

ORDINANCE 2020-06

AN ORDINANCE AUTHORIZING THE EXPENDITURE OF A SUM IN EXCESS OF \$50,000.00 FOR WATER METERS AND INSTALLATION OF WATER METERS FOR VILLAGE OF SWANTON UTILITY CUSTOMERS AND DECLARING AN EMERGENCY

WHEREAS, as the Ohio EPA requires that all public water systems track and annually document assets and document and track the metrics for the public water system. An upgrade to the Village of Swanton water meters is urgently needed to track the water supply as water losses from the water treatment plant have exceeded twenty percent and the loss of revenue is a significant issue for the Village of Swanton. That the current residential meters appear to be a source for many of the water loss and asset tracking issues;

WHEREAS, the cost of a meters and installation thereof will exceed \$50,000.00 and there is a real and present emergency pursuant to Revised Code 737.051 that requires an immediate purchase without competitive bidding as ongoing water losses or failure to properly bill customers will result in financial losses to the Village of Swanton that exceed the cost of installation of and purchase of new meters;

WHEREAS, Ohio Revised Code 735.051 authorizes the purchase of water meters and entering into contract for their installation without competitive bidding;

WHEREAS, Ohio Revised Code Section 9.29 also allows certain contracts involving water storage tanks and appurtenant facilities to be let without bidding and this contract meets the requirements under this Code section as a professional engineer will supervise the work, the payments will not exceed the excess of water utility charges less than operating expenses of the water system and the contract is required to bring the Village water system into compliance with state of Ohio requirements;

NOW, THEREFORE, BE IT ORDAINED by Council of the Village of Swanton, two thirds or more of its members elected thereto concurring as follows:

Section 1. The Village Administrator is authorized to expend an amount not to exceed \$170,000.00 without competitive bidding for the purchase and installation of water meters for the Village of Swanton;

Section 2. The Village Administrator, who is the municipal officer having supervision and management of such property, is hereby authorized to execute a purchase agreement for said water

meters with Ferguson Enterprises Inc. a copy of which is attached hereto;

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of the Council and any committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including §121.22 of the Revised Code of the State of Ohio.

Section 4. Ordinance is declared an emergency measure for the immediate preservation of the public peace, health, safety, convenience and welfare of the Village of Swanton and shall become effective immediately upon its passage by Council and approval by the Mayor because the Village of Swanton needs to purchase and install said water meters immediately to preserve Village assets, to properly track water usage within the Village for EPA purposes, to determine where water losses are occurring, to preserve revenues from water sales and correct the ongoing issues with the current meters.

Motion to Suspend the Rules

Moved: Dzyak Second: Rochelle YEAS: 6 NAYS:0

Vote on Passage

Moved: Rochelle Second: Pilliod YEAS: 6 NAYS:0

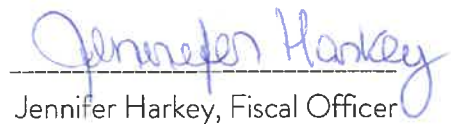
Date of Passage: March 9, 2020



Neil Toeppe, Mayor

Attest:

I, Jennifer Harkey, Fiscal Officer of the Village of Swanton, do hereby certify that this is a true and accurate copy of Ordinance 2020-06, passed on March 9, 2020.



Jennifer Harkey, Fiscal Officer

CONTRACT AGREEMENT

Owner: Village of Swanton
Address: 219 Chestnut Street
Swanton, OH 43558

Contractor: Ferguson Enterprises, Inc.
Address: 1501 Kieswetter Rd.
Holland, OH 43528

Project Description: Allegro AMR Meter Material & Installation
Contract Date: 2-11-2020
Contract Sum: \$159,720.00

Swanton, a Village, ("Owner") and Ferguson Enterprises, LLC. ("Contractor") have entered into this Contract Agreement ("Agreement") as of the date set forth above. The Owner and the Contractor agree as follows:

