

PROFESSIONAL SERVICES AGREEMENT
for
WATER METER READING

THIS AGREEMENT is entered into the date last below written between the CITY OF LONGVIEW, WASHINGTON ("City") and METEREADERS, LLC ("Contractor").

1. SERVICES BY CONTRACTOR

- A. **Performance of Services.** The Contractor shall perform the services described in the scope of work attached hereto as Attachment A. All Services will be rendered to the best of the Contractor's ability and in a timely and professional manner in compliance with all standards and rules reasonably established by the City.
- B. **Modification.** The City periodically may make changes to the services that are within the general scope of the Agreement by giving the Contractor written notice of such changes. If any change results in an increase or a reduction in the work that was contemplated to be performed by the Contractor as described in Attachment A, the Contractor's compensation hereunder shall be modified accordingly.

2. PAYMENT

- A. The City shall pay the Contractor for such services: (Check One)
- () Hourly: _____ per hour, plus actual expenses, but not more than a total of _____.
- () Fixed Sum: A total amount of: _____.
- (X) Other: See Services and Compensation Attachment A, for all services performed, and expenses incurred under this Agreement.
- B. The Contractor shall maintain expense records and provide them not more frequently than monthly to the City, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.
- C. All invoices shall be paid by mailing a City warrant within 30 days of receipt of a proper invoice after approval of the Contractor's completed tasks/deliverables to the date of the invoice or monthly report, as appropriate.
- D. The Contractor shall keep cost records and accounts pertaining to the Agreement available for inspection by the City's representatives for three (3) years after final payment. Copies shall be made available on request.

- E. If the services rendered do not meet the requirements of the Agreement, the Contractor will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

3. DISCRIMINATION AND COMPLIANCE WITH LAWS

- A. The Contractor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.
- B. The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement, including where applicable the Longview Municipal Code.
- C. Violation of this Section 3 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

4. TERM AND TERMINATION OF AGREEMENT

- A. **Term.** This Agreement shall remain in effect through October 21, 2019, unless terminated earlier in accordance with Paragraph 4.B. of this Agreement. This Agreement may be renewed in two-year increments upon mutual agreement of any adjustments to the terms and the compensation paid to the Contractor.
- B. **Rights upon Termination.** This Agreement may be terminated by either party without cause upon thirty days' written notice, in which event all finished or unfinished documents, reports, or other material or work of Contractor pursuant to this Agreement shall be submitted to the City, and the Contractor shall be entitled to just and equitable compensation at the rate set forth in Paragraph 2 for any satisfactory work completed prior to the date of termination.

Either City or Contractor may terminate this Agreement in the event of a breach by the other party. Prior to such termination, however, the party seeking to terminate shall give to the other party, written notice of the breach and its intent to terminate this Agreement. If the party has not completely cured the breach within 30 days of the notice, then the party giving the notice may terminate this Agreement immediately or at any time thereafter, by giving written notice of such termination date.

By mutual written agreement, City and Contractor may terminate this Agreement at any time, not subject to the above advance notice requirements.

- C. **Noninterference with business.** During the course of the Contractor's performance of the services for the City and for a period of twelve (12) months after the completion of such services, the Contractor will not interfere with the City's business in any manner, including without limitation, encouraging anyone to leave the City's employ or encouraging any employee or independent contractor to sever that person's relationship with the City.

5. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda, and other documents developed under this Agreement, whether finished or not, shall become the property of the City, shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if it uses products prepared by the Contractor for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to hold the Contractor harmless therefore.

Contractor agrees that all information provided by the City or obtained by Contractor through performance of this agreement shall be confidential and shall not be disclosed or otherwise provided to any other person, except as directed by the City. City agrees that input and output files and software developed for Contractor's proprietary systems shall remain confidential and the property of the Contractor, except as otherwise required by the state of Washington Public Records Act.

6. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or his/her designee, shall be the City's representative and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices under this Agreement.

