

9.1 General Indemnity. Landis+Gyr (the "**Indemnifying Party**") will indemnify and defend Customer and its officers, directors, shareholders, agents, employees, and representatives (collectively, the "**Indemnified Party**") from all third party claims, and related liabilities, fines, interest, costs, expenses and damages (including reasonable attorneys' fees) (collectively, "**Losses**") incurred by the Indemnified Party for any property damage, injury, death, loss or destruction of any kind to persons or property, to the extent the damage, injury, death, loss or destruction arises out of or is related to the conduct, negligence, willful misconduct or misrepresentation on the part of the Indemnifying Party or any of its servants, representatives, agents, employees or contractors.

9.2 Infringement Indemnity by Landis+Gyr. Landis+Gyr agrees to indemnify and defend Customer and its officers, directors, shareholders, agents, employees, and representatives from and against any third party claim alleging that any Products or any resulting use of the Products constitutes an infringement of any patent or copyright or misappropriation of any trademark or trade secret, or constitutes a breach of any intellectual property right of any third party.

9.3 If the sale or use of any of the Products is enjoined in connection with any such claim, Landis+Gyr agrees to, at its option, without cost or expense to Customer:

- (a) procure for Customer and its End Users the right to use such Products at no cost to Customer and its End Users;
- (b) replace such Products with equivalent non-infringing products that perform the same or materially same function as the Products being replaced; or
- (c) modify such Products so they become non-infringing provided that such modification does not render such Products unacceptable to Customer.

Notwithstanding the foregoing, Landis+Gyr will have no liability pursuant to this Section or otherwise for any claim of infringement to the extent such a claim is caused by (i) the misuse or unapproved modification of the Products by or at the direction of Customer (ii) the failure of Customer to use corrections or enhancements made available to Customer by Landis+Gyr at no cost to Customer or (iii) use of the Products in combination with other equipment or software not provided by Landis+Gyr but only to the extent such claim is attributable to the combination or other equipment or software and if such claim would have been avoided but for such combined use. Customer will consult with Landis+Gyr, as the subject matter expert in this space, before making any unilateral change(s) to the operating environment. If Landis+Gyr advises Customer that making the proposed change(s) would likely lead to an infringement claim and Customer moves forward with those changes despite Landis+Gyr's advisement, then Landis+Gyr will have no liability pursuant to this Section or otherwise for any resulting claim of infringement. This Section 9.3 sets forth the entire liability of Landis+Gyr with respect to patent infringement.

9.4 Indemnification Procedures. In the event any third party asserts any claim with respect to any matter as to which the indemnities in this Agreement may relate, the Indemnified Party shall give commercially reasonable written notice to the Indemnifying Party, and the Indemnified Party shall have the right at its election to participate in the defense or settlement of the third party claim at its own expense by giving prompt written notice to the Indemnified Party. If the Indemnifying Party does not give such notice and does not proceed diligently so to defend the third party claim promptly after receipt of the notice of the third party claim, the Indemnifying Party shall be bound by any defense or settlement that the Indemnified Party may make as to those claims and shall reimburse the Indemnified Party for its Losses related to the defense or settlement of the third party claims but only if it is determined that the Indemnifying Party's indemnity and defense obligations under this Agreement covers such third party claim. The parties shall cooperate in defending against any asserted third party claims. In the Indemnifying Party's defense of the third party claim, the following provisions shall apply:

- (a) the Indemnified Party shall be entitled to participate in (but not control) the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim;
- (b) the Indemnifying Party shall obtain the prior written approval of the Indemnified Party before entering into any settlement of such claim or ceasing to defend against such claim, if pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief would be imposed against the Indemnified Party; and
- (c) the Indemnifying Party shall not permit any lien, encumbrance or other adverse charge to exist upon any asset of the Indemnified Party or its affiliates.

9.5 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, Indemnifying Party is not obligated to indemnify, hold harmless or defend

Indemnified Party against any claim (whether direct or indirect) to the extent such claim or corresponding Losses arise out of or result from Indemnified Party's:

- (a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or
- (b) use of the Products in any manner that does not reasonably conform with the usage guidelines or specifications provided by Landis+Gyr.

10.0 Term; Termination

- 10.1 Term. This Agreement shall become effective on the Effective Date and continue in full force and effect for twelve (12) years unless sooner terminated in accordance with the provisions hereof. Thereafter, the term shall renew on a year to year basis unless either party receives written notice from the other of the other party's intent to terminate the Agreement upon the expiration of the then current one (1) year term. Such notice shall be delivered no later than sixty (60) days prior to the expiration of the then current one (1) year term; if the non-terminating party receives the notice thereafter, the term shall renew for an additional one (1) year. Notwithstanding the previous provisions, after a period of two years, Customer may terminate this Agreement by following the termination provisions in this Subsection.
- 10.2 Right to Terminate. Either party may terminate this Agreement upon sixty (60) days prior written notice to the other party for failure of such party to fulfill any of its material obligations hereunder. In the event that the breaching party corrects the breach within the sixty (60) day period, this Agreement shall continue in full force and effect as it would have had such breach not occurred. Failure to perform due to a force majeure shall not be considered a substantial or material default under this Agreement. A party hereto may, at its option, terminate this Agreement upon an Event of Bankruptcy of the other party.
- 10.3 Effect of Termination. The expiration or termination of this Agreement, for any reason, shall not release either party from any liability to the other party, including any payment obligation, which has already accrued hereunder. If Customer shall terminate this Agreement other than for reasons of a default by Landis+Gyr, Customer shall upon such expiration or termination:
- (a) within 30 days, at Customer's expense, return to Landis+Gyr or destroy all copies of materials containing Landis+Gyr's Confidential Information.
 - (b) Within 30 days, certify in writing to Landis+Gyr that all such copies and materials have been returned or destroyed.
- 10.4 Survival. The provisions of Section 1, 6 through 10, and 12 through Section 15 shall survive the expiration or earlier termination of this Agreement for any reason, provided that with respect to Section 12, each party's obligations under this Section 10.4, shall survive the expiration or earlier termination of this Agreement for a period of two (2) years from the date of such expiration or termination, except for Confidential Information that constitutes a trade secret under any applicable law, in which case, such obligations shall survive for as long as such Confidential Information remains a trade secret under such law.

11.0 Change Management Process

- 11.1 Change Management. If changes are requested by either party following the Effective Date, the requesting party shall provide a request to the other party's Project Manager or other designated staff in writing. The other party will analyze the impact and inform the other party's Project Manager of any impacts to cost, schedule, and other implications to perform the change. If both parties approve of the written change, accepted Change Requests will be deemed amendments to

this Agreement and are incorporated into this Agreement by reference. Execution of the requested work cannot begin until both parties have accepted the change order in writing.

12.0 Governing Law; Submission to Jurisdiction

12.1 Governing Law; Submission to Jurisdiction.

- (a) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Utah, without regard to Utah's conflict of laws principles. The Uniform Computer Information Transactions Act does not have any application to this Agreement.
- (b) Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States located in Salt Lake City, Utah or the courts of the State of Utah located in Utah County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

12.2 Court Actions. Except as permitted in this section, neither party may bring a case in court. If Landis+Gyr or Customer disregards this restriction, files a court case and fails to dismiss it promptly upon being notified of this provision, that party will pay the other party's costs and expenses, including reasonable attorney's fees, incurred after the notice in defending the court case. Landis+Gyr retains the right to obtain an injunction in court to prevent Customer's misuse of its intellectual properties.

13.0 Confidentiality

Confidential Information. From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") non-public, proprietary, confidential information about its business affairs, products, services, confidential intellectual property, trade secrets, third party confidential information and other sensitive or proprietary information in oral, written, electronic or other intangible form marked or indicated as "**Confidential**" or "**Proprietary**" at the time of disclosure (collectively, "**Confidential Information**"). Confidential Information, however, shall not include: (a) Information which is already generally available to the public; (b) Information which hereafter becomes generally available to the public, except as a result of the direct or indirect action of the Receiving Party in breach of this Agreement; (c) Information known to the Receiving Party or its Representatives on a non-confidential basis prior to receipt by the disclosing party; (d) Information that is independently developed without access to the Disclosing Party's Confidential Information; and (e) Information disclosed under legal compulsion; provided, however, that prior to a disclosure pursuant to an order or applicable law, the Receiving Party, to the extent permitted by law, promptly provides the other party written notice of such proposed disclosure and reasonably cooperates with the other party in its attempts to limit or prevent such disclosure. The Receiving Party shall use the Confidential Information solely for the performance of this Agreement and shall not disclose or permit access to Confidential Information other than to its Affiliates and its or their employees, officers, directors, attorneys, accountants and financial advisors (including insurers) (collectively, "**Representatives**") who: (a) need to know such Confidential Information for the performance of this Agreement; (b) know of the existence and terms of this Agreement and (c) are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. These non-disclosure obligations shall survive the termination of this Agreement and shall continue for a period of five (5) years thereafter. Information need not

be marked “Confidential” to be considered Confidential Information. “Confidential Information” includes any Confidential Information disclosed prior to the effective date of this Agreement. Customer Confidential Information shall also be deemed to include Customer Data regardless of marking or indication and shall not be subject to the exceptions referenced above.

Notwithstanding the provisions in this Section 13.1, the parties acknowledge and agree that Customer is bound by the provisions of the Utah Government Records Access and Management Act (Utah State Code Title 63G, Chapter 2) (“GRAMA”). If Landis+Gyr desires to have information provided to Customer protected from disclosure under GRAMA, Landis+Gyr must request such treatment by providing a “written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality” of the records provided to Customer (Utah State Code 63G-2-309). The parties agree and acknowledge that Customer will protect all Confidential Information as allowed under GRAMA. However, if Customer is required to disclose any Confidential Information pursuant to GRAMA, court order, or other applicable law, Customer shall not be considered in breach of this Agreement or subject to any penalties for such required disclosure.

- 13.1 Safeguarding Confidential Information. The Receiving Party shall safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. The Receiving Party shall promptly notify Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to cooperate with Disclosing Party to prevent further use or disclosure. The Receiving Party will be responsible for any breach of this Agreement caused by its Representatives.

- 13.2 **No Rights in Confidential Information.** Customer and Landis+Gyr hereby acknowledge and agree that all Confidential Information of the other party shall remain the sole and exclusive property of such other party and that the receiving party shall have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.
- 13.3 **Termination.** Upon termination for any reason, or at any other time that Customer or Landis+Gyr demands, the other party shall promptly deliver and/or certify destruction of Confidential Information, as appropriate, to the requesting party all Confidential Information (copies and originals) of the requesting party as may be in the other party's possession or under its control.
- 14.0 Limitation of Liability.** Customer advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7, Utah Code Annotated, 1953, as amended) and does not waive any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative enactment, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. Any indemnity and insurance obligations incurred by Customer under this contract are expressly limited to the amounts identified in the Government Immunity Act.