1 WORK.

- 1.1 The Contractor shall furnish all the labor, services, and materials as described in the Scope of Work attached hereto as Exhibit "A" (collectively called the "Work") necessary for the timely and proper completion of the Work described in this Agreement.
- 1.2 **CLEANUP.** Contractor shall cleanup, repair, restore, and otherwise return any site or location to the condition in which it was delivered to Contractor.
- 1.3 **COMPLETION.** The date for final completion of the Project is One year from Contract Date set forth above ("Completion Date"), unless otherwise agreed to in writing or as provided herein. The Contractor shall perform the Work in conformance with the Contract Documents so as to complete the Project by the Completion Date. All materials and equipment provided shall be new, free from liens and covered by manufacturer warranties against defects. A copy of the manufacturer's warranty is attached hereto as Exhibit "B".
- 1.4 **TAXES AND FEES.** Contractor is subject to and responsible for paying fees to obtain all applicable contractor or business licenses. Owner will be responsible for obtaining any permits or approvals required by local, state or federal agencies to permit the Project.

2 CONTRACT DOCUMENTS.

- 2.1 The Contract Documents consist exclusively of this Agreement, attachments to this Agreement, and Change Orders, all of which are incorporated into this Agreement.

3 OWNER'S REPRESENTATIVE.

- 3.1 Rosanna Hoelzle is the Owner's Representative with respect to all matters involving the Owner.
- 3.2 Except as specifically stated to the contrary elsewhere in this Agreement, the Contractor shall direct all communications to the Owner through the Owner's Representative.

- 3.3 The Owner's Representative, or their representative, will monitor the progress of the Contractor's Work and may conduct regular inspections of the progress of the Work as provided in the Contract Documents.
- 3.4 The Contractor shall at all times provide the Owner's Representative access to the Work.

4 TIME FOR COMPLETION AND PROJECT COORDINATION.

- 4.1 **PROJECT TIME SCHEDULE.** The Work on the Project will begin on the date Owner issues a notice to proceed for this Agreement [**AND THE CUSTOMER'S UTILITY BILLING SOFTWARE PROVIDER'S INTEGRATION IS COMPLETE**] and be substantially completed by the Completion Date, unless the Owner and Contractor agree to different commencement and completion dates in writing. The Work will be deemed to be substantially complete when Owner issues a Certificate of Substantial Completion for the project. It is anticipated that such Certificate of Substantial Completion will be deemed when all work required for the project is ready for use by the Owner, subject to punch list items to correct any matters noted by Owner in its final inspection, and excluding items turned over to the Owner to address due to being outside the scope of Work or due to lack of Contractor ability to gain access to private property after reasonable efforts as required by this Agreement. Subject to written approval by Owner, which shall not be unreasonably withheld, the date of completion shall be extended for any delays beyond the reasonable control of Contractor, including but not limited to extreme weather conditions, acts of God, war, labor difficulties, accidents, inability to obtain materials, inability to gain access to properties, delays of carriers, contractors or suppliers, deteriorated condition of existing pipes and/or connections requiring non-standard installation as defined herein or any other causes of any kind whatever beyond the control of Contractor. Contractor shall submit any requests for extension of the date of completion to Owner in writing with the number of additional days being requested and the justification for the requested additional days. Owner shall make a determination with regard to the requested extension of the date of completion within 10 days. In the event of uncooperative property owners the Owner will assist the Contractor in gaining access to any required premises. If Contractor is unable to gain access with the Owner's assistance within ninety (90) days after completion of all other Work, then the installation in question will be turned over to the Owner who will be responsible for the installation.
- 4.2 Contractor is responsible for scheduling its subcontractors and for any delay resulting from their performance.

5 DELAYS AND ACCELERATIONS.

- 5.1 **NOTICE OF DELAYS.** The Contractor shall submit to Owner written notice of any delay affecting its Work within 10 calendar days after Contractor becomes aware of the delay and shall include the number of additional days by which Contractor is requesting that the Contract be extended, if applicable, with the justification for requesting the additional days pursuant to Section 4.1 above
- 5.2 **ACCELERATION OF THE WORK.** If the Contractor fails, due to its own fault, to perform as required by the Contract schedule, the Owner may require the Contractor, at no additional cost to Owner, to accelerate its Work by adding workers or working additional shifts, extended shifts or overtime, so that the Work is in final form before the Completion Date. If the Owner requires the Contractor to accelerate its Work, Owner shall issue a written Notice to Contractor, and the Contractor shall take action reasonably required to comply within 10 calendar days of the Notice. If the acceleration is not due to fault of the Contractor, Contractor shall submit a written request to Owner for the issuance of a Change Order to increase the Contract Sum to pay the Contractor for the Contractor's additional

