City of Grand Island

Tuesday, April 26, 2016
Council Session

Item G-9

#2016-95 - Approving the AMI Support Services Contract Extension with Landis+Gyr

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Stacy Nonhof, Assistant City Attorney

Meeting: April 26, 2016

Subject: AMI Support Service Contract Extension with
Landis+Gyr

Presenter(s):   Timothy Luchsinger, Utilities Director

Background

The Utilities Department made a presentation concerning AMI (Automated Metering Infrastructure) at the April 3, 2012 Council Study Session with the resulting recommendation to evaluate the technology by creating a pilot project. The proposed project area to be used was the new water construction in Merrick County as part of a groundwater contamination remediation project being paid for by the Union Pacific Railroad. The remediation project area was localized and included approximately 170 new water meters.

The intent of the pilot project was to gain first-hand experience with the installation and operation of an AMI system as well as determining the fiscal costs and benefits. This information would then be used to evaluate the feasibility of AMI for the entire electric and water utility systems.

Specifications for the AMI pilot project were developed by Department staff and issued for proposals in accordance with City procurement requirements. These specifications were drafted to allow the use of multiple suppliers for the hardware and software components of the AMI system for flexibility in evaluating additional vendors of AMI components during the pilot project. The AMI system data would be stored at a remote secure server and accessed by the City for meter billing and system information. Meter consumption information could also be made available to customers through the City's website. On October 23, 2012, Council awarded AMI pilot project to Landis+Gyr in the amount of $108,129.95, with an annual server support cost of $8,100.00.

Discussion

The term of the AMI pilot project with Landis+Gyr will be expiring at the end of this May, however some of the goals of the project have not yet been implemented,

specifically integration for the meter reading information into the City's utility billing system. Landis+Gyr has provided a proposal for a one year extension of the server hosting services for the same price of $8,100.00. Department staff has reviewed this proposal and recommends its acceptance.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:
1.   Move to approve
2.   Refer the issue to a Committee
3.   Postpone the issue to future date
4.   Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Landis+Gyr Software as a Service Agreement.

Sample Motion

Move to approve the Landis+Gyr Software as a Service Agreement.

Software as a Service Agreement

This Software as a Service (SaaS) Agreement (referred to hereinafter as "**Agreement**" or "**Main Agreement**"), dated as of **June 1, 2016** ("**Effective Date**"), is by and between **City of Grand Island Utilities,** ("**Customer**") with offices located at **1116 W. N. Front Street Grand Island, NE 68801**, 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 .

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"**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 Servicer 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.

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"**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.

"**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.

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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, monitoring, technical support, backup and recovery, initial training, change management, and technology 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 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.

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.

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.

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2.4. <u>Professional Services</u>. During the Term of this Agreement, Service Provider will 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. <u>No Software Delivery Obligation</u>. 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. <u>Use of Subcontractors</u>. Service Provider may from time to time in Service Provider's discretion engage third parties to perform Services (each, a "**Subcontractor**").

2.7. <u>Designation of Responsible Contacts</u>. 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.   <u>Customer Obligations</u>

3.1. <u>Customer Systems and Cooperation</u>. 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. <u>Effect of Delay</u>. 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 of Customer's obligations under this Agreement.

3.3. <u>Corrective Action and Notice</u>. 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

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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 believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with, any 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; (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 GUI, 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.

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4.2.   Authorization Limitations and Restrictions. Customer will not and will not permit any other Person to access or use the Servicers 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.

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4.4. <u>Non-Interference with Service Provider's Customers</u>. 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. <u>Term and Termination</u>

5.1. <u>Term</u>. This Agreement will begin on the Effective Date and will remain in full force and effect until one (1) year 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. <u>Term of Service Orders/SOWs</u>. 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. <u>Renewal</u>. 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. <u>Termination for Cause</u>. 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.

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5.5. <u>Survival</u>. 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. <u>Fees and Expenses</u>.

6.1. <u>Fees</u>. 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. <u>Fees During Renewal Terms</u>. 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. <u>Reimbursable Expenses</u>. 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. <u>Taxes</u>. 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. <u>Invoices</u>. 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

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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. <u>Ownership and Restrictions</u>.

    7.1. <u>Ownership of Customer Data</u>. 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. <u>Limited License to Use Customer Data</u>. 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. <u>Reservation of Rights</u>. 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. <u>Confidentiality</u>.

    8.1. <u>Obligation of Confidentiality</u>. In the course of performing under this Agreement, each party may disclose to the other party material, non-public information, including but not limited to, algorithms, codes, formulas, methodology, design, process, structure, format, documents, documentation, manuals, technical information, specifications, source code, costs and pricing ("**Confidential Information**"). Each party agrees to hold the Confidential Information of the other party in strict confidence, to use reasonable measures which will be no less restrictive than the measures used by the receiving party to protect its own confidential and proprietary information, and not to disclose or use such Confidential Information except as contemplated by this Agreement.