15.0 General

- 15.0 **Complete Agreement, Modification and Assignment.** The parties agree that this Agreement, as defined in Section 1.1 hereof, constitutes the complete and exclusive agreement between them with respect to its subject matter and supersedes all previous understandings, negotiations, proposals, acknowledgements, and representations, whether oral or written with respect thereto. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of Customer and Landis+Gyr. Customer may not assign this Agreement or its rights or obligations thereunder without the express written consent of Landis+Gyr which shall not be unreasonably withheld. Any exhibit attached hereto is incorporated herein by this reference.
- 15.1 **Notices.** Notices, other than routine communications having no legal effect, shall be in writing and shall be sent by certified United States mail (return receipt requested), by guaranteed overnight delivery, by courier, or by confirmed facsimile addressed to the addresses set forth below:

For Customer: City of Springville
 110 South Main Street
 Springville, UT 84663
 Attn: City Administrator
 Facsimile No: 801.491.7894

For Landis+Gyr: Landis+Gyr Technology, Inc.
 30000 Mill Creek Avenue, Suite 100
 Alpharetta, GA 30022
 Attn: Legal Department
 Facsimile No: 678.258.1686

- 15.2 **Force Majeure.** Neither party is liable for failing to fulfill its obligations due to acts of God, civil or military authority, war, riots, strikes, fire, or other causes beyond its reasonable control. To the extent a party is substantially delayed by force majeure from performing its obligations hereunder, such party shall give notice and details of the force majeure to the other party as soon as practicable, then the parties may extend the time for performance for the period of delay or inability to perform due to such occurrence, or by written agreement. In the event it shall become

impossible for Landis+Gyr or Customer to perform its respective obligations because of force majeure, then in such event the party so unable to perform may terminate this Agreement upon written notice to the other. In no event shall an event of force majeure excuse or delay the payment of any amount owed by one party to the other party under this Agreement.

- 15.3 No Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no party other than Landis+Gyr and Customer shall have any legally enforceable rights under this Agreement.
- 15.4 Headings. All headings used in this Agreement are for reference purposes only and are not part of this Agreement.
- 15.5 Waiver; Severability. No delay or omission by Customer or Landis+Gyr in enforcing its rights or remedies under this Agreement shall impair such right or remedy or be deemed to be a waiver thereof. Any waiver, in whole or in part of any provision of this Agreement will not affect or be considered to be a waiver of any other provision. No waiver of this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought. If any term of this Agreement is found to be unenforceable or invalid for any reason, such term shall not affect the other provisions, but such unenforceable term shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Customer and Landis+Gyr set forth in this Agreement, and all other terms will remain in full force and effect.
- 15.6 Independent Contractor. Nothing in this Agreement shall be read as appointing either party as the agent or legal representative of the other party for any purpose whatsoever, nor shall either party hold itself out as such. This Agreement does not create or is intended to create any express or implied relationship of joint ventures, partners, employer and employee, associates, or principal and agent between the parties, and both parties are acting as independent contractors and principals for their own accounts. Neither party is granted any right or responsibility for or on behalf of the other or otherwise to bind the other. In providing the Services and Products and, Landis+Gyr shall have sole responsibility for all persons employed by it in connection with the performance of such Services; and, except as provided in this Agreement, Landis+Gyr shall solely determine the methods, details, and means of performing the Services.
- 15.7 EEOC and Affirmative Action.
- a. **Landis+Gyr is in compliance with all of the laws and Executive Orders prohibiting discrimination, including but not limited to Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, 42 USC 2000(e), et seq., and all applicable state and local laws against discrimination.**
 - b. **Landis+Gyr and subcontractor, if any, shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**
- 15.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement.

Acknowledged and agreed by the authorized representatives of the parties.

Customer

Landis+Gyr

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBIT A TO MASTER AGREEMENT

PRODUCTS PRICING SCHEDULE AND DESCRIPTION OF SERVICES

A. Project Delivery Services Overview

The parties will perform in accordance with the following summary (see Table 1) in connection with the deployment and implementation of the Gridstream RF AMI System:

Table 1 – Summary of Roles

Services	Landis+Gyr	Customer
Project Management Support	√	
System Design	√	
Training	√	
Installation (network)		√
Installation (endpoint)		√
Field Engineering (on-site field installation support)		√
Integration Services		To be determined if required
System Administration/Daily Operations/Database Administration		√
WAN Backhaul Communications		√

This Agreement includes **Level 3 Services** provided by Landis+Gyr. Other Services are provided for reference only. Detailed description of these services is provided in Table 2. Customer may elect to upgrade to a higher level of service and support by paying the applicable upcharge with a signed amendment to the Agreement. A la carte services and pricing for services and support beyond this agreement are provided in Table 3.

Table 2 – Detailed Description of Landis+Gyr Project Delivery Services

Service	Level 1 Starter	Level 2 Extended	RECOMMENDED Level 3 Preferred	Level 4 Comprehensive
Project Management	Remote project management by a Landis+Gyr Project Coordinator, including remote project kickoff session, coordination and scheduling of Landis+Gyr resources and activities, and bi-weekly status meetings	Project management services, led by a Landis+Gyr PMP®-certified Project Manager or qualified Landis+Gyr distributor, including on-site project kickoff session, logistics support, risk/issue management, scope management, contract management, resource management, and biweekly status meetings	Project management services, led by a Landis+Gyr PMP®-certified Project Manager or qualified Landis+Gyr distributor, including on-site project kickoff session, logistics support, risk/issue management, scope management, contract management, resource management, and weekly status meetings	Project management services, led by a Landis+Gyr PMP®-certified Project Manager or qualified Landis+Gyr distributor, including on-site project kickoff session, logistics support, risk/issue management, scope management, contract management, resource management, and weekly status meetings
Configuration Support	Endpoint configuration workshop and remote support for first-article testing	Endpoint configuration workshop and remote support for first-article testing	Endpoint configuration workshop and remote support for first-article testing	Endpoint configuration workshop and remote support for first-article testing
Network Design and Site Surveys	Basic network design services including initial network design and review of initial design with customer	Initial network design, up to 40 hours of on-site survey work, and final network design	Includes initial and final network design, up to 40 hours of on-site surveys and 40 hours of network optimization services, as well as validation of connectivity	Comprehensive network design services which include Level 3 services plus packet testing and network validation
Technical Implementation Support	Unlimited remote technical support during implementation from Landis+Gyr technical experts	Unlimited remote technical support during implementation from Landis+Gyr technical experts	Unlimited remote technical support during implementation from Landis+Gyr technical experts	Dedicated Technical Implementation Manager assigned through the critical early phases of project, then transitions to the Landis+Gyr Service Desk for unlimited remote technical support
Integration Support	Available as an à la carte service	Up to 20 hours of remote integration support to facilitate customer's integration with billing system (Landis+Gyr will lead detailed requirements and design workshops, provide standard APIs and API specifications, provide best practices, and support customer integration activities)	Up to 40 hours of remote integration support to facilitate customer's integration with billing system (Landis+Gyr will lead detailed requirements and design workshops, provide standard APIs and API specifications, provide best practices, and support customer integration activities)	Up to 40 hours of remote integration support to facilitate customer's integration with billing system and/or MDM (Landis+Gyr will lead detailed requirements and design workshops, provide standard APIs and API specifications, provide best practices, and support customer integration activities)

On-Site Commissioning	Remote support for commissioning of initial network device	Up to 40 hours of on-site commissioning of initial network device (Landis+Gyr will inspect installation, commission equipment and ensure network preparation for endpoint deployment)	Up to 40 hours of on-site commissioning of initial network device (Landis+Gyr will inspect installation, commission equipment and ensure network preparation for endpoint deployment)	Up to 40 hours of on-site commissioning of initial network device (Landis+Gyr will inspect installation, commission equipment and ensure network preparation for endpoint deployment)
Network Monitoring	Available as an à la carte service	Available as an à la carte service	Available as an à la carte service	Proactive network monitoring, troubleshooting, and recommendations for improvement by a dedicated Landis+Gyr expert
Software Installation and Upgrades, Monitoring, Cloud Services	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed Hosting Agreement and a 1-year commitment.	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed Hosting Agreement and a 1-year commitment.	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed Hosting Agreement and a 1-year commitment.	Command Center installation and hosting in our secure Network Operations Center which includes monitoring, backups, software upgrades, and DBA and system administration. Includes license for Command Center. Requires a signed Hosting Agreement and a 1-year commitment.
Training and Documentation	(a) Online training for site surveys, (b) Online Command Center training, (c) Online Network Deployment training, (d) 6 Online training courses for continuing education (e) access to our library of technical documentation	(a) Online training for site surveys, (b) 3-day Command Center training in our training facilities for 3 people, (c) 3-day Network Deployment course in our facilities for 3 people, (d) 6 Online training courses for continuing education (e) access to our library of technical documentation	a) On-site training for site surveys, (b) 3-day Command Center training in our training facilities for 3 people, (c) 3-day Network Deployment course in our facilities for 3 people, (d) 8 Online training courses for continuing education (e) access to our library of technical documentation	(a) On-site training for site surveys, (b) 3-day Command Center training at Landis+Gyr or customer facilities for 12 people, (c) 3-day Network Deployment course at Landis+Gyr or customer facilities for 12 people, (d) 3-day field tool training at customer facilities for 12 people, (e) 8 Online training courses for continuing education (e) access to our library of technical documentation
24x7 Post-Implementation Technical Support	Landis+Gyr will provide ongoing 24x7 phone technical support ¹	Landis+Gyr will provide ongoing 24x7 phone technical support ⁶	Landis+Gyr will provide ongoing 24x7 phone technical support ⁶	Landis+Gyr will provide ongoing 24x7 phone technical support ⁶
System Audit Service	Available as an à la carte service	Available as an à la carte service	Available as an à la carte service	A skilled IT resource will perform ² an exhaustive series of inspections to

¹ With the execution of the Landis+Gyr Command Center Hosting and Support Agreement and payment of the monthly hosting/support fee

² Within 6 months of project completion

				assure reliability, high-performance, and continued customer confidence in our solution. The detailed analysis includes a review of meter programs, enterprise architecture, database maintenance and retention practices, system configuration settings, system/server performance, third-party integration, and security.
Delivery Services Price³	Fixed Price, invoiced upon contract execution	Fixed Price, 50% invoiced upon contract execution, 50% invoiced upon conclusion of project delivery services	Fixed Price, 50% invoiced upon contract execution, 50% invoiced upon conclusion of project delivery services	Fixed Price, 50% invoiced upon contract execution, 50% invoiced upon conclusion of project delivery services
Software Installation and Upgrades, Monitoring, Cloud Services Price	Monthly fee commences once Command Center is installed	Monthly fee commences once Command Center is installed	Monthly fee commences once Command Center is installed	Monthly fee commences once Command Center is installed

³ Additional services available as an à la carte service or via an upgrade to a higher level of service