costs of accelerating its Work so that the Work is in final form before the Date for Final Completion with a justification for the requested Change Order. If there is a dispute as to whether the Contractor is entitled to a Change Order for accelerating its Work, the Contractor shall proceed to accelerate its Work without waiting for a Change Order or payment of any additional compensation but may reserve its right to make a claim against the Owner for its additional costs incurred in accelerating its Work. The parties agree that any such claim shall be brought within 30 calendar days after the Completion Date. The Contractor's additional costs for accelerating its Work shall be determined in accordance with Paragraph 5.2.2 of this Agreement.

- 5.2.1 **OWNER'S OBLIGATION TO PAY.** The Owner shall pay the Contractor, as provided in this Paragraph, for the Contractor accelerating its Work so that its Work is in final form before the Completion Date so long as the acceleration is not required as a result of the Contractor's failure to stay on schedule.
- 5.2.2 **COMPENSATION FOR ACCELERATION OF THE WORK.** To the extent that the Owner requires the Contractor to accelerate its Work and is obligated to pay under Section 5.2.1, the Owner shall pay the Contractor for the Contractor's additional costs of accelerating its Work, as determined in accordance with this Paragraph. The additional costs of accelerating the Work shall be: (a) any premium for overtime, additional shift work, or extended shift work; (b) the cost of any additional supervision required by the acceleration; and (c) out of pocket cost of any additional equipment required for the acceleration.

6 CORRECTIVE ACTION.

- 6.1 If the Owner determines that the Contractor is not cooperating or coordinating its work properly with its subcontractors, not supplying sufficient skilled workers, not cleaning up, not furnishing the necessary materials, equipment, or any temporary services or facilities to perform the Work in strict conformance with the Contract Documents, or is not otherwise performing its obligations under the Contract Documents, the Contractor shall within ten (10) days after notice of such determination commence such action as is reasonably necessary to correct the deficiencies noted by the Owner, including but not limited to, increasing the number of skilled workers, providing temporary services or facilities, and cleaning up the Project.

- 7 **CONTRACT SUM.** The Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Project and all of the duties, obligations, and responsibilities of the Contractor under this Agreement and the other Contract Documents will be \$159,720.00 (the "Contract Sum"). The Contract Sum is based upon the unit prices set forth in the Scope of Work and will be adjusted for agreed upon Change Orders. The Contract Sum includes all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. If the Owner is tax exempt it will provide Contractor with a tax exempt certificate.

8 LIMITATION AND LIABILITY.

- 8.1 Under no circumstances shall the elected officials, officers, employees, council members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

9 PAYMENT

- 9.1 APPLICATIONS FOR PAYMENT. The Owner has agreed to pay in accordance with the terms of this Contract after submission of a pay application reflecting the amount of Work completed as of the date the application for payment is submitted and including invoice for work performed and materials and equipment provided for the previous pay period and lien waivers for prior payments. Contractor will bill and Owner agrees to pay for equipment, including meters, radios and AMI equipment, based on prices set forth on Contractor's quotation upon delivery to Owner's warehouse if applicable. Contractor will bill and Owner agrees to pay monthly for labor charges at the unit prices set forth on Contractor's quotation. If any additional work beyond a standard meter installation (as defined in the Scope of Work attached hereto) is required due to the condition of existing pipe or meter connections, such work shall be completed on a time and material basis if approved by the Owner. In the event Owner does not approve such additional work, then Contractor shall not complete the installation of such meter and shall not bill the Owner the installation charge for such meter.
- 9.2 The Owner may withhold payment in whole or in part to protect the Owner from loss because of: 1) The Contractor's default or failure to perform any of its obligations under the Contract Documents, including but not limited to failure to provide sufficient skilled workers; 2) Work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; 3) The filing of third party claims, or reasonable evidence that third party claims have been or will be filed; 4) The Work has not proceeded to the extent set forth in the application for payment; 5) The failure of the Contractor to make payments to its Subcontractors; and/or 5) Liens filed or reasonable evidence indicating the probable filing of such liens.
- 9.3 The Owner will pay the Contractor within 30 days after receipt of the Contractor's payment application, if the payment application has been properly submitted on a timely basis and is accompanied by all of the required documentation.
- 9.4 DOCUMENTATION. Upon request, the Contractor immediately shall supply the Owner with such information as may be requested so as to verify the amounts due to the Contractor pursuant to a submitted pay application.
- 9.5 FINAL PAYMENT. The final application for payment shall be itemized, and the Contractor shall ensure that the final application for payment shall contain one copy of each of the following documents, if not previously delivered to the Owner: a) copies of applicable manufacturer warranties; b) a list of all Claims that Contractor believes are unsettled; and c) Such other documentation as required by the Contract Documents or applicable law.
- 9.5.1 The making and acceptance of Final Payment by the Owner shall not constitute a waiver of Claims by the Owner
- 9.6 ESCROW ACCOUNT. The Owner and the Contractor agree that no escrow account shall be required in connection with this Agreement and that retained funds will not earn interest.