    8.2. Notwithstanding anything to the contrary in the foregoing, each party may disclose Confidential Information to an Affiliate of the receiving party provided that such Affiliate has agreed in writing to protect the confidentiality of such Confidential Information in a manner substantially equivalent to that required of such party under this Agreement. Each party will require its personnel to agree to do likewise. Confidential Information disclosed whether orally or in a tangible form will be marked or indicated as "**Confidential**" or "**Proprietary**" at the time of disclosure. These restrictions will not be construed to apply to (a) information generally available to the public; (b) information released by a party to the public generally without restriction; (c) information independently developed or acquired by a party or its personnel without reliance in any

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way on other protected information of the disclosing party; or (d) information expressly approved for use and disclosure without restriction. Notwithstanding the foregoing restrictions, a party and its personnel may use and disclose any information (e) to the extent required by an order of any court or other governmental authority; or (f) as necessary for it or them to protect such party's interest in this Agreement, but in each case only after the disclosing party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

8.3. <u>Term of Confidentiality</u>. The obligation of confidentiality will continue for a period of five (5) years from the date of disclosure of the information; provided, however, that for any trade secret the obligation of confidentiality will continue and survive until such information is no longer a trade secret under applicable law.

8.4. <u>Customer Data Exception</u>. Notwithstanding the provisions of **Section 8.1** or any other provisions of this Agreement, none of the exclusions set forth in **Section 8.1** apply to any Customer Data.

8.5. <u>Data Privacy and Security</u>

(a) <u>Undertaking by Service Provider</u>. 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) <u>Unauthorized Access</u>. 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) <u>Service Provider Systems</u>. 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. <u>Indemnification</u>.

9.1. <u>Service Provider's Indemnification Obligations</u>. 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:

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(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, 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 Service Provider or its Subcontractor.

9.2. <u>Indemnification Limitations</u>. 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. <u>Customer's Indemnification Obligations</u>. 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. <u>Indemnification Procedure</u>. 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.

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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. <u>Option</u>. 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.

9.6. <u>Indemnification Procedure</u>. The party seeking indemnification will promptly notify the Indemnifying Party in writing of any Claims for which such party seeks indemnification pursuant to this **Section 9** and 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 9.6** 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.

10. <u>Limitations of Liability</u>.

10.1. <u>EXCLUSION OF INDIRECT DAMAGES</u>. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR THE

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FOLLOWING TYPES OF LOSS: LOSS OF PROFITS OR REVENUE; LOSS OF BUSINESS OR GOODWILL, OR BUSINESS INTERRUPTION, OR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, A SERVICE ORDER/SOW OR THE PERFORMANCE OR BREACH THEREOF, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBLITIES OF SUCH CLAIM.

10.2. CAP ON DIRECT DAMAGES. EXCEPT FOR DAMAGES ARISING OUT OF OR RELATING TO A PARTY'S INDEMNIFICATION OBLIGATIONS, BREACH OF CONFIDENTIALITY OBLIGATIONS, OR UNDER OR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING UNDER OR IN RELATION TO THIS AGREEMENT, A SERVICE ORDER/SOW (OTHER THAN CUSTOMER'S OBLIGATION TO PAY FEES) WILL BE LIMITED TO THE LESSER OF ACTUAL DIRECT DAMAGES OR THE ACTUAL FEES PAID BY CUSTOMER TO SERVICE PROVIDER UNDER THE AFFECTED SERVICER ORDER/SOW DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY INCIDENT UNDER WHICH OR IN RELATION TO WHICH THE LIABILITIY ARISES. THE EXCLUSIONS AND LIMITATIONS WILL NOT APPLY TO LOSSES ARISING OUT OF OR RELATING TO A PARTY'S GROSS NEGLIGENCE OR MORE CULPABLE CONDUCT, INCLUDING ANY WILLFUL MISCONDUCT OR INTENTIONAL WRONGFUL ACTS.

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;

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(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.   <u>Additional Customer Warranty</u>. 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.   <u>DISCLAIMER OF WARRANTIES</u>. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, 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.   <u>Insurance</u>.

12.1.   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

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(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, $1,000,000 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). At Customer's request, Customer will be included, via blanket endorsement, as an additional insured in such policies, excluding workers' compensation and professional liability, which will contain standard cross liability clauses. 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 upon the effective date of such renewal or substitution.

13. <u>Force Majeure</u>.

13.1. <u>Force Majeure Events</u>. 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. <u>General Provisions</u>.

14.1. <u>Compliance with Laws/Export</u>. 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. <u>Further Assurances</u>. 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. <u>Relationship of the Parties</u>. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any

<p style="text-align:center">Main SaaS Agreement Page 16</p>

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 Grand Island Utilities
1116 W. N. Front Street
Grand Island, NE 68801
Attn: Bryan Fiala
Facsimile:

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.

