



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

28

2. Council Meeting Date:

February 28, 2008

TO: MAYOR & COUNCIL

3. Date Prepared: January 28, 2008

THROUGH: CITY MANAGER

4. Requesting Department: Municipal Utilities

5. SUBJECT: Award of Request for Proposal (RFP) WA8-890-2551 for the purchase of large water meters and related equipment from HD Supply Waterworks LTD, in an amount not to exceed \$1,000,000.

6. RECOMMENDATION: Recommend award of RFP WA8-890-2551 for the purchase of large water meters and related equipment from HD Supply Waterworks LTD, in an amount not to exceed \$1,000,000.

7. HISTORICAL BACKGROUND/DISCUSSION: The City of Chandler maintains more than 170 (one hundred seventy) 2" to 12" water meters. These meters generate approximately 40% to 45% of the revenue received from water sales in the City. Through normal use, these meters eventually fail. When a meter fails, the City uses historical data to estimate water usage. Replacing failed meters will ensure accurate accounting of water used by our large meter customers.

8. EVALUATION PROCESS: On December 10, 2007, the City issued RFP WA8-890-2551 for the purchase of large water meters and related equipment. The RFP was advertised and all registered vendors were notified. The City received one response. An evaluation committee, which included representatives from Utility Services, Water Distribution, Central Supply, and Purchasing, evaluated the response received. Based on the evaluation criteria set forth in the RFP, the evaluation committee is recommending acceptance of the proposal received from HD Supply Waterworks LTD. The requested contract will have a two-year term, with provisions to extend up to four additional two-year periods.

9. FINANCIAL IMPLICATIONS:

Costs: \$1,000,000

Savings: N/A

Long Term Costs: N/A

Fund Source:

<u>Acct. Name:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
101.0000.0000.1516	General Fund/Inventory	New Meters	Non-CIP	\$1,000,000

10. PROPOSED MOTION: Move to award RFP WA8-890-2551 for the purchase of large water meters and related equipment from HD Supply Waterworks LTD, in an amount not to exceed \$1,000,000.

APPROVALS

11. Requesting Department

Robert Mulvey, Assistant Municipal Utilities Director

13. Department Head

Dave Siegel, Municipal Utilities Director

12. Procurement Officer

Mike Mandt, Procurement Officer

14. City Manager

W. Mark Pentz

**CITY OF CHANDLER PURCHASE CONTRACT
LARGE WATER METERS
CONTRACT NO.: WA8-890-2551**

THIS AGREEMENT is made and entered into this _____ day of _____, 200____, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and HD Supply Waterworks, LTD, hereinafter referred to as "CONTRACTOR".

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATION AND OPERATION:

1.1. Contract Administrator: CONTRACTOR shall act under the authority and approval of the Water Distribution Superintendent /designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. Ordering Instructions: Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the prices listed on Exhibit B.

2.1. Safety Standards: All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

2.2. Non-Discrimination. The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3. Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

2.4. Licenses: CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.

- 2.5. Contract Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all contract orders received by CONTRACTOR prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all contract orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.
- 2.6. Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 2.7. Compliance With Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.8. Payment.** A separate invoice shall be issued for each shipment of goods or materials, and no payment will be issued prior to receipt of goods or materials and receipt of a correct invoice.
- 2.9. Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.
- 2.10. Catalogs/Contract Price Listing.** As applicable, the CONTRACTOR(s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline contract prices.
- 2.11. Current Models.** It is CITY's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.12. Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.13. New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.14. New Products.** New products announced by manufacturers on contract may be submitted by the CONTRACTOR for add-ons to the existing contract. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.15. Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. Warranties:

- 3.1. Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 3.2. Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:

3.2.1. Of a quality to pass without objection in the trade under the Contract description;

- 3.2.2. Fit for the intended purposes for which the materials are used;
 - 3.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 3.2.4. Adequately contained, packaged and marked as the Contract may require; and
 - 3.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.
- 3.3. **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.
- 3.4. **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY.
- 3.5. **Warranty (Equipment).** All equipment supplied under this Contract shall be fully guaranteed by CONTRACTOR for a period Specified on Exhibit C from the date of acceptance by CITY. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specifications shall be fully corrected by CONTRACTOR (including parts and labor) without cost to CITY. The written warranty shall be included with the delivered products to the using Department.
4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification
- 4.1. **Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 4.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.
- 4.3. **Delivery.** Delivery shall be made within (two) (2) calendar days after receipt of a Contract Purchase Order (ARO).
5. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed one million Dollars (\$1,000,000) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference. The "not to exceed amount" is based on an estimate of Five hundred thousand dollars (\$500,000) per year
- 5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.
- 5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be

identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.

- 5.3. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.
- 5.4. **Risk of Loss:** CONTRACTOR shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with CONTRACTOR regardless of receipt.
- 5.5. **TAXES:** CONTRACTOR shall be solely responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR.
- 5.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.
- 5.7. **TERM:** The term of the Contract is two years but may be extended by mutual agreement of the parties for up to four (4) additional successive terms of two years each (a total of 10 years).
- 5.8. **Price Adjustment .** All prices offered herein shall be firm against any increase for Two (2) years from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.
6. **TERM:** The term of the Contract is two years but may be extended by mutual agreement of the parties for up to four (4) additional successive terms of two years each (a total of 10 years).
7. **USE OF THIS CONTRACT:**
 - 7.1. The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.
 - 7.2. **Emergency Purchases:** CITY reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately by the CONTRACTOR.
 - 7.3. **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

8. CITY'S CONTRACTUAL REMEDIES:

- 8.1. Right to Assurance:** If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2. Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.
- 8.3. Nonconforming Tender:** Goods, materials or merchandise supplied under this Contract shall fully comply with this Contract and the specifications included herein. The delivery of goods, materials or merchandise or any portion thereof that do not fully comply constitutes a breach of contract. On delivery of nonconforming goods, materials or merchandise, CITY may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.4. Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. TERMINATION:

- 9.1. Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. CONTRACTOR shall receive payment for the goods and materials already shipped to CITY.
- 9.2. Termination for Cause:** CITY may, upon written notice, terminate this Contract for CONTRACTOR'S failure to comply with the terms of this Contract.
- 9.3. Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.
- 9.4. Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.
- 9.5. Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.