10 CHANGE ORDERS.

- 10.1 A Change Order is a written instrument signed by the Owner and the Contractor stating their agreement upon a change in the Work, the amount of the adjustment or the method for computing the amount of the adjustment of the Contract Sum, if any, and the extent of the adjustment in the Project Time Schedule, if any.
- 10.2 Any changes to the approved Contract must be submitted by Contractor to the Owner in the form of a Change Order for the Owner's review and consideration. Owner
 - 10.2.1 The Contractor shall submit all Change Orders within ten (10) days after the occurrence of the event giving rise to the requested Change Order.
 - 10.2.2 If the Contractor has submitted a Change Order for an increase in the Contract Sum, written Notice as provided herein shall be given before proceeding to execute the Work except in the case of repairs authorized by Owner as provided in Section 10.1.
 - 10.2.3 If the Contractor has submitted a Change Order for additional time, the Contractor shall include an estimate of cost and probable effect of delay on progress of the Work. If adverse weather conditions are the basis for a Change Order for additional time, such Change Order shall be documented by data substantiating that weather conditions had an adverse effect on the scheduled construction.
 - 10.2.4 Within ten (10) days of its receipt of a written request from Owner, the Contractor shall make available to the Owner or its representative any books, records, or other documents in its possession or to which it has access relating to any Change Order and shall require its Subcontractors, regardless of tier, and materialmen to do likewise.

11 DEFAULT OF THE CONTRACTOR.

- 11.1 EVENTS OF DEFAULT. Each of the following constitutes an event of default of the Contractor:
 - 11.1.1 The Contractor's failure to perform any of its obligations under the Contract Documents and to proceed to commence to correct such failure within five (5) days after written notice thereof from the Owner or such other time as is provided in the Contract Documents, or
 - 11.1.2 or
 - 11.1.3 The Contractor's failure to pay its obligations as they become due or the Contractor's insolvency.
- 11.2 OWNER'S REMEDIES. Upon the occurrence of an event of default the Owner shall have the following remedies, which shall be cumulative:
 - 11.2.1 Order the Contractor to stop the Work, which the Contractor shall do immediately;
 - 11.2.2 To perform through others all or any part of the Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Sum or, if the unpaid balance of the Contract Sum is inadequate, to demand reimbursement of amounts previously paid to the Contractor;
 - 11.2.3 To terminate this Agreement and take possession of, for the purpose of completing the Work or any part of it, all materials and equipment to be installed as part of the Work, and to employ any person or persons to complete the Work, and the Contractor shall not be entitled to receive any further payment until the Work is completed; and/or,

- 11.2.4 All other remedies which the Owner may have at law or in equity or otherwise under the Contract Documents.
- 11.3 **TERMINATION OF AGREEMENT.** The termination of this Agreement shall be without prejudice to the Owner's rights and remedies, including without limitation the Owner's right to be indemnified by the Contractor.
- 11.4 **PAYMENTS DUE CONTRACTOR.** If the unpaid balance of the Contract Sum exceeds the cost of finishing the Project, including any costs, expenses or damages incurred by the Owner as a result of the event of default, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligations under this Paragraph shall survive the termination of this Agreement.