Table 3 – A La Carte Services and Pricing

Vendor Role	Functional Description	Rate (\$/hour)
PROGRAM MANAGEMENT RESOURCES		
Program Sponsor/Program Director	Executive sponsorship and leadership	\$300.00
Program Manager/PMO Manager	Leads and manages programs and supports overall project portfolio	\$250.00
Senior Project Manager	Leads and manages projects	\$225.00
Project Manager	Leads and manages projects	\$210.00
TECHNICAL PROFESSIONALS		
Network Design Engineer	Designs field network solutions, provides network optimization support	\$175.00
Solution Architect	Provides overall strategic consulting on various existing and future technical solutions to solve customer business challenges	\$275.00
Integration Architect	Provides consulting services for integrating various systems and solutions	\$250.00
Technical Implementation Manager	Accountable for end-to-end implementation of technical solutions to meet customer requirements as well as consulting on technical domains including security	\$210.00
Business & Integration Analyst	Leads detailed integration requirements session, provides standard APIs and specifications, provides best practices, and supports customer integration activities to facilitate integration with customer systems	\$200.00
Field Analyst/Data Analyst	Analyzes data from various software systems and provides actionable information and reports to customers	\$175.00
Systems Administrator/Database Administrator	Performs IT-related system and database administration and maintenance	\$225.00
Technical Implementation Engineer/ Product Support Specialist/ Application Engineer/ Field Quality Assurance	Responds to technical inquiries and provides in-depth technical support to customers and project teams, and provides network monitoring and troubleshooting services	\$190.00
Technical Trainer/Technical Writer	Provides formal technical training to customers and develops technical documentation for customers	\$175.00
FIELD RESOURCES		
Field Service Representative/RF Technician	Provides field commissioning services, on-site surveys, field troubleshooting, network equipment maintenance	\$150.00
SUPPORT STAFF		
Customer Account Representative/ Sr Customer Account Rep/ Sr Product Customization Specialist	Enters orders, manages logistics, and tracks status of orders and RMAs	\$150.00
Sr. Technical Business Analyst/Sr. Operations Analyst	Provides process improvement, business consulting and PMO services	\$200.00
Lead Warehouse Operator (Cross-dock Worker)	Manages cross-dock and inventory levels	\$150.00
OTHER		
Training Courses – On-site at Customer Facilities within Continental US	Training provided at customer facilities within the Continental US	\$12,500/Class (includes travel expenses)
Training Courses - At Landis+Gyr Facilities - 2-Day Class	2-day training class held at Landis+Gyr's facility	\$800/Person/Class
Training Courses - At Landis+Gyr Facilities - 3-Day Class	3-day training class held at Landis+Gyr's facility	\$1200/Person/Class

Footnote: Unless otherwise noted, rates do not include travel expenses, which are billed at cost

B. Gridstream RF Solution Pricing

The following table represents Products and Services for the proposed Gridstream **RF** System.

Item	Quantity	Unit Price	Extended Price
Network Equipment			
RF C6000 Series Collector	3	\$6,500.00	\$19,500.00
C6000 Series Collector Mounting Kit, Street Light Arm, 18-Foot Cable	3	\$980.00	\$2,940.00
RF Routers	22	\$1,790.00	\$39,380.00
Project Delivery Services			
Level 3 - Preferred	1 lot	\$65,000.00	\$65,000.00
RF Tools			
RF Field Tool Kit	1	\$1,600.00	\$1,600.00
Endpoint Test Manager License	1	\$1,800.00	\$1,800.00
RadioShop License	1	\$1,500.00	\$1,500.00
Total			\$131,720.00

C. Clarifications

1. Gridstream RF Collectors and Routers are currently available with a 20-week manufacturing lead time after receipt of order.
2. Network equipment (Collector and Router) installation, and electric meter installation are not in scope of this Agreement.
3. Level 3 Project Delivery Services pricing is based on services being provided by Landis+Gyr for a period of six months and invoiced at 50% upon contract execution, with the remaining 50% invoiced upon conclusion of project delivery services.
4. Network Equipment device quantities are approximations of required quantities and have been developed from the 10,548 electric meter locations provided by City of Springville and assume a Router mounting height of 20 feet above ground level. Actual Network Infrastructure device quantities necessary for the AMI System to function properly may vary based on verification of final meter quantities, system analysis and requirements, locations, deployment approach, and system optimization needs.
5. It is assumed that the endpoint deployment will be deployed in a manner in which the electric endpoints are contiguous to enable adequate meshing.
6. WAN backhaul from the Collector to the head-end system will be provided by customer.
7. Customer will provide existing or new poles, of an appropriate height, with 120/240V power source, for installation of RF Mesh network infrastructure.
8. RadioShop and Endpoint Test Manager License Fee includes the cost of a radio but does not include the cost of the PC required to run the software.

D. Description of Roles and Responsibilities/Deployment of Gridstream RF AMI System.

1. PROJECT SCOPE

Landis+Gyr will assist Customer's planning of deployment of the System prior to Customer's deployment of the System and perform design and project management Services. This approach will certify Customer to run and maintain the System through a transitional plan starting at the beginning of the System implementation.

During the start-up time period, defined as the planning and readiness phase of the project, Landis+Gyr will coordinate all activities related to the planning of the initial deployment covering Landis+Gyr meters, network, installation, operation and maintenance training and related activities.

2. PROJECT RESPONSIBILITIES

This Section provides a summary of the responsibilities to be undertaken by Landis+Gyr and Customer in order to fulfill the requirements of the project.

2.1 Landis+Gyr Responsibilities

2.1.1 Project Management

Landis+Gyr will provide the services of a Project Manager experienced in the implementation of the Gridstream RF system and who will be responsible for coordination of the equipment delivery, planning deployment, and training to deploy the network. Specific services under Levels 2, 3, and 4 (see Table 2) include leading a project kickoff session, and providing logistics support, risk/issue management, scope management, contract management, resource management, and regular status meetings.

For Level 1 support, Landis+Gyr will provide a Project Manager to coordinate all Landis+Gyr activities per this Agreement, and will provide biweekly status updates.

2.1.2 Endpoint Configuration Support

Landis+Gyr shall provide a remote specialist available to support Customer in the configuration of endpoints, such as programming requirements, settings, nameplate configuration, labeling, etc. This specialist will assist Customer, when required, with first article testing associated with the approved endpoint configurations. These remote Services are provided through the initial planning phase prior to installation of the System. Customer is responsible for acquiring and maintaining all endpoint equipment unless otherwise noted.

2.1.3 Network Design and Site Survey Services

As part of this scope of work, Landis+Gyr's Network Design staff will develop the initial Network design based on data provided by the Customer and will review such design with the Customer. Additional Network Design Services, including initial site survey support Services, will be provided by Landis+Gyr if the Customer has selected Level 2, 3, or 4 Services as part of this Agreement. Customer will be involved throughout the design phase and will be required to provide input and data to Landis+Gyr's experts so that an optimal design can be furnished.

2.1.4 Technical Implementation Support

Landis+Gyr will provide remote technical support from a technical expert. This resource will provide unlimited remote support. Level 4 service also allows for on-site support for critical technical issues, if required.

2.1.5 Integration Support

If selected in Table 2 by Customer as part of Level 2, 3, or 4 Service, Landis+Gyr shall provide remote integration support Services. This support will facilitate Customer's integration with Customer billing system (and in Level 4, MDM system). Integration experts will lead detailed requirements and design workshops, provide standard APIs and API specifications, provide best practices, and answer Customer questions related to integration.

2.1.6 Network Equipment Commissioning

Per Customer selection in Table 2, Landis+Gyr will provide support to Customer for the commissioning of the initial network device. Level 1 Service provides remote support for the commissioning of the initial network device. If the Customer has selected Level 2, 3, or 4 Service, Landis+Gyr will visit the Customer for a one-week period (40 hours maximum, including travel time) to inspect the Customer's installation, commission the equipment, answer Customer questions regarding installation of equipment, and ensure the network equipment is ready for endpoint installation.

2.1.7 Network Monitoring

Per Customer selection in Table 2, Landis+Gyr will provide network monitoring Services. Level 4 Service includes proactive network monitoring, troubleshooting, and recommendations for improvement by a dedicated Landis+Gyr expert.

2.1.8 Training

Landis+Gyr shall provide training services to Customer in the operation and installation of the System. The scope of Services will vary depending on the Customer's selection in Table 2. See Table 2 for a description of the scope of training services that shall be provided with the tiered delivery services. Training times are generally Tuesday-Thursday from 8:30 a.m. to 4:30 p.m. Training is available at Landis+Gyr's training facilities. Classes are available at Landis+Gyr's Pequot Lakes, MN, or Alpharetta, GA, locations. Customer is responsible for its own travel/expenses.

2.1.9 System Audit Service

Upon the selection of Level 4 Service by Customer, Landis+Gyr shall provide a system audit within 6 months after completion of the project. Landis+Gyr shall perform a series of inspections including a review of meter programs, enterprise architecture, database maintenance and retention practices, system configuration settings, system/server performance, third-party integration, and security.

2.1.10 Products

2.1.10.1 Network Equipment (Collectors/Routers)

After acknowledgement of Customer Order, Landis+Gyr shall furnish Network Equipment to Customer in conjunction with Landis+Gyr's product specifications.

2.1.10.2 Landis+Gyr Endpoints (Meters/Modules)

After acknowledgement of Customer Order, Landis+Gyr shall furnish Endpoints to Customer per Customer's requirements and in conjunction with Landis+Gyr's product specifications.

2.2 Customer Responsibilities

2.2.1 General Services

2.2.1.1 Project Lead. Customer will designate and provide an experienced project lead ("**Customer's Project Manager**") who will serve as the primary contact between Customer and Landis+Gyr's Project Manager. Customer's Project Manager will be responsible for all Customer deliverables and coordinate Customer's internal resources in areas such as IT, Customer Service, Metering Services, Training and System Administration. Specific services include supporting a project kickoff session and participating in regular status meetings.

2.2.1.2 Project Sponsor. Customer will designate a Project Sponsor who will serve as a final authority for project governance as well as participate actively in project steering and render customer decisions in a timely manner. An example would be when a project impact requires the customer to make a decision on scope or schedule, secure resources, approve change requests, resolve disputes, etc.

2.2.2 Network Design

2.2.2.1 Customer will provide accurate data required for Landis+Gyr to provide a reliable network design (meter data, substation data, tower data, and/or pole data)

2.2.2.2 Customer will review and approve, if acceptable to Customer at Customer's sole discretion, and sign off on Landis+Gyr's designs prior to Customer's installation.

2.2.2.3 Customer will supply an experienced Journey Meter Technician who will:

(a) Assist Landis+Gyr with design by participating in pre-design site meetings and providing advice;

(b) Review Landis+Gyr's designs and provide comments prior to installation.

2.2.3 Installation

2.2.3.1 Customer will provide necessary resources to install, energize and commission the routers and collectors for placement into permanent service.