7. INDEMNIFICATION AND HOLD HARMLESS

- A. The Contractor shall protect, defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all cost, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omission of the Contractor. The Contractor agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agent. For this purpose the Contractor, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- B. The City shall protect, defend, indemnify and save harmless the Contractor, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omission of the City. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects the Contractor

only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

- C. The Contractor will indemnify, defend, and hold the City (and its elected officials, officers, employees, successors, assigns, insurers, licensees, distributors, independent contractors, and agents) harmless from all claims, damages, losses, and expenses (including reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) arising out of or resulting from any claim, action, or other proceeding that is based upon (a) the Contractor's breach of any obligations, representations, or warranties under the Agreement, (b) the Contractor's outside business activities, or (c) the infringement or misappropriation by the Contractor of any foreign or United States patent, copyright, trade secret, or other proprietary right in results.

8. INSURANCE; RISK OF LOSS

The Contractor shall maintain insurance that is sufficient to protect the Contractor's business against all applicable risks, as set forth in Attachment B. The Contractor will cause the indemnified parties, as described in Section 7 above, to be named as additional insureds on the policies required under this Agreement and shall cause its insurance to be primary to any insurance carried by the indemnified parties. The Contractor will provide the City with certificates of insurance and other supporting materials as City reasonably may request to evidence Contractor's continuing compliance with this Section 8. The Contractor will be liable for all loss or damage, other than ordinary wear and tear, to the City's property in the Contractor's possession or control that is caused by the Contractor. In the event of any such loss or damage, the Contractor will pay the City the full current replacement cost of such equipment or property within thirty (30) days after its loss or damage.

9. INDEPENDENT CONTRACTOR

- A. **Nature of Relationship.** The Contractor shall be and act as an independent Contractor (and not as an employee, agent, or representative of the City) in the performance of the services for the City. This Agreement shall not be interpreted or construed as creating or evidencing an association, joint venture, partnership, or franchise relationship among the parties or as imposing any partnership, franchise, obligation, or liability on any party. The Contractor will not represent himself/herself as an employee of the City. The Contractor shall not be entitled to, and shall not attempt to, create or assume any obligation, express or implied, on behalf of the City. So long as the Contractor is able to adequately perform all of the Contractor's obligations under this Agreement in a skilled and workmanlike manner. Since the Contractor will not be an employee of the City, the Contractor will not be entitled to any of the benefits that the City may make available to its employees, such as but not limited to vacation leave, sick leave, or insurance programs, including group health insurance or retirement benefits; nor shall the Contractor permit or cause any of the Contractor's employees, agents, or subcontractors to perform any services under the Agreement in such a way as to cause or enable them to become, or claim to have become, employees, common law or otherwise, of the City. In addition, the Contractor acknowledges that as an independent contractor, he/she/it and or his/her/its agents, servants, or employees are not

eligible to recover worker's compensation benefits from or through the City in the event of injury.

- B. **Contractor Responsible for Business License, Taxes and Records.** The contractor shall obtain a Longview Business License prior to commencing any work under this Agreement. The Contractor will be solely responsible for and will file, on a timely basis, all tax returns and payment required to be filed with or made to any federal, state, or local tax authority with respect to the Contractor's performance of the services and receipt of fees under the Agreement. The Contractor will be solely responsible for and must maintain adequate records of expenses incurred in the course of performing the services under the Agreement. No part of the Contractor's payment will be subject to withholding by the City for the payment of any social security, federal, state or any other employee payroll taxes; nor shall the City be obligated to make any such withholdings and/or payments on behalf of any employee, subcontractor, supplier, or other person working for or engaged by the Contractor to perform the Contractor's obligations under the Agreement. The City will regularly report amounts paid to the Contractor by filing Form 1099-MISC with the Internal Revenue Service as required by law.

10. SUBLETTING OR ASSIGNING AGREEMENT

Neither the City nor the Contractor shall assign, transfer, or encumber any rights, obligations, duties, or interests accruing or arising from this Agreement without the express prior written consent of the other. Subject to the foregoing, this Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.