12 DEFAULT OF THE OWNER.

12.1 **EVENTS OF DEFAULT.** The following constitutes the exclusive events of default of the Owner:

- 12.1.1 The failure of the Owner to perform any of its obligations under the Contract Documents and to correct such failure within thirty (30) days after receipt of written notice thereof from the Contractor specifying the default and the necessary corrective action; and/or
- 12.1.2 The failure of the Owner to pay any undisputed amounts within the times established by paragraph 9 above and such failure continues for 5 days after notice from the Contractor that such amount is unpaid.

12.2 **CONTRACTOR'S REMEDY.**

- 12.2.1 The Contractor's sole and exclusive remedy for the default of the Owner, other than the failure of the Owner to pay the Contractor, will be to bring a suit for damages. The Contractor's right to exercise that remedy shall be subject to it giving the Owner the required notices and following any other procedures required by the Contract Documents.
- 12.2.2 If the Owner fails to pay the Contractor as payment becomes due as described in paragraph 9 above, the Contractor may, upon ten (10) days written Notice, stop the Work until payment of the amount owing has been received. An adjustment to the Contract Sum will be made as if the Work had been suspended for the convenience of the Owner under Section 13 of this Agreement.

13 SUSPENSION OR TERMINATION FOR THE CONVENIENCE OF THE OWNER.

13.1 **SUSPENSION FOR THE CONVENIENCE OF THE OWNER.**

- 13.1.1 The Owner may, without cause, order the Contractor to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.
- 13.1.2 An adjustment shall be made for increases in the cost of performance of the Work, including profit and overhead on the increased cost of performance, caused by the suspension, delay or interruption.
- 13.1.3 In the event the Work is suspended by the Owner for more than thirty (30) days for any reason other than breach by the Contractor, then the Contractor shall have the right, upon fifteen (15) days notice to terminate this Agreement as to any remaining Work.

13.2 **TERMINATION FOR THE CONVENIENCE OF THE OWNER.**

- 13.2.1 The Owner may, in its discretion and without cause, by written notice to the Contractor terminate this Agreement for the Owner's convenience.
- 13.2.2 Upon receipt of a written notice from the Owner terminating this Agreement without cause and for the Owner's convenience, the Contractor shall: (a) immediately cease performing the Work, unless otherwise directed by the Owner, in which case the Contractor shall take the action directed by the Owner; (b) take all reasonable and necessary action to protect and preserve the Work; and (c) unless otherwise directed by the Owner, terminate all agreements with Subcontractors and suppliers.
- 13.2.3 If this Agreement is terminated without cause and for the Owner's convenience and there exists no event of the Contractor's default, as defined in this Agreement, the Owner will pay the Contractor for Work performed under this Agreement up to the date the notice of termination is received by the Contractor at the rates for Work provided under this Agreement. Owner will also pay Contractor for all equipment and meters purchased for installation as part of the Work if not previously billed and paid by Owner.
- 13.2.4 The termination of this Agreement shall be without prejudice to any rights or remedies that exist at the time of termination.

14 INSURANCE AND INDEMNIFICATION.

- 14.1 The Contractor shall maintain the following insurance coverages, on which the Owner shall be listed as an additional insured:
- Commercial general liability insurance in the amount of \$1,000,000.00;
 - Automobile liability insurance in the amount of \$1,000,000.00;
 - Workers compensation coverage as required by applicable state Law; and
 - Umbrella/Excess liability coverage in the amount of \$2,000,000.00.
- 14.2 Insurance furnished by the Owner, if any, is not intended and shall not cover equipment and materials before they are physically incorporated into the Work or tools. The Contractor shall bear the entire risk of loss with respect to tools, equipment, and materials prior to incorporation into the Work.
- 14.3 To the maximum extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's consultants, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' and consultants' fees—whether made by Owner or a third-party—arising out of or related to the Contractor's negligence in performance of the Work including but not limited to any claims for bodily injury, sickness, disease, or death or to injury to or destruction of or loss of use of real or personal property, claims for additional storage and handling charges, liens against funds, and/or claims related to the removal, handling, or use of any hazardous materials.
- 14.4 The Contractor and/or the Contractor's subcontractors shall comply with Occupational Safety and Health Act of 1970 during the conduct and performance on and in connection with this Project.