- 2.2.3.2 Customer will provide installation-ready poles or towers (no less than 45 feet above ground) for mounting of collectors including power, grounding and WAN communication. Customer agrees to install facilities at its cost for the purposes of router and collector attachment to enable the routers and collectors to perform optimally and in accordance with the design.
- 2.2.3.3 Customer will arrange for underground facilities locating, in advance of construction, if ground disturbance is required.
- 2.2.3.4 Customer will arrange for power interruptions if required for construction.
- 2.2.3.5 Arrange any survey and staking required for pole placement; and
- 2.2.3.6 Perform any make-ready work to ensure adequate installation and obtain all necessary permits and any and all approvals prior to installation.
- 2.2.3.7 Customer will install all collectors and routers and third party-ancillary equipment as per the Landis+Gyr network design and training guides.
- 2.2.3.8 Customer is responsible for endpoint installation.
- 2.2.3.9 Customer will connect to applicable communication equipment to accommodate available utility fiber or communication network.

2.2.4 Meter Configuration Support

Customer shall furnish resources experienced in determining what data should be provided by the endpoints, what programs are required, how various endpoint settings shall be configured, and how nameplates shall be designed. These resources shall work with Landis+Gyr to make timely decisions on endpoint configuration. Customer, when required, shall provide first article testing associated with the approved endpoint configurations and provide written approval to Landis+Gyr. Endpoint configuration activities shall be completed within 15 days of the Effective Date.

2.2.5 Network Design and Site Survey Services

Customer will furnish resources to be involved throughout the design phase and will provide input and data to Landis+Gyr's experts. Customer to provide field resources to validate sites in the network design are available for deployment of Landis+Gyr equipment.

2.2.6 Integration

If selected in Table 2 by Customer as part of Level 2, 3, or 4 Service, Landis+Gyr will design and develop interfaces which will be needed to support the System. Customer will participate in integration workshops to finalize/approve detailed requirements.

2.2.7 Network Equipment Commissioning

Customer shall install and commission network devices. The Customer, at its option, shall work with Landis+Gyr for the commissioning of the initial network device. If the Customer has selected Level 2, 3, or 4 Service, Landis+Gyr will visit the Customer for a one-week period (40 hours maximum, including travel time) to inspect the Customer's installation and commission the equipment, as well as answer Customer

questions regarding installation of equipment and ensure the network equipment is ready for endpoint installation.

2.2.8 Network Monitoring/System Administration

2.2.8.1 To support network performance, Customer shall appoint a System Administrator to perform daily system monitoring and troubleshooting activities. Customer will furnish resources to provide technical support and act as the primary contact person for Landis+Gyr technical support experts. System Administrator shall perform basic troubleshooting before contacting Landis+Gyr Technical Support. This resource shall administer all Software logins and passwords for its personnel and respond to inquiries from Customer employees and/or its end use customers.

2.2.8.2 Landis+Gyr requires remote access to all aspects of the System to support deployment and monitor the progress of the deployment. This includes Command Center server(s) and services (i.e. Mobile Admin), IP connections to all collectors, and any System encryption keys to access devices in the field such as routers and endpoints for all devices not hosted by Landis+Gyr. Customer shall supply a solution to allow Landis+Gyr to access these parts of the System as needed. Landis+Gyr will require individual logons to the solution as well as Command Center and any other network resources needed to support the deployment. VPN access “to the field” is recommended over shared access via remote desktop or other terminal service. The Customer may turn off access to Landis+Gyr personnel after project delivery services have concluded although system access will allow technical support to resolve issues ongoing.

2.2.8.3 Customer agrees to provide System encryption keys to accepted members of Landis+Gyr’s staff in order to support initial deployment and troubleshooting. Landis+Gyr will supply, at Customer request, Landis+Gyr’s I.T. Policies for encrypting and securing Landis+Gyr personal computer equipment against leakage of the Customer system encryption keys. Landis+Gyr staff will furnish all standard equipment (i.e., laptop, IWR Radio, software, etc.) to support its troubleshooting efforts on behalf of Customer. Customer may choose to audit each Landis+Gyr-supplied piece of equipment to fulfill Customer security policy once per visit.

2.2.9 Training

Customer is responsible to attend training to be knowledgeable with the System. The scope of Services varies depending on the Customer’s selection in Table 2.

2.2.10 Products

- 2.2.10.1 Customer shall provide equipment forecasts, Orders, and inspect orders and provide approval to Landis+Gyr.
- 2.2.10.2 Customer shall furnish resources to remove defective or non-performing equipment at its expense and return the equipment, if under warranty, to Landis+Gyr per the RMA terms in this Agreement.
- 2.2.10.3 Customer will provide warehousing and/or storage facilities for equipment purchased.

EXHIBIT B

(Hamilton Letters)

Software as a Service Agreement

This Software as a Service (SaaS) Agreement (referred to hereinafter as “**Agreement**” or “**Main Agreement**”), dated as of the last signature date below (“**Effective Date**”), is by and between **CITY OF SPRINGVILLE** (“**Customer**”) with offices located at 110 South Main Street, Springville, UT 84663 and **LANDIS+GYR TECHNOLOGY, INC.** with offices located at 30000 Mill Creek Avenue, Suite 100, Alpharetta, GA 30022 (“**Service Provider**”).

WHEREAS, Customer requires third-party hosted “software as a service” (the “**SaaS Services**,” as further described herein) with respect to certain of Customer’s information technology needs and related smart grid program;

WHEREAS, Service Provider has agreed to provide the SaaS Services to Customer, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an person’s identity and authorization to access and use the SaaS Services.

“**Affiliate**” means any entity (including any person, without limitation, any corporation, company, partnership, limited liability company or group) that directly through one or more intermediaries, controls, is controlled by or is under common control with Service Provider or Customer for so long as such control exists. For purposes of this definition, “control” means having more than fifty percent (50%) of the shares or other equity interest with voting rights in the legal entity or organization at issue.

“**Authorized Users**” means any Customer employee, contractor or agent, or any other person authorized by Customer to access and use the SaaS Services through Customer's account under this Agreement.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to be closed for business.

“**Customer Data**” means any and all information, data, materials, works, or other content, relating to Customer’s end customers’ information relating to electricity, water or natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by Customer in connection with supplying electric services, water services or gas services to that customer or group of customers (regardless of the media in which it is contained) that may be disclosed at any time to Service Provider by Customer or Customer’s employees, agents, consultants, contractors, or suppliers in anticipation of, in connection with, or incidental to Service Provider’s performance of the SaaS Services for or on behalf of Customer .

“Customer Systems” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

“Documentation” means any manuals, instructions or other documents or materials that Service Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the SaaS Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“Disabling Code” means any software, virus, Trojan horse, time bomb or other code that is harmful, disabling or which enables unauthorized access to the Service Provider Systems or Customer Systems, or theft or damage to Customer Data, or otherwise impairs the operation of the Service Provider Systems, any Customer Systems, or any Third Party system utilized by Service Provider in the Service Provider Systems.

“Endpoints” means each of the following types of physical devices installed for use in the delivery of any commodity:

- i. a meter measuring the quantity of a commodity delivered, at a utility customer premise or at any other point within the distribution system, with respect to which the Software stores, processes, or makes accessible data specifically identified to that premise or distribution point for use in one or more of the utility operations the Software performs or supports; and
- ii. an unmetered supply point with respect to which the Software performs calculations of quantities of a commodity delivered in lieu of metering.

For avoidance of doubt, Endpoints do not include: aggregations of data from multiple Endpoints; interfaces between the Software and other systems or applications; sub-meters or devices installed at a utility customer premises beyond the meter; or devices only used to read, retrieve, or transmit data from Endpoints.

“Intellectual Property Rights” means any and all intellectual property rights whether registered or unregistered, and all applications for and renewals or extensions of such rights, including rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) works of authorship, designs, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all similar or equivalent rights or forms of protection.

“Interfaces” means the Service Provider's file transfer communications interfaces and data feeds mechanisms between the Service Provider Systems and the Customer's Systems which are developed, operated, owned and maintained by Service Provider pursuant to this Agreement including, as applicable, any configuration and customization required to meet the requirements of this Agreement, but excluding ownership of any customization that constitutes a component or derivative of Customer's Systems.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, common law, judgment, decree or other requirement or rule of any federal, state, local or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Permitted Uses**” means any use of the SaaS Services by Customer or any Authorized User for the benefit of Customer in or for Customer's internal business operations.

“**Person**” means an individual and any entity, including, but not limited to, any corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust or association.

“**Process**” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Service Provider Materials**” means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all Service Software, Documentation, computer hardware, programs, reports and specifications, client software and deliverables provided or made available to Customer in connection with Service Provider's performance of the SaaS Services, in each case developed or acquired by the Service Provider independently of this Agreement.

“**Service Provider Personnel**” means all employees and agents of Service Provider, all subcontractors and all employees and agents of any subcontractor, involved in the performance of Services.

“**Supported Release**” means versions of Service Software currently supported by Service Provider. Service Provider will support at a minimum the current generally available release in addition to the previous release of Service Software.

“**Representatives**” means a party's employees, officers, directors, consultants, legal advisors and, with respect to Service Provider, Service Provider's subcontractors, and, with respect to Customer, solely those of Customer's independent contractors or service providers that are Authorized Users.

“**Service Software**” means the Service Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Service Provider provides remote access to and use of as part of the SaaS Services made available to Customer.

“**Territory**” means the Customer's service territory, which includes all areas wherein Customer provides power services.

“**Third Party Materials**” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Service Provider.

“**Upgrade**” means updating the Service Software to the most current generally available version.

2. Services.

2.1. Services. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Service Provider agrees to provide to Customer and its Authorized Users access to certain of Service Provider's hosted software and hardware products and provide the following services: infrastructure and infrastructure monitoring, technical support, backup and recovery, data center access training, and Service Software upgrades for Customer's productive use of such services. Throughout the Term and at all times in connection with Service Provider's actual or required performance under this Agreement, Service Provider will, in accordance with all terms and conditions set forth in this Agreement and each applicable Service Order, provide to Customer and its Authorized Users the following services ("**Services**"):

- (a) the hosting, management and operation of the Service Software for availability and other services for remote electronic access and use by the Customer and its Authorized Users ("**SaaS Services**") as described in one or more written, sequentially numbered service orders specifically referencing this Agreement, which, upon execution of such service orders will be attached as part of Schedule B and by this reference are incorporated in and made a part of this Agreement (each, a "**Service Order**");
- (b) service maintenance and the Support Services as set forth in the applicable Service Order and the Service Level Agreement described in Schedule A; and
- (c) such other services as may be specified in the applicable Service Order.

The above Services are provided by Service Provider except for Scheduled Downtime in accordance with the Service Level Agreement in Schedule A; service downtime or degradation caused by a Force Majeure Event or any other circumstances beyond Service Provider's reasonable control, including Customer's or any Authorized User's use of Third Party Materials, misuse of the SaaS Services, or use of the Services other than in compliance with the express terms of this Agreement and the Documentation. For avoidance of doubt, the SaaS Services do not include managed services and Customer agrees that it shall operate Service Software and monitor its operation of Service Software.

2.2. Documentation. The Documentation for the Service Software will accurately and completely describe the functions and features of the Service Software, including all subsequent revisions thereto. The Documentation will be understandable by a typical end user and will provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Services. Company will have the right to make any number of additional copies of the Documentation for internal business purposes at no additional charge.