11. FUTURE SUPPORT

The City makes no commitment and assumes no obligations for the support of the Contractor's activities except as set for in this Agreement.

12. GENERAL PROVISIONS

- A. **Governing Law.** This Agreement will be governed by the laws of the State of Washington and its choice of law rules. The Contractor irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts located in Cowlitz County, Washington or the applicable federal court for such County, with respect to any dispute arising out of or in connection with this Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with this Agreement other than in the aforementioned courts.
- B. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The City and the Contractor agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

- C. **Nonwaiver.** Any failure by the City to enforce strict performance of any provision of this Agreement will not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of this Agreement.
- D. **City Marks.** The Contractor will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
- E. **Notices.** All notices and other communications required under this Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address as follows:

City:
Public Works Director
PO Box 128
Longview WA 98632
360-442-5200

Contractor:
Manager/Company Representative
Metereaders, LLC
18167 SW Boones Ferry Road
Portland, OR 97224
(503) 624-7010

- F. **Legal Fees/Venue.** In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Cowlitz County, Washington.
- G. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.
- H. **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify particular provisions.

13. EXTENT OF AGREEMENT/MODIFICATION

This Agreement together with attachments or addenda, represents the entire and integrated Agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both Parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of
_____, 2018.

CONTRACTOR

By:_____

Printed Name:_____

Title:_____

Address:_____

City/State/ZIP:_____

Tax ID#_____

CITY OF LONGVIEW

By:_____

Printed Name:_____

Title:_____

Approved as to form:

By:_____

City Attorney

ATTACHMENT “A” SERVICES & COMPENSATION

Contractor is engaged in the business of providing utility meter reading services. In consideration for the mutual promises between City and Contractor to faithfully comply with the terms of the agreement, City and Contractor intend to provide the following services and payments for services.

A. Duties of Contractor

1. Contractor agrees that for each reading period, it shall read all water meters designated to be read by City. These meters comprise those served by the City, except as noted in Section B.1 below. Contractor agrees that it is fully cognizant and aware of the physical features of the terrain, roadway access, and other characteristics pertaining to the City’s water service area and meter access.
2. Contractor shall furnish, except as noted, all labor, materials, supplies, equipment, and incidentals necessary to provide meter reading services, and shall ensure its readers are equipped with all reasonable tools necessary to read meters. Such tools may include, but are not limited to: reading tubes, hand pumps, shovels, scoops, etc.
3. Contractor shall develop input and output files and software as necessary to accurately and electronically exchange meter reading data between its data collection equipment and programs and the City’s utility billing system, with minimal manual effort required by City to accomplish the exchange of data.
4. Contractor shall not be responsible for readings associated with an opening or closing of customer accounts, nor shall Contractor be responsible for rereads, checking for vacancies, verifying whether meters are on or off, reading meters inside buildings, pumping flooded vaults, or reading meters inside vaults that are not readable without entering.
5. Contractor shall make repeated attempts to read meters where readings were not obtained during the normal process of reading meters, except for locations where the meter cannot be read due to circumstances beyond the control or reasonable efforts of the Contractor. Contractor shall not be responsible for reading meters the access to which is obstructed in such a manner that more than due diligence is required to read the meter. In the case of extreme weather conditions or other acts of God that would make it impossible for Contractor to perform said contracted service during the current reading period, such readings may be delayed or skipped without penalty as referenced in Section D.4 below. If reading is delayed beyond the reading period, both parties shall decide when or if reading shall be done by Contractor for that certain reading period.
6. If, in Contractor’s sole opinion, a meter is thought to be an obvious and immediate hazard, (such as a missing lid), Contractor shall report said meter condition within 24 hours of its

discovery, but in no event will Contractor be liable or responsible for any injuries incurred directly or indirectly relating to the condition of the meter (including meter lids and boxes).