15 WARRANTIES.

- 15.1 In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents, the Contractor warrants and guarantees that:
- The Owner will have good title to the Work and all materials and equipment incorporated into the work will be new;
 - Contractor guarantees installation services for a period of one (1) year from completion of the Work. All materials and equipment incorporated into the Work will be covered by applicable manufacturer's warranties provided to Owner;
 - All manufacturers' warranties shall be made available to Buyer or end user. Seller shall coordinate manufacturer warranty service with the end user at Buyer's request. The sole warranty applicable to installation service provided (as applicable) is delineated as Installation Warranty (see above). Product warranties are solely from the respective manufacturer. With respect to the underlying products, **THE OWNER'S SOLE AND EXCLUSIVE WARRANTY IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. CONTRACTOR HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL CONTRACTOR BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES RELATED TO THE UNDERLYING PRODUCTS PROVIDED.** All manufacturers' warranty and service obligations shall be for the benefit of the Owner.

16 GENERAL.

- 16.1 **MODIFICATION.** No modification or waiver of any of the terms of this Agreement or of any other Contract Documents shall be effective against a party unless set forth in writing and signed by or on behalf of a party, which in the case of the Owner shall require the signature of the Owner's Representative acting under the authority of a specific resolution of the Owner. Under no circumstances shall forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Paragraph.
- 16.2 **ASSIGNMENT.** The Contractor may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.
- 16.3 **THIRD PARTIES.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Contractor.
- 16.4 **LAW AND JURISDICTION.** The laws of the State of Ohio shall govern the interpretation, validity, performance and enforcement of this Contract. The parties agree that this Contract is performable in Swanton, Ohio, and that exclusive venue shall lie in Swanton, Ohio.
- 16.5 **NOTICES.** Notices, requests, or demands by either party shall be in writing, unless otherwise expressly authorized, and shall be personally served, forwarded by expedited messenger service, or


be given by registered or certified mail, return receipt requested, postage prepaid, and, in the case of the Owner, addressed to the address set forth at the beginning of this Agreement and, in the case of the Contractor, addressed to its address set forth at the beginning of this Agreement. Any party may change its address/FAX number by giving written notice hereunder. All notices, requests, and demands shall be deemed received upon receipt in the case of personal delivery or delivery by expedited messenger service, including leaving the notice at the address provided herein during normal business hours; upon the expiration of three (3) days from the time of deposit in the United States mail or one day after delivery to overnight messenger with delivery receipt.

- 16.6 **CONSTRUCTION.** The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and has voluntarily entered into this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.
- 16.7 **APPROVALS.** Any approvals required hereunder shall be made in the reasonable discretion of the individual providing approval.
- 16.8 **PARTIAL INVALIDITY.** If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement shall remain in full force and effect, and such term shall be deemed stricken; provided this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.
- 16.9 **COMPLIANCE WITH LAWS AND REGULATIONS.** The Contractor, at its expense, shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work.
- 16.10 **PROJECT SAFETY.** The Contractor shall follow all applicable safety and health regulations during the progress of the Project and shall monitor all of its employees and its subcontractors for compliance with such safety and health regulations. In undertaking the responsibilities set forth in this Paragraph, the Contractor does not assume any duty or responsibility to the employees of any Subcontractor or supplier, regardless of tier. The Owner assumes no responsibility for the development, review, or implementation of the any project safety plan or for Project safety and has no authority to direct the means and methods of the Contractor.
- 16.11 **EQUAL OPPORTUNITY.** Contractor agrees that, in the hiring of employees for the performance of work under the Contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, color, citizenship status, religion, creed, gender, national origin, ancestry, age, physical or mental disability, military status, veteran status, genetic status, or any other characteristic protected by law. Contractor further agrees that neither it, its subcontractors, or any person on the Contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, color, citizenship status, religion, creed, gender, national origin, ancestry, age, physical or mental disability, military status, veteran status, genetic status, or any other characteristic protected by law
- 16.12 **PREVAILING WAGES:** Applicable

16.13 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives as of the date first set forth above.

Village of Swanton, OH

By: 
Name: Rosanna Hockley
Title: Village Administrator

Ferguson Enterprises, LLC.