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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, 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. 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.

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14.12. <u>Governing Law; Submission to Jurisdiction</u>.

    (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 Georgia, without regard to Georgia'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 or the courts of the State of Georgia in each case located in Fulton 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. <u>Waiver of Jury Trial</u>. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

14.14. <u>Equitable Relief</u>. 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.

14.15. <u>Attorneys' Fees</u>. 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.

14.16. <u>Limitations on Actions</u>. No actions, regardless of form, arising from the transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action has accrued.

14.17. <u>Schedules and Exhibits</u>. 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

14.18. <u>Counterparts</u>. 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.

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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: _Rebecca Lorentz_   By: _____

Name: _Rebecca Lorentz_____   Name: _____

Title: _Director Order Fulfillment_   Title: _____

Date: _April 20, 2016_____   Date: _____

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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 Grand Island Utilities** 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

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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

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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.   <u>Scheduled Downtime</u>. 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.   <u>Service Levels</u>.

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:

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Severity Level of incident	Definition	Response Time During Business Hours	Response Time During Non-Business Hours
Critical	Critical Business Impact – 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.	2 Hours or less*	4 Hours or less
High	Significant Business Impact – Impacts individual or small work group. Normal operations may be degraded but can continue.	4 Hours	8 Hours
Medium	Some Business Impact – 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	Non-Business Impact – Maintenance request, data requests, and non-critical process enhancements.	2 Business Days	3 Business Days

*Response time critical incident during business hours or after business hours

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3.5. <u>Support Requests and Customer Obligations.</u>

    (a)   <u>Support Requests.</u> 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)   <u>Customer Obligations.</u> 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.   <u>Service Desk Contact Information</u>**.** The point of contact for Support Requests is the Service Desk. The phone number for the Service Desk is: (888) 390-5733. Normal support hours are 7:00 AM – 6:00 PM Central Time, Monday through Friday. After hours support is accessible 24 x 7 by calling the Service Desk number and following the prompts.

4.   <u>Backup and Recovery</u>. 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.   <u>Business Continuity and Disaster Recovery Protection</u>. 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.   <u>Communications</u>. 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.

<p style="text-align:center">SaaS Agreement Schedule A Page 5</p>

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

Landis+Gyr Technology, Inc.   **Customer**

By: ___Rebecca Lorentz___   By: _____

Name: _____Rebecca Lorentz_____   Name: _____

Title: __Director Order Fulfillment__   Title: _____

Date: __April 20, 2013_____   Date: _____

SaaS Agreement Schedule A Page 6

<p style="text-align:center;">**SCHEDULE B**</p>
<p style="text-align:center;">**SERVICE ORDER; PRICING**</p>
<p style="text-align:center;">**SERVICE ORDER NO. 001**</p>

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 Servicer Order No. 001 Effective Date, by and between **City of Grand Island Utilities** (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:

   X   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 twelve (12) 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.

<p style="text-align:center;">SaaS Agreement Schedule B Page 1</p>

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 $675.00 USD per month based on up to 667 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.

SaaS Agreement Schedule B Page 2

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. 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.

SaaS Agreement Schedule B Page 3

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.

SaaS Agreement Schedule B Page 4

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: _Rebecca Lorentz_   By: _____

Name: _Rebecca Lorentz_   Name: _____

Title: _Director Order Fulfillment_   Title: _____

Date: _April 20, 2016_   Date: _____

SaaS Agreement Schedule B Page 5

R E S O L U T I O N   2016-95

WHEREAS, on April 3, 2012, Council was presented the information concerning a pilot project using Automated Meter Infrastructure (AMI) which included approximately 170 new water meters for new water construction in Merrick County; and

WHEREAS, the intent of the pilot project was to gain first-hand experience with the installation and operation of an AMI system as well as determining the fiscal costs and benefits; and

WHEREAS, on October 23, 2012, Council awarded the AMI pilot project to Landis+Gyr in the amount of $108,129.95, with an annual server support cost of $8,100.00; and

WHEREAS, the term of the AMI pilot project with Landis+Gyr will expire at the end of May and some of the goals of the project have not yet been implemented and Landis+Gyr has provided a proposal for a one year extension of the server hosting services for the same price of $8,100.00; and

WHEREAS, the Legal Department has reviewed and approved the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the AMI Support Service Contract Extension with Landis+Gyr is hereby approved, and the Mayor is authorized to sign the Agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, April 26, 206

_____
Jeremy L. Jensen, Mayor

Attest:

_____
RaNae Edwards, City Clerk

| Approved as to Form ¤ _____ |
| April 22, 2016   ¤ City Attorney |