7. If the meter reader or data collection equipment identifies a reading above a mutually agreed upon range indicating high consumption based on historical data for that account, Contractor shall notify City of the high consumption account and its current and prior reading, within 24 hours after the reading is taken.
8. As part of its meter reading function, Contractor will note and report to the City, potential water service problems including, but not limited to the following: vandalism, damaged or buried meters, signs of tampering, unreadable meter dials, obstructions found over the meter box (such as fences), water leaks, and meters below water. Contractor shall continue to report problems to the CITY each time a cycle or route is submitted to the CITY, regardless of whether or not Contractor has previously reported the problem.
9. All meter readings shall be accurate and shall not be estimated, except that the City may authorize estimates under extenuating circumstances. Contractor shall maintain a level of accuracy that results in not more than one-half of one percent (0.50%) of all readings being determined to be erroneous. In the event that erroneous readings exceed the allowable error rate, Contractor shall be responsible for obtaining rereads for the number of meters in excess of the allowable error rate, at no additional cost to the City. All rereads shall be obtained and submitted to the City within 24 hours of notification by the City.
10. In the event the Contractor or its employees and agents are found to have stolen or negligently damaged any equipment owned by the City, such as meters, meter dials, meter boxes or lids, or any documents provided by the City, Contractor shall be responsible for all costs related to the repair or replacement of such equipment or documents.
11. Contractor shall employ only competent and well trained readers, except as necessary to train new employees, and shall continuously oversee the activities of its readers.
12. The CITY expects that Contractor's readers may be interpreted by the public to be City employees and may be contacted with questions or complaints. Contractor and its employees shall conduct themselves in a professional and courteous manner when responding to the public. When contacted by the public, Contractor's employees shall politely identify themselves as Contractor staff, working under contract to the City.

Contractor's employees may respond to public inquiries about meter location, frequency of the reads, or how to read a meter. Under no circumstances, however, shall Contractor's employees communicate with the public on issues such as relocation of meters and/or meter boxes, billing inquiries, billing adjustments, or any other City matters outside the realm of this contract. Contractor's employees shall instead advise the public to contact the City.

13. Contractor agrees that the performance of this agreement is essential to the provision of vital public services and the accomplishment of the goals and mission of the City.

Therefore, Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with the City, its customers, and the public, and shall actively foster a public image of mutual benefit to both parties. Contractor and its staff shall not make any statements or take any actions detrimental to this effort.

14. Contractor shall ensure that all equipment, including vehicles, hand-held units, etc. is kept clean, and that its meter readers are dressed in a professional manner appropriate for this line of work. Contractor's readers shall wear an approved safety vest meeting WISHA/OSHA standards at all times the employees are reading meters for the City. Said vest shall be clearly labeled "Meter Reader" in large bold letters on the back.

B. Duties of City

1. City grants to Contractor, the exclusive right to read all water meters served by the City except radio read meters and other meters normally read by the City due to access or other issues, whether now existing or installed in the duration of this contract. The City may install additional radio read meters or may read certain other meters with its own staff, and remove such meters from Contractor's work. If twenty (20) or more such meters will be removed from the Contractor's work in the geographic area of one reading cycle prior to the next reading period for that cycle, City shall provide Contractor thirty (30) days advance written notice prior to removing such meters from the Contractor's work.
2. CITY agrees to maintain all meters and meter enclosures in reasonable repair and condition at all times so Contractor can perform its services without undue dangers or hardships. Furthermore, Contractor shall not be held responsible or liable for any defective or faulty meters and meter enclosures.
3. On mutually agreed upon dates, City shall furnish to Contractor an electronic file to designating the meters to be read during that reading cycle.

C. Schedule

1. Contractor shall commence providing services and reading meters according to the following schedule:
 - a) Set up Contractor's computer system and routes: Immediately upon execution of this Agreement.
 - b) Start reading meters: October 22, 2018
 - c) Meters shall be read in the following monthly and bi-monthly schedules:

Month	Monthly Start Date	Monthly Due Date
Odd (Cycle 1)	On or near the 1st	15th
Even (Cycle 2)	On or near the 1st	15th
Monthly (Cycle 3)	On or near the 22nd	1st of following month

If the Monthly Due Date falls on a day the City Finance Department is closed, the readings shall be submitted by 9:00 a.m. on the next Finance Department business day. At the time of execution of this Agreement, the Finance Department is closed Friday, Saturday, Sunday, and City recognized holidays.