2.3. Service Orders. Service Orders will be effective only when signed by Customer and Service Provider. Any modifications or changes to the SaaS Services under any executed Service Order will be effective only if and when memorialized in a mutually agreed written change order ("**Change Order**") signed by both Parties. Where a Change Order

may result in an adjustment to fees, Service Provider will provide a written estimate of such adjustment to Customer within ten (10) calendar days of Service Provider's receipt of a Change Order. Upon approval of the written estimate to complete the Change Order, the parties will each ratify the Change Order indicating any adjustments to the fees, or delivery schedule.

2.4. Professional Services. During the Term of this Agreement, Service Provider may also perform certain implementation, consulting, training and/or support services ("**Professional Services**") as specified in mutually agreed upon written Statement of Work ("**SOW**"). Each SOW will contain a reference identifying it as a SOW under this Agreement and will contain the following information, as applicable:

- (a) a description of scope of the Professional Services;
- (b) any other items to be delivered ("**Deliverable**");
- (c) the fees;
- (d) an estimated schedule; and
- (e) assumptions on which the performance of the Professional Services or delivery of the Deliverables is conditioned.

Any provision of a SOW that deems any Deliverable developed by Service Provider to be a "work for hire" or the property of Customer will be contingent upon payment to Service Provider of all amounts properly invoiced to Customer pursuant to the applicable SOW.

2.5. No Software Delivery Obligation. Service Provider has no software delivery obligation and will not ship copies of any of the Service Software used to provide the SaaS Services to Customer as a part of the SaaS Services. Upon the end of the Service Order, Customer's right to access or use the Service Software specified in the Service Order and the SaaS Services will terminate.

2.6. Use of Subcontractors. Service Provider may from time to time in Service Provider's discretion engage third parties to perform Services (each, a "**Subcontractor**").

2.7. Designation of Responsible Contacts. Customer will provide Service Provider with current appropriate contact information such that Service Provider may communicate maintenance notifications, outages, support items and other communications under this Agreement to Customer on an ongoing basis.

3. Customer Obligations

3.1. Customer Systems and Cooperation. Customer, at all times during the Term to the extent applicable for the specific Service Order, will: (a) set up, maintain and operate in good repair and in accordance with the Documentation all Customer Systems on or through which the Services are accessed or used; (b) provide Service Provider with such access to Customer Systems as is necessary for Service Provider to perform the Services in accordance with the Availability Requirement as provided in the Service Level Agreement; and (c) provide all cooperation and assistance as Service Provider may reasonably request to enable Service Provider to exercise Service Provider's rights and perform Service Provider's obligations under and in connection with this Agreement.

- 3.2. Effect of Delay. Neither party is responsible or liable for the portion of any delay or failure of performance caused in whole or in part by the other party's delay in performing, or failure to perform, any obligations under this Agreement.
- 3.3. Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.4, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within r respective control of Customer and its Authorized Users that are necessary to stop the activity or threatened activity and to mitigate the effects of such activity (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Service Provider Materials and permanently erasing from Authorized Users' systems and destroying any data to which any of the Authorized Users have gained unauthorized access); and (b) notify Service Provider of any such actual or threatened activity.
- 3.4. Suspension or Termination of Services. Service Provider may, directly or indirectly, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other third party's access to or use of all or any part of the Services or Service Provider Materials, without incurring any resulting obligation or liability, if: (a) Service Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Service Provider to do so; or (b) Service Provider has documented evidence that: (i) Customer or any Authorized User has failed to comply with, any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation and has failed to correct such non-compliance within 30 days of receiving notice of the non-compliance; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is lawfully terminated pursuant to its terms. This **Section 3.4** does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.
4. Authorization and Restrictions.
- 4.1. Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Service Provider hereby authorizes Customer, to access and use, solely in the Territory during the Term, the Services and such Service Provider Materials as Service Provider may supply or make available to Customer for the Permitted Uses by and through Authorized Users in accordance with the Documentation and the conditions and limitation set forth in this Agreement or any Service Order. In addition, Customer is authorized to:
- (a) generate, print, copy, upload, download, store and otherwise Process all graphical user interface , audio, visual, digital and other output, displays and other content as may result from any access to or use of the SaaS Services;
 - (b) prepare, reproduce, print, download and a reasonable number of copies of Documentation as may be necessary or useful for any Permitted Uses of the SaaS Services under this Agreement;

- (c) access and use the SaaS Services for production uses and applications as may be necessary or useful for the effective use of the SaaS Services for the Permitted Uses hereunder; and
- (d) perform, display, execute, and reproduce and distribute and otherwise make available to Authorized Users, any Service Provider Materials solely to the extent necessary to access or use the SaaS Services in accordance with the terms and conditions of this Agreement.

4.2. Authorization Limitations and Restrictions. Customer will not and will not permit any other Person to access or use the Services or Service Provider Materials except as expressly permitted by this Agreement and/or any Service Order and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement or any Service Order expressly permits:

- (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Services or Service Provider Materials available to any third party that is not an Authorized User;
- (b) copy, modify or create derivative works or improvements of the Services or Service Provider Materials;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Service Provider Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Service Provider Materials or access or use the Services or Service Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) use or authorize the use of the Services or Documentation in any manner or for any purpose that is unlawful under applicable Law;
- (f) remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Service Provider Materials, including any copy thereof;
- (g) access or use the Services or Service Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;
- (h) access or use the Services or Service Provider Materials for purposes of competitive analysis of the Services or Service Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Service Provider's detriment or commercial disadvantage; or

- (i) otherwise access or use the Services or Service Provider Materials beyond the scope of the authorization provided in this Agreement or in any applicable Service Order.
 - 4.3. Excess Use. If Customer's use of the SaaS Services exceeds the volume of use authorized in the applicable Service Order (including as to the number of Endpoints), Customer will pay Service Provider the Fees attributable to the excess use in accordance with the applicable Service Order.
 - 4.4. Non-Interference with Service Provider's Customers. Customer agrees that its use of the SaaS Services shall not restrict, inhibit, interfere with, or degrade other Service Provider customer's use of the SaaS Services (such as running custom queries against the database). If Customer's use of the SaaS Services violates such restrictions as determined by Service Provider, Service Provider may suspend or limit the SaaS Services of Customer that is causing the degradation of the services without penalty. In addition, Service Provider shall have the right to implement controls necessary to stop or limit future occurrences of a similar nature.
5. Term and Termination
- 5.1. Term. This Agreement will begin on the Effective Date and will remain in full force and effect until four (4) years thereafter ("**Initial Term**") unless terminated by either party for cause, as described in Section 5.4, "**Termination for Cause**," in which case this Agreement and all Service Orders/SOWs will also be terminated. Except in the case of termination for breach by Service Provider, within thirty (30) days' of the date of termination, Customer must pay all amounts remaining unpaid for SaaS Services provided prior to the effective date of termination, plus related taxes and expenses.
 - 5.2. Term of Service Orders/SOWs. Each Service Order/SOW will remain in effect until the earlier to occur of: a) termination of such Service Order/SOW by either party for cause as described in Section 5.4 below; b) termination of such Service Order/SOW upon mutual written consent of the Parties; or c) expiration of the Service Order Term or completion of all Services and the delivery of all Deliverables required under the Service Order/SOW.
 - 5.3. Renewal. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless a party provides the other party with written notice of its intent not to renew this Agreement at least ninety (90) days prior to the expiration of the then current Term.
 - 5.4. Termination for Cause. A party may terminate a Service Order/SOW and this Agreement if:
 - (a) the other party is in default of a material obligation under the applicable Service Order/SOW or this Agreement, and such default has not been cured within thirty (30) calendar days after receipt of written notice (specifying the default) from the non-defaulting party. If the default specified in such notice is cured within the thirty (30) day period, the Service Order/SOW and Agreement will remain in effect; or

- (b) the non-terminating party enters into liquidation (apart from a solvent liquidation for the purposes of amalgamation or reconstruction) or is dissolved or declared bankrupt or has a receiver, administrator or administrative receiver appointed over all or part of its assets or enters into an arrangement with its creditors or takes or suffers any similar action.

5.5. Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party hereunder will so survive the completion of the performance, cancellation or termination of this Agreement, including without limitation, Confidentiality, Infringement and Limited Warranties.

6. Fees and Expenses.

6.1. Fees. Customer agrees to pay for all services ordered as set forth in the applicable Service Order or SOW (the “**Fees**”). All Fees are due thirty (30) days from the date of invoice. Any Fees not paid within thirty (30) days after the date on which Customer receive an invoice (the “**Due Date**”) will accrue interest on the overdue balance from the Due Date at the rate of one and one-half percent (1.5%) per month, or the maximum lawful rate allowable under applicable law, whichever is lower.

6.2. Fees During Renewal Terms. Service Provider's Fees are fixed during the Initial Term. Service Provider fees for Renewal Terms shall escalate annually as of each anniversary of the Effective Date of the Service Order by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available as of that anniversary of the Effective Date.

6.3. Reimbursable Expenses. If a Service Order and/or SOW permits reimbursement of expenses by Customer (“**Reimbursable Expenses**”), Service Provider will be reimbursed for those reasonable expenses, at cost. In addition, if there are any system communication fees that are incurred by Service Provider (i.e. long distance charges), Service Provider will invoice Customer monthly for the communications fees, which Customer agrees to pay.

6.4. Taxes. Customer is exclusively responsible for the payment of all sales and use, value added, duties, tariffs or other similar charges or taxes on the SaaS Services, other than taxes based upon Service Provider’s income. All amounts set forth in an applicable Service Order/SOW are exclusive of taxes and taxes are not included in the Fees. Applicable taxes payable by Customer will be separately itemized of invoices sent to Customer.

6.5. Invoices. Service Provider will invoice Customer for all Service Orders at the start of Initial Term and at least thirty (30) days prior to the start of any Renewal Term. Fees for time and materials SOW’s and Reimbursable Expenses shall be issued monthly in arrears based on expenses incurred in the previous month. Fees for fixed bid SOW’s shall be invoiced upon completion of the milestone as set forth in the applicable SOW. All Invoices shall be issued in electronic format, via such delivery means and to such address as are specified by Customer in writing from time to time. If more than one Service Order

and/or SOW is in effect, Service Provider may provide an aggregate invoice for all amounts invoiced, together with separate invoices for each Service Order or SOW. Each separate invoice will: (a) clearly identify the Service Order or SOW to which it relates; (b) list each Fee item and Reimbursable Expense separately; (c) include sufficient detail for each line item to enable Customer to verify the calculation thereof; (d) for Fees determined on a time and materials basis, report details of time taken to perform Services on a per-individual basis; (e) be accompanied by all supporting documentation required hereunder for Reimbursable Expenses; and (f) include such other information as may be required by Customer as set forth in the applicable Service Order or SOW. If Customer validly disputes any invoiced amount it shall pay the undisputed amounts and provide written notice of the basis of that dispute to Service Provider within thirty (30) days following delivery of that invoice. The parties will work diligently, promptly and in good faith to resolve any such disputes.