By: _____
Name: _____
Title: _____

Exhibit "A"

SCOPE OF WORK

Installation of Endpoints: The proposer's pricing and installation scope of water meters and radio modules assume a "standard" installation. A standard meter installation is recognized as one which involves the replacement of an existing meter or the installation of a new meter provided the necessary setter/fittings are present and the following conditions are met:

1. Meters will be located in settings with adequate access, or if access is restricted, proposer will be able to obtain access from the property owner within one week of request during normal business hours;
2. Meter access will not subject proposer's employees to dangerous or unsafe working conditions;
3. No additional labor or groundwork will be needed to access meters, including but not limited to cutting, removal and replacement of asphalt, tree roots, shrubbery or landscaping obstructions;
4. Existing meter locations and depths do not require confined space entry.
5. Proposer will not be required to remove excessive amounts of dirt, silt, water or other debris from meter boxes. Excessive amounts shall be defined as dirt, silt, water or other debris that requires 10 or more minutes of hand digging or hand pumping by one installer.
6. Proposer will not be required to repair or replace pipe due to corrosion, existing damage, plumbing irregularities, substandard conditions or existing connections not in conformity to current building codes;
7. Water meters are on setters or equipped with standard meter connections that can be reused during meter installation;
8. Meter exchanges are like-for-like, same lay length and no plumbing is required;
9. Existing meter boxes or meter vaults will be used, and curb stops and valves are in good working condition.
10. Existing meter boxes must be in good condition, allowing enough room for easy replacement of the existing meter. Standard requirements are 6" on all sides of a residential meter/connections and 12" on all sides of a commercial meter/connections;
11. Proposer presumes they will be able to find the meter box at the specified physical address within 10 minutes or less. This may require that the Proposer is provided with accurate meter box location notes or that meter box locations are marked with blue paint/blue flags.

12. Existing meter box lids must be in good condition. Proposer will not be required to perform any modifications to the existing meter box lids or any replacement of meter box lids.

Installation Guidelines

A. Installation Responsibilities of the Proposer:

1. **Water Shutoffs.** The Proposer, including its agents and subcontractors, will be responsible for shutting off the water to each meter serviced as well as notifying each customer of the water shutoff. Some assistance may be required by Buyer with the notification of its customers. The Installation team will knock on the doors of residential customers as well as leave notifications on their doors. In the case of large commercial customers such as: schools, hospitals, nursing homes or any other commercial customer, special efforts will be made to ensure minimum disruption to their water needs. In order to prevent any damage from running flush valves or any other plumbing fixtures that are sensitive to water shutoffs, the Proposer, with the assistance of the Village, will schedule replacements with these commercial customers and will notify the maintenance personnel when turning the water back on at these facilities.
2. **Meter Boxes, Vaults, and Roadways.** The Proposer is responsible for repairing any damage it causes to meter boxes or vaults that result from the installation of the Project; the Proposer shall not be liable for pre-existing conditions or leaks.
3. **Disposal.** The Buyer will work with The Proposer for the disposal of all waste, debris and materials from the installation of the Project. The Proposer shall collect all debris from the work area and return them to a central collection point which the Buyer shall establish at the Buyer's work facility. The Buyer shall establish a storage location for any goods they wish to salvage and provide a refuse container for item they wish to dispose of.
4. **Liability.** The Proposer is responsible for any damages that occur within 12" on either side of the water meter resulting from the Project installation. Any damages incurred within this 12" area will be promptly repaired at the expense of the Proposer. The Proposer is not liable for damages outside the 12" zone, either on the water distribution side or on the customer side incurred from the Project installation including shutoff, temporary outage, and restart of water service. The Proposer is not liable for any preexisting conditions including leaks, faulty workmanship and materials from previous projects or rust. Should such conditions occur (*i.e.* leaks) the Proposer may document them and at Buyer's written request repair them for a negotiated price.
5. **Non-Covered Work.** Contracted meter change outs contemplate a standard meter change out. In the event that location's conditions require nonstandard work (*i.e.* move a service location, move fences for or other customer structures and items for access, install systems in heavy traffic locations, alleys, parking lots, resize or re-plumb services, etc.), Proposer and the Buyer will discuss pricing and work may proceed from this point or the Buyer may elect to excuse this work from the project.

Exhibit "B"

MANUFACTURER'S WARRANTIES

Appendix A
Warranty

Annual Fees