- d) City reserves the right to change the submission dates and/or reading cycles upon thirty (30) days written notification to Contractor. City and Contractor shall discuss any impacts this may have on the Contractor's operations, and negotiate any compensation adjustments, if applicable.

D. Payments

1. Payments shall be made to the Contractor by the City based exclusively on the adjusted number of meters read per month, multiplied by \$0.87 per meter.
2. City shall pay a one-time setup fee to cover the Contractor's costs for programming its software and data collectors and other costs related to initiating service to the City. This one-time setup fee shall be based on the number of meters to be read as of the execution of this Agreement, multiplied by \$0.87 per meter.
3. City shall make payment after the service has been provided and an invoice submitted to the City. Payment shall be made according to the City's normal voucher and payment processing schedule. City shall make payments to Contractor at its business office as shown in this Agreement, on a later invoice, or in writing from the Contractor.
4. Time is of the essence of this Agreement. Delays in submitting readings cause inconvenience to the City's customers and added expense to the City. Because it is impractical to calculate the actual costs of such delays, it is hereby agreed that a penalty of One Hundred Fifty Dollars (\$150.00) per day shall be imposed upon the Contractor for each calendar day or partial calendar day beyond the identified due dates, until all readings have been submitted. This penalty shall not apply when delays are caused by conditions identified in Section A.5 above. Further, this penalty shall be waived during initial startup of the meter reading work, such startup period considered to be October 21, 2018 through February 21, 2019 unless extended by mutual written agreement of the Parties.

ATTACHMENT “B”

INSURANCE REQUIREMENTS

The Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the contractor, his agents, representatives, employees, or subcontractors. The Contractor’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City of Longview’s recourse to any remedy available at law or in equity. The cost of such insurance shall be paid by the Contractor. Insurance shall meet or exceed the following unless otherwise approved by the City.

A. Minimum Scope of Insurance with Associated Limits

The Contractor shall obtain insurance of the types and coverage described:

1. Commercial General Liability coverage with limits not less than \$1,000,000 per occurrence /\$2,000,000 annual aggregate,
2. Business Automobile Liability coverage with limits not less than \$1,000,000 per accident for any auto,
3. Professional Liability insurance appropriate to Contractor’s profession shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Workers’ Compensation coverage as required by the Industrial Insurance Laws of the State of Washington.
5. Stop/Gap/Employers Liability coverage with limits not less than \$1,000,000 per accident/disease,

B. Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City.

C. Other Insurance Provisions.

Commercial General Liability policies shall be endorsed to include the City, its officials, employees, and volunteers named as additionally insured.

Contractor obtained insurance shall be primary as respects any insurance or self-insurance maintained by the City,

Any insurance, self-insurance, or self-insured pool maintained by the City of Longview shall be in excess of the Contractor's insurance and shall not contribute with it,

Each contractor provided insurance policy shall provide that coverage shall not be canceled except after thirty (30) days' written notice has been given to the City and will remain in effect throughout the duration of this Agreement.

D. Acceptability of Insurers

Insurance shall be placed with insurers with a rating acceptable to the City. Generally insurance will be placed with insurers with a current A.M Best rating of not less than A-:VII

E. Verification of Coverage

Contractor shall furnish the City with original certificates of insurance and a copy of the amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements of the contractor. The certificates are to be received and approved by the City prior to work commencing. The City reserves the right to verify insurance policies and associated coverages at any time.

F. Notice of Cancellation

The Contractor shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

H. Public Entity Full Availability of Contractor Limits

If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the

Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

I. Subcontractors

Contractor shall require all subcontractors to provide equivalent coverage which complies with the requirements stated herein.