7. Ownership and Restrictions.

- 7.1. Ownership of Customer Data. As between Customer and Service Provider and its Subcontractors, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in Section 7.2.
- 7.2. Limited License to Use Customer Data. During the Term of this Agreement and subject to the terms and conditions of this Agreement, Customer hereby grants Service Provider a limited, royalty-free, fully-paid up, non-exclusive, non-transferable and non-sublicensable license to Process the Customer Data in the United States as instructed by Customer or an Authorized User and solely as necessary to provide the SaaS Services for Customer's benefit as provided in this Agreement.
- 7.3. Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Service Provider Materials and Documentation or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Service Provider Materials and the Third Party Materials are and will remain with Service Provider and the respective rights holders in any such materials.

8. Confidentiality.

Confidential Information. From time to time during the Term of this Agreement, either Party (as the “**Disclosing Party**”) may disclose or make available to the other Party (as the “**Receiving Party**”) non-public, proprietary, confidential information about its business affairs, products, services, confidential intellectual property, trade secrets, third party confidential information, source code and other sensitive or proprietary information in oral, written, electronic or other intangible form marked or indicated as “**Confidential**” or “**Proprietary**” at the time of disclosure (collectively, “**Confidential Information**”). Confidential Information, however, shall not include: (a) Information which is already generally available to the public; (b) Information which hereafter becomes generally available to the public, except as a result of the direct or indirect action of the Receiving Party in breach of this Agreement; (c) Information known to the Receiving Party or its Representatives on a non-confidential basis prior to receipt by the disclosing party; (d) Information that is independently developed without access to the Disclosing Party's Confidential Information; and (e) Information disclosed under legal

compulsion; provided, however, that prior to a disclosure pursuant to an order or applicable law, the Receiving Party, to the extent permitted by law, promptly provides the other party written notice of such proposed disclosure and reasonably cooperates with the other party in its attempts to limit or prevent such disclosure. The Receiving Party shall use the Confidential Information solely for the performance of this Agreement and shall not disclose or permit access to Confidential Information other than to its Affiliates and its or their employees, officers, directors, attorneys, accountants and financial advisors (including insurers) (collectively, “**Representatives**”) who: (a) need to know such Confidential Information for the performance of this Agreement; (b) know of the existence and terms of this Agreement and (c) are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. These non-disclosure obligations shall survive the termination of this Agreement and shall continue for a period of five (5) years thereafter. Information need not be marked “Confidential” to be considered Confidential Information. “Confidential Information” includes any Confidential Information disclosed prior to the effective date of this Agreement. Customer Confidential Information shall also be deemed to include Customer Data regardless of marking or indication and shall not be subject to the exceptions referenced above. Notwithstanding the provisions in this Subsection 8.1, the parties acknowledge and agree that Customer is bound by the provisions of the Utah Government Records Access and Management Act (Utah State Code Title 63G, Chapter 2) (“GRAMA”). If Service Provider desires to have information provided to Customer protected from disclosure under GRAMA, Service Provider must request such treatment by providing a “written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality” of the records provided to Customer (Utah State Code 63G-2-309). The parties agree and acknowledge that Customer will protect all Confidential Information as allowed under GRAMA. However, if Customer is required to disclose any Confidential Information pursuant to GRAMA, court order, or other applicable law, Customer shall not be considered in breach of this Agreement or subject to any penalties for such required disclosure.

8.1.

8.2. Safeguarding Confidential Information. The Receiving Party shall safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. The Receiving Party shall promptly notify Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to cooperate with Disclosing Party to prevent further use or disclosure. The Receiving Party will be responsible for any breach of this Agreement caused by its Representatives.

8.3. No Rights in Confidential Information. Customer and Landis+Gyr hereby acknowledge and agree that all Confidential Information of the other party shall remain the sole and exclusive property of such other party and that the receiving party shall have no proprietary rights, title or interests therein except as otherwise provided in this Agreement.

8.4. Termination. Upon termination for any reason, or at any other time that Customer or Landis+Gyr demands, the other party shall promptly deliver and/or certify destruction of

Confidential Information, as appropriate, to the requesting party all Confidential Information (copies and originals) of the requesting party as may be in the other party's possession or under its control.

8.5. Customer Data Exception. Notwithstanding the provisions of **Section 8** or any other provisions of this Agreement, none of the exclusions set forth in **Section 8** apply to any Customer Data.

8.6. Data Privacy and Security

(a) Undertaking by Service Provider. Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider will use commercially reasonable efforts to establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized disclosure, access to, or use of the Customer Data; (d) ensure the proper disposal of Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. .

(b) Unauthorized Access. Service Provider will use commercially reasonable efforts to prohibit access to Customer Systems, in whole or in part, whether through Service Provider's Systems or otherwise.

(c) Service Provider Systems. Service Provider will be responsible for the security, management and maintenance of information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Service Provider to access the Customer Systems or otherwise in connection with the SaaS Services ("**Service Provider Systems**").

9. Indemnification.

9.1. Service Provider's Indemnification Obligations. Service Provider will indemnify and defend Customer and its Affiliates and their respective officers, directors, employees, shareholders and members from and against any losses, claims, penalties, fines, judgments, damages, liabilities or expenses, including reasonable attorneys' fee ("**Losses**"), or threatened Losses arising out of third party claims relating to, incurred in connection with, or based upon any claim, threatened claim, suit, action or proceeding ("**Claim**") made against Customer:

(a) that that the Services infringe any Intellectual Property Rights of a third party enforceable in the U.S. ("**Infringement Claim**"); or

(b) any claim for bodily injury or death of any individual, the loss, damage or destruction of any real or personal property, or any losses or damages related to customer data breaches or Service Provider's services provided under this Agreement, any Service Order, or SOW, resulting from the willful, negligent,

reckless, fraudulent or intentional acts or omissions of Service Provider or its Subcontractor.

- 9.2. Indemnification Limitations. Service Provider will have no liability or obligation for any Losses to the extent that such Loss arises out of or results from any:
- (a) alteration or modification of the SaaS Services by or on behalf of Customer or any Authorized User without Service Provider's authorization (each, a “**Customer Modification**”), provided that no infringement, misappropriation or other violation of third party rights would have occurred without such Customer Modification and provided further that any alteration or modification made by or for Service Provider at Customer's request will not be excluded from Service Provider's indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to Customer's written specifications and (ii) the SaaS Services, as altered or modified in accordance with the Customer's specifications, would not have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Service Provider;
 - (b) Customer's access to or use of the SaaS Services that is expressly prohibited by this Agreement or otherwise outside the scope of access or manner or purpose of use described or contemplated anywhere in this Agreement, the Documentation or the applicable Service Order; or
 - (c) breach of this Agreement by Customer or noncompliance herewith by any Authorized User.
- 9.3. Customer's Indemnification Obligations. Customer will indemnify and defend Service Provider, its Subcontractors, Affiliates and such person's respective officers, directors, employees, shareholder and members from and against Losses arising out of a Claim made against Service Provider relating to, incurred in connection with, or based upon:
- (a) Customer's use of the SaaS Services in breach of this Agreement; or
 - (b) any Infringement Claim asserted by any third party based upon Customer materials provided to Service Provider; or
 - (c) any claim for bodily injury or death of any individual, or the loss, damage or destruction of any real or personal property, resulting from the willful, negligent, reckless, fraudulent or intentional acts or omissions of Customer.
- 9.4. Indemnification Procedure. The party seeking indemnification (the “**Indemnified Party**”) will promptly notify the other party (“**Indemnifying Party**”) in writing of any Claims for which it seeks indemnification pursuant to this Section 9 and reasonably cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party will immediately take control of the defense and investigation of such Claim and will employ counsel reasonably acceptable to the other party to handle and defend the same, at the Indemnifying Party's sole cost and expense. The Indemnifying Party will not settle any Claim on any terms or in any manner that adversely affects the rights of the other party or any Indemnitee without the other party's

prior written consent, which will not be unreasonably withheld or delayed. The other party and any Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. A party's failure to perform any obligations under this Section 9.4 will not relieve the Indemnifying Party of its obligations herein except to the extent that the Indemnifying Party can demonstrate that it has been prejudiced as a result of such failure.

9.5. Option. In addition to the foregoing indemnification obligations, if all or any part of the a SaaS Services is subject to an Infringement Claim, Service Provider may, at its discretion and expense, take the following actions:

- (a) Procure for Customer the right to continue using the SaaS Services; or
- (b) Modify or replace the allegedly infringing aspect of the SaaS Services to make it non-infringing, provided, however, that such modification or replacement will not degrade the operation or performance of the SaaS Services.
- (c) If neither of the remedies set forth in this **Section 9.5** is reasonably available with respect to the Infringement Claim features then Service Provider may direct Customer to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Service Provider will refund to Customer any prepaid Fees for SaaS Services that have not been provided.
- (d) Excluding the indemnity obligation owed by Service Provider to Customer, the remedies set forth in this **Section 9.5** are Customer's exclusive remedies with respect to any Infringement Claim.

10. Limitations of Liability. Customer advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7, Utah Code Annotated, 1953, as amended) and does not waive any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative enactment, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. Any indemnity and insurance obligations incurred by Customer under this contract are expressly limited to the amounts identified in the Government Immunity Act.

11. Representations and Limited Warranties.

11.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;
- (b) it has, and throughout the Term and any Renewal Terms during which it does or is required to perform the SaaS Services will retain, the full right, power and authority to enter into this Agreement and perform its obligations hereunder;

- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate/ action of the party; and
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with the Agreement terms, except as the enforceability thereof may be limited by bankruptcy and similar Laws affecting creditors' rights generally and by general equitable principles.

11.2. Additional Service Provider Warranties. Service Provider represents, warrants and covenants to Customer that:

- (a) it is in the business of providing the SaaS Services;
- (b) it is the lawful licensee or owner of the SaaS Services (excluding any Customer Data therein) and has all the necessary rights in the SaaS Services to grant the use of the SaaS Services to Customer;
- (c) the Service Software and Services will in all material respects conform to and perform in accordance with the Documentation and all requirements of this Agreement;
- (d) it will use its best efforts to ensure that no Disabling Code is introduced into Customer's computing and network environment by the SaaS Services; and
- (e) it will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet Service Provider's obligations under this Agreement.

11.3. Additional Customer Warranty. Customer represents, warrants and covenants to Service Provider that:

- (a) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Service Provider and Processed in accordance with this Agreement, Customer does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.
- (b) prior to Customer's delivery to Service Provider of any Customer Data that is outside of the Service Providers Systems, Customer shall use current industry state-of-the-art anti-virus measures to detect, prevent and remove Disabling Code, and to prevent the spread of Disabling Code between the Parties when accessing and/or exchanging data or software through the Interfaces or any other network connectivity.

11.4. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1, SECTION 11.2 AND SECTION 11.3, ALL SERVICES AND SERVICE PROVIDER MATERIALS ARE PROVIDED "AS IS" AND SERVICE PROVIDER HEREBY DISCLAIMS ALL WARRANTIES,

WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. Insurance.