- 9.6. Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.
- 9.7. Continuation of Performance Through Termination:** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 9.8. No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 10. FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 11. ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between CITY and CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
- 11.1. Notice:** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the end of the Contract nor lumped together with other pending claims.
- 11.2. Forfeiture:** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of CITY'S position.
- 11.3. CITY Response:** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
- 11.4. Appeal:** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.

11.5. Arbitration: If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of \$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.

A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.

B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.

C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.

D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.

E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.

F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.

G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any

party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.

- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.
- M. **Equitable Litigation:** Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.
- N. **Merger and Bar:** Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of Contract Time which reasonably should or could have been brought against any party that was or could have been brought into this ADR process. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.
- O. **Disputes of amounts greater than \$500,000:** Disputes for which the Arbitration Panel has determined to warrant an award in an amount greater than Five Hundred Thousand Dollars (\$500,000) to any one party, may be brought in the appropriate Court. A party must obtain such a determination from the Arbitration Panel prior to filing any legal action.

12. INDEMNIFICATION: To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions,

officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

- 13. NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

<p>In the case of CITY Department: <u>Water Distribution</u></p> <p>Contact: <u>Ray Dubois</u></p> <p>Mailing Address: <u>Water Distribution Superintendent</u></p> <p>Physical Address: <u>975 East Armstrong Way Bld K</u></p> <p>City, State, Zip: <u>Chandler, AZ 85225</u></p> <p>Phone: <u>480-782-3709</u></p> <p>FAX: <u>480-782-3666</u></p>	<p>In the case of the CONTRACTOR Firm Name: <u>HD Supply Waterworks LTD.</u></p> <p>Contact: <u>Thomas Otto</u></p> <p>Address: <u>3622 South 30th Street</u></p> <p>City, State, Zip: <u>Phoenix, AZ 85040</u></p> <p>Phone: <u>602-268-8781</u></p> <p>FAX: <u>602-268-8973</u></p> <p><u>Thomas.otto@hdsupply.com</u></p>
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Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. GENERAL TERMS:

- 14.1. Entire Agreement:** This Contract, including Exhibits A, B and C attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.
- 14.2. Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.
- 14.3. Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.
- 14.4. Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.

14.5. Conflict of Interest:

14.5.1 No Kickback: CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

14.5.2 Kickback Termination: CITY may cancel this Contract, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of CITY'S departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the Contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the Contract, unless the notice specifies a later time (A.R.S. §38-511).

14.5.3 No Conflict: CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

14.6. Independent CONTRACTOR: The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

14.7. No Parole Evidence: This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

14.8. Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

14.9. Award of Contract Contingent on Sale and Delivery of Bonds. As the sole source for payment of the amounts due under the Contract, CITY will sell bonds and deposit the bond funds in a special fund to be used thereafter to pay progress payments and incidental expenses. To guard against the possibility that CITY will be unable to sell or deliver the bonds for any reason, the award of the Contract and the performance by CITY of its obligations under the Contract is conditioned upon the actual sale and delivery of CITY's bonds in an amount which is sufficient to produce the amount required to meet the payments due under the Contract. CITY reserves the right to rescind the award of the Contract and terminate the Contract, if executed, without incurring expenses or liability for such termination or rescission if it is unable to provide funding through the sale of its bonds for any reasons. Notwithstanding an award of the Contract, CONTRACTOR should not incur any expense pursuant to this Contract until such time as CONTRACTOR has received notice from CITY that bond funds are held by CITY in an amount sufficient to pay the amounts due under the Contract.

14.10. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR.

Funds may not presently be available for performance under this Agreement beyond the current fiscal year. No legal liability on the part of the City for services may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The City may reduce services or terminate this Agreement without further recourse, obligation or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this
day of 20 .

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: _____
Signature

ATTEST:

City Clerk

SEAL ATTEST: If Corporation

Secretary

Approved as to form:

City Attorney

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this [redacted] day of [redacted] 20[redacted].

FOR THE CITY OF CHANDLER

FOR THE CONTRACTOR

MAYOR

By: James D. Blom
Signature SWR VP.

ATTEST:

City Clerk

SEAL ATTEST. of Corporation

Secretary

Approved as to form:

City Attorney

Exhibit A

Turbine Meter 3" – 12" Unitized Measuring Element

Compound Meter 3" – 8" with Turbine-type meter for high flow measuring and Positive Displacement Configuration for low flow measuring

Fire Hydrant Meter 3" w/isolation valve and fire hydrant coupling

Fire and Service Rated Compound Meter 4" – 10" ULFM Approved with left or right bypass configuration capabilities and with Turbine-type meter for high flow measuring and Positive Displacement Configuration for low flow measuring

Fire Service Turbine Meter w/ULFM Approved Strainer 3" – 10"

Strainer 3" – 12" AWWA Approved

All