Service Provider will, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly qualified in those states (locations) where the SaaS Services are to be performed, covering the operations of Service Provider, pursuant to this Agreement: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability (\$500,000 per accident); and, professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate). Where applicable, such limits of insurance may be satisfied by a combination of primary and umbrella/excess liability coverage. At Customer's request, Customer will be included, via blanket endorsement, as an additional insured in such policy, excluding workers' compensation and professional liability. The commercial general liability policy will also contain standard cross liability clauses which do not exclude coverage for claims between insureds. Service Provider will cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. At Customer's Request, Service Provider will provide Customer with certificates of insurance evidencing all of the above coverage and will provide Customer with certificates of insurance evidencing renewal or substitution of such insurance within a reasonable amount of time following the effective date of such renewal or substitution.

13. Force Majeure.

13.1. Force Majeure Events. Neither party will be liable in damages or have the right to terminate this Agreement for any reasonable delay or default in performing under this Agreement if such delay or default is caused by conditions beyond the party's reasonable control, including without limitation acts of God, natural disasters, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations or failures or fluctuations in electrical power, heat, lights, air conditioning or telecommunications equipment (each of the foregoing, a "**Force Majeure Event**"), provided that the non-performing party is without fault in causing such condition. Subject to the party so delaying promptly notifying the other party in writing of the reason for the delay and the likely duration of the delay, the performance of the delaying party's obligations, to the extent affected by the delay, will be temporarily suspended during the reasonable period of time that the cause persists, provided that if performance is not resumed within thirty (30) days after that notice, the non-delaying party may by notice in writing immediately terminate this Agreement.

14. General Provisions.

14.1. Compliance with Laws/Export. The Parties will comply with all applicable Laws, regulations and codes, including procurement of permits and licenses, when needed, of their respective states, territories, and/or countries in the performance of this Agreement, provided such is not in violation of the U.S. Government's Export and Anti-boycott Rules and Regulations. The SaaS Services and Deliverables and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Service Provider in any audit or inspection that relates to these controls; and (c) not export, re-export, divert or transfer, directly or indirectly, any such item to any country or person who or which is embargoed by Executive Order or any applicable law, including any rules, regulations or policies promulgated thereunder.

14.2. Further Assurances. Each party will, upon the reasonable request, and at the sole cost and expense, of the other party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

14.3. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

14.4. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, will be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Service Provider:

Landis+Gyr Technology, Inc.
3000 Mill Creek Avenue, Suite 100
Alpharetta, GA 30022
Attn: Legal Department
Facsimile: 678.258.1686

If to Customer:

City of Springville
110 South Main Street
Springville, UT 84663
Attn: City Administrator
Facsimile: 801-491-7894

Notices sent in accordance with this **Section 14.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

- 14.5. Interpretation. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; [and] (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; and all personal pronouns, whether used in the feminine, masculine, or neuter gender, include all other genders and the singular will include the plural and vice versa. Unless the context otherwise requires, references herein: (x) to Sections, Schedules and Exhibits refer to the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document (including this Agreement) means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, and together with all schedules and exhibits thereto; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Schedules and Exhibits referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if such Schedules and Exhibits were set forth verbatim herein.
- 14.6. Headings. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.
- 14.7. Entire Agreement. This Agreement, including all Service Orders and other Schedules and Exhibits and any other documents, agreements or instruments incorporated by reference herein, including all applicable provisions of the Landis+Gyr Response 2/1/16 to Springville City’s “Advanced Metering Infrastructure (AMI) System Request for Proposal #2015-14” and all follow up responses to inquiries submitted to Customer from Service Provider (the “RFP Response”), which RFP Response is incorporated herein and

made part of this Agreement by this reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, and all subsequent oral understandings and agreements with respect to such subject matter. In the event of any conflict between the terms of this Agreement and those of any Schedule, Exhibit or other document, the following order of precedence will govern: (a) first, this Agreement, excluding its Exhibits and Schedules; (b) second, the Exhibits and Schedules to this Agreement as of the Effective Date; and (c) third, any other documents, instruments or agreements incorporated herein by reference, including, but not limited to, the RFP Response. This Agreement and all Service Orders take precedence over any purchase order issued by Customer, which may be accepted by Service Provider for administrative convenience only.

- 14.8. Assignment. Neither party will assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without the other party's prior written consent, which consent will not unreasonably be withheld or delayed. Any purported assignment, delegation or transfer in violation of this Section 14.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- 14.9. No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 14.10. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 14.11. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable according to Law, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 14.12. Governing Law; Submission to Jurisdiction.
- (a) This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Utah, without regard to Utah's conflict of laws principles. The Uniform Computer Information Transactions Act does not have any

application to this Agreement.

- (b) Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States located in Salt Lake City, Utah, or the courts of the State of Utah located in Utah County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

14.13. Equitable Relief. The Parties will be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek equitable relief in a court of competent jurisdiction.

14.14. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and out-of-pocket and court costs from the non-prevailing party.

14.15. Schedules and Exhibits. All Exhibits that are referenced herein and attached hereto, or are signed by both parties on or after the Effective Date, are hereby incorporated by reference. The following Schedules and Exhibits are attached hereto and incorporated herein:

Schedule A	Service Level Agreement
Schedule B	Service Order; Pricing

14.16. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (to which a signed PDF copy is attached) will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Landis+Gyr Technology, Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

SERVICE LEVEL AGREEMENT

Service Provider shall provide Customer with Service Levels on the terms and conditions set forth in this Schedule and the Software as a Service (SaaS) Agreement dated as of the Effective Date, by and between City of Springville and Landis+Gyr Technology, Inc. (“**Main Agreement**”). All capitalized terms that are not defined in this Schedule shall have the respective meanings given to such terms in the Main Agreement.

1. **Definitions.** For purposes of this Schedule the following terms have the meanings set forth below.

“**Error**” means any reproducible failure of the Service Software to operate in all material respects in accordance with the Documentation and, to the extent consistent with and not limiting of the Documentation, including any problem, failure or error referred to in the Service Level Table.

“**Service Levels**” means the defined Error severity levels and corresponding required service level responses and response times referred to in the Service Level Table.

“**Service Level Table**” means the table set out in Section 2.4.

“**Support Period**” means the Service Order Term as set forth in the applicable Service Order.

2. **Availability Requirement.** Subject to the terms and conditions of the Main Agreement and this Schedule, Service Provider will use commercially reasonable efforts to make the SaaS Services Available, as measured over the course of each calendar month during the Support Period and any additional periods during which Service Provider does or is required to perform any SaaS Services (each such calendar month, a “**Service Period**”), at least 99.5% of the time, excluding only the time the SaaS Services are not Available solely as a result of one or more Exceptions (“**Availability Requirement**”). “**Available**” means the SaaS Services are available and operable for normal access and use by Customer and its Authorized Users over the Internet in material conformity with the Documentation.

- 2.1. **Exceptions.** No period of SaaS Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following (“**Exceptions**”):

- a. Customer's misuse of the SaaS Services;
- b. failures of Customer's or its Authorized Users' Internet connectivity;
- c. internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Service Provider or its Subcontractor; or
- d. Customer's or any of its Authorized Users' failure to meet any minimum hardware or software requirements set forth in the Documentation.
- e. Force Majeure Event

- f. Failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Service Provider pursuant to the Main Agreement or this Schedule.
 - g. Scheduled Downtime; or
 - h. disabling, suspension or termination of the Services pursuant to Section 3.4 of the Main Agreement.
3. Support Services. Service Provider will provide SaaS Service maintenance and support services (collectively, “**Support Services**”) during the support hours throughout the Support Period in accordance with the terms and conditions of this Schedule and the Main Agreement, including the Service Levels and other Service Provider obligations set forth herein. The Support Services are included in the SaaS Services, and Service Provider will not assess any additional fees, costs or charges for such Support Services.
- 3.1. Support Service Responsibilities. Service Provider will:
- (a) respond to Support Requests in accordance with the Service Levels;
 - (b) provide responsive telephone or email support as set forth in Section 3.6.
 - (c) Provide online access to technical support bulletins and other user support information and forums, to the full extent Service Provider makes such resources available to its other customers.
- 3.2. Service Monitoring and Management. Service Provider will continuously monitor and manage the SaaS Services to optimize Availability (defined herein) that meets or exceeds the Availability Requirement. Such monitoring and management will include:
- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all SaaS Services, infrastructure and other components of SaaS Service security;
 - (b) if such monitoring identifies, or Service Provider otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the SaaS Service, taking all necessary and reasonable remedial measures to eliminate such threat and ensure Availability;
 - (c) if Service Provider receives knowledge that the SaaS Service or any SaaS Service function or component is not Available (including by notice from Customer pursuant to the procedures set forth herein or in the applicable Service Order):
 - i. Service Provider will confirm the outage by a direct check of the associated facility or facilities;
 - ii. if Service Provider's facility check in accordance with clause (i) above confirms a SaaS Service outage in whole or in part: (A) notifying Customer pursuant to the procedures set forth herein or in the applicable Service Order that an outage has occurred, providing such details as may be available, including a Service Provider trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing

and caused by the outage until they are resolved as Critical Service Errors in accordance with the Support Request Classification set forth in the Service Level Table.

- iii. Service Provider will continuously maintain the SaaS Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services will include providing to Customer and its Authorized Users:
 - a. such updates, bug fixes, enhancements, new releases, new versions and other improvements to the SaaS Services, including the Service Software, that Service Provider provides at no additional charge to Service Provider's other similarly situated customers. Specific upgrades are set forth in the applicable Service Order; and
 - b. all such services and repairs as are required to maintain the SaaS Services or are ancillary, necessary or otherwise related to Customer's or its Authorized Users' access to or use of the SaaS Services, so that the SaaS Services operate properly in accordance with this Agreement and the Documentation.

3.3. Scheduled Downtime. Planned maintenance and updates are not expected to exceed ten (10) hours in a normal month. Service Provider will use commercial reasonable efforts to provide Customer advance notification (via email) of scheduled maintenance that is anticipated to involve system unavailability of two (2) hours or more. Service Provider will use commercially reasonable efforts to notify Customer at least 48 hours (via email) in advance to scheduled maintenance and updates ("**Scheduled Downtime**"). Service Provider will use commercially reasonable efforts to perform scheduled maintenance outside the hours of 7:00 AM – 7:00 PM Central Standard Time, Monday – Friday.

3.4. Service Levels.

Response times will be measured from the time Service Provider receives a Support Request until the respective times Service Provider has responded to that Support Request. Service Provider shall respond to all Support Requests within the following times based on Service Provider's designation of the severity of the associated Error, subject to the parties' written agreement to revise such designation after Service Provider's investigation of the reported Error and consultation with Customer:

Severity Level of incident	Definition	Response Time During Business Hours	Response Time During Non-Business Hours
Critical	<u>Critical Business Impact</u> – Impacts multiple users and halts or severely impacts the division's ability to conduct critical operations. Postponement of any critical interface file that can delay Field Services, Billing and daily critical activities.	1 Hours	2 Hours
High	<u>Significant Business Impact</u> – Impacts individual or small work group. Normal operations may be degraded but can continue.	1 Hours	4 Hours
Medium	<u>Some Business Impact</u> – Impacts individual or small work group. Normal operations may be degraded but can continue, and service response may be delayed until a mutually established future time. Issue is informational in nature, a request, suggestion or report. No immediate remedial action is expected.	1 Business Day	2 Business Days
Low	<u>Non-Business Impact</u> – Maintenance request, data requests, and non-critical process enhancements.	3 Business Days	6 Business Days

3.5. Support Requests and Customer Obligations.

- (a) Support Requests. Customer may request Support Services by way of a Support Request. Customer shall classify its requests for Error corrections in accordance with the severity levels classifications and definitions of the Service Level Table set forth in Section 3.4 (“**Support Request**”). Customer shall notify Service Provider of each Support Request by e-mail, telephone or such other means as the parties may agree to in writing. Customer shall include in each Support Request a description of the reported Error and the time Customer first observed the Error.
- (b) Customer Obligations. Customer will, by and through its employee or consultants provide the Service Provider with:
 - i. prompt notice of any Errors; and
 - ii. each of the following to the extent reasonably necessary to assist Service Provider to reproduce operating conditions similar to those present when Customer detected the relevant Error and to respond to the relevant Support Request:
 - a. direct access to the Customer Systems and the Customer’s files and personnel;
 - b. output and other data documents and information, each of which is deemed Customer’s Confidential Information as defined in the Main Agreement; and
 - c. such other reasonable cooperation and assistance as Service Provider may request.

3.6. Service Desk Contact Information. Landis+Gyr shall provide Customer with access to the Service Desk. Landis+Gyr’s current Service Desk business hours are 7:00 AM to 6:00 PM Central Time, Monday through Friday, excluding Landis+Gyr observed holidays (available upon request) and weekends (“**Business Hours**”). In addition, emergency access to on-call personnel via Landis+Gyr’s Emergency Dispatch Service will be provided by Landis+Gyr from 6:01 PM through 6:59 AM, and 24 hours per day on weekends and holidays. Landis+Gyr shall provide advanced troubleshooting, via telephone or e-mail, as deemed necessary by qualified Landis+Gyr personnel, to resolve Customer issues.

3.7. Submission Method. Customer can contact the Service Desk through:

- i. Telephone direct dial-in at 888.390.5733;
- ii. Fax to 218.562.5530, or
- iii. E-mail at solutionsupport.na@landisgyr.com

All contact information is subject to change and update by delivery of notice or by posting on the Landis+Gyr Website at www.landisgyr.com.

4. Backup and Recovery. Service Provider will conduct or have conducted at minimum, daily backups of Customer Data and perform or cause to be performed other periodic backups (snapshots, differential backups, etc.). At least one backup will be stored online (directly accessible) and one full backup will be stored near-line. Both copies will be less than one week old and may be overwritten as they are replaced with newer backups. Weekly backups are stored for a minimum of one month. Monthly backups are stored off-site for a minimum of one (1) year.

5. Business Continuity and Disaster Recovery Protection. Service Provider has an ongoing Business Continuity (“**BC**”) program (that includes Risk Assessment) that covers its primary locations as well as a Disaster Recovery (“**DR**”) program for restoring its data center operations. Service Provider uses industry best practices and exercises its DR program, (i.e. failing over its customers’ services to an alternate datacenter with client verification) for an additional fee.

6. Communications. In addition to the mechanisms for giving notice specified in the Main Agreement, unless expressly specified otherwise in this Schedule or the Main Agreement, the parties may use e-mail for communications on any matter referred to herein.

IN WITNESS WHEREOF, the parties hereto have executed this Schedule A as of the last signature date below.

Landis+Gyr Technology, Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE B
SERVICE ORDER; PRICING
SERVICE ORDER NO. 001

This Service Order No. 001, effective as of the last signature date set forth below (the “**Service Order No. 001 Effective Date**”), is issued and executed as Schedule B to the Software as a Service (SaaS) Agreement also dated as of the Service Order No. 001 Effective Date, by and between City of Springville (as Customer) and Landis+Gyr Technology, Inc. (as Service Provider) (the “**Main Agreement**”) and is a part of and incorporated into the Main Agreement. All capitalized terms that are not defined in this Schedule shall have the respective meanings given to them in the Main Agreement.

SCOPE OF SERVICE. Service Provider shall provide Customer with access to Services on the terms and conditions set forth in the Main Agreement. Service Provider will provide Services that will enable Customer to access the Service Software.

1. **Service(s) Description**

The Service Software provided to Customer consists of the following items:

- Gridstream Command Center RF
- Gridstream Command Center PLC
- Gridstream Command Center PLX
- Gridstream Advanced Security

2. **SaaS Service Term**

The initial term for this Service Order begins after Service Software installation upon verification of Customer’s ability to access and utilize the SaaS Services as provided herein and in the Main Agreement and ends thirty-six (36) months thereafter (the “**Initial Service Order Term**”).

Upon expiration of the Initial Service Order Term, this Schedule B shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Service Order Term, the “**Service Order Term**”), unless a party provides the other party with written notice of its intent not to renew this Service Order at least ninety (90) days prior to the expiration of the then current term.

3. **SaaS Service Fee**

3.1 The Fee Schedule is determined by the total number of Endpoints deployed by Customer. The fee for the Initial Service Order Term for the number of Endpoints set forth in Section 2 of this Service Order (the “**Initial Service Fee**”) payable by Customer to Service Provider is a total of **\$1,000.00 USD per month** based on **up to 12,500 Endpoints**. Actual fee will be calculated and billed on a monthly basis and include adjusted fees for the total number of Endpoints in the “deployed” status on the last business day of the previous month, as indicated by the Command Center Software.

Quantity of Deployed Endpoints in Command Center	Price
Up to 2,000	\$675 flat rate per month
2,001 to 6,000	\$750 flat rate per month
6,001 to 8,000	\$850 flat rate per month
8,001 to 12,500	\$1,000 flat rate per month
12,501 to 30,000	\$0.09 per deployed endpoint, per month
30,001 to 59,999	\$0.07 per deployed endpoint, per month
60,000+	\$0.05 per deployed endpoint, per month

3.2 The fees for the Renewal Terms of SaaS Service are payable by Customer to Service Provider as set forth in the Main Agreement.

3.3 Customer is required to add additional Endpoints prior to beneficial use of such additional Endpoints.

4. **Price Increases**

Service Provider's Additional Endpoint Fees are fixed during the Initial Term. Service Provider Additional Endpoint fees for Renewal Terms shall escalate annually as of each anniversary of the Effective Date of the Service Order by the amount of the increase in the Consumer Price Index – All Urban Consumers of the Bureau of Labor Statistics of the U.S. Department of Labor for U.S. for All Items with Base Years 1982-1984=100. Those increases will be measured applying the twelve (12) month period ending in the month for which the most recent index results are available as of that anniversary of the Effective Date.

5. Summary of Services Included in Service Order

SaaS Services are detailed in the SaaS Agreement. Services specific to this Service Order are detailed below:

- 5.1 Project Coordination. Service Provider will provide a project coordination to provide direction to Customer relating to SaaS Services. Customer to provide primary point of contact to work with the project coordinator.
- 5.2 Installation and Configuration. Installing the Software in the data center with standard configurations. Custom configurations are available for an additional fee as detailed in an applicable SOW. Service Software includes Service Provider Application Software, operating system software, database software and any software running on the Service Provider equipment.
- 5.3 Upgrades. Service Provider and Customer will mutually agree on an upgrade schedule for Service Software. SaaS Services include at least one (1) Software Upgrade per calendar year. Customer agrees to remain on a Supported Release of Service Software. Service Provider will install all Software Upgrades on the Service Provider Equipment. Service Software includes Service Provider Application Software, operating system software, database software and any software running on the Service Provider Equipment. Software DOES NOT INCLUDE any application or tools software running on local Customer computers or other Customer equipment including Mobile Administration Software (“MAS”) upgrades to handheld devices, endpoint programming software upgrades at the Customer site, Endpoint Test Manager (“ETM”), RadioShop or Substation Processing Unit Software Upgrades.
- 5.4 Integration(s). Service Provider will provide integrations to third party systems for an additional fee as detailed in the applicable SOW.
- 5.5 Data Availability. Service Provider will make available on a live basis at least 90 days of Customer Data. Data older than 90 days will be archived and available to Customer upon request (additional fees may apply). Archive data will be retained for a minimum of one (1) year unless otherwise mutually agreed upon. Additional data retention periods are available for an additional fee.
- 5.6 Monitor Collector Communications (To the Extent Service Provider is providing the Backhaul Services). To the extent applicable, Service Provider will monitor the status of system communications. In the event of a fault during normal business hours if the communications fault is a result of a Service Provider Equipment failure, Service Provider will resolve the communications fault. If the communications fault is not the result of a Service Provider Equipment failure, Service Provider will report the fault for resolution by Customer. In the event of a fault as a result of a Service Provider Equipment failure outside of normal business hours, Service Provider will attempt to resolve the issue; however, no notice of the event will be made to the Customer. Should Customer require assistance with respect to communications to the system, after hours assistance is available as described in Schedule A.
- 5.7 Process Collector Communication Fees. Service Provider will process and invoice for communication fees as applicable.

6. Customer Responsibilities:

- 6.1 Conduct Collector Field Maintenance. Customer will perform field maintenance work on the Meters/modules and Collectors. This includes, but is not limited to, updating the collector, ETM, RadioShop and other Field Tools software to the latest version.
- 6.2 Interface Billing data to Customer Billing System. Customer is responsible for executing the Billing Extract file utilizing the functionality built into the Command Center Software and loading it into Customer's billing system. Customer is also responsible for any exception processing that is associated with endpoints that do not have billing data available for a particular billing cycle window.
- 6.3 Provide Collector Communication. Customer is responsible for purchasing and physically maintaining all collector communications infrastructure as applicable.
- 6.4 Administer Login and Passwords. Customer is responsible for assigning security officer(s), administering all Software logins and passwords, to provide Customer-selected configurations and to maintain access rights for the Customer's employees.
- 6.5 Support Utility Consumer. Customer is responsible for handling all support for Customer's own end-use consumers. Service Provider will not provide any support regarding billing inquiries or any other matter for end-use consumers.
- 6.6 Install and Upgrade Endpoint Programmer Software. Customer is responsible to load and maintain Endpoint Programmer Software on desired hardware at Customer's location including ETM , Radioshop and other field tools.
- 6.7 Loading Files. Customer is responsible for loading MMF, IIF and CIF files to Software.
- 6.8 Application Administration. Customer is responsible to provide Customer-selected configurations and maintain access rights.
- 6.9 Application Operations. Customer is responsible to provide daily business operations of the Software monitoring jobs; reporting; coordination of issues, etc.
- 6.10 IT coordination. Customer is responsible to coordinate management of interfaces to connected Customer Systems.
- 6.11 Upgrades. Customer is responsible to validate upgrades to Software.

In the event of any conflict between the body of the Main Agreement and this Service Order B, the body of the Main Agreement will govern.

Landis+Gyr Technology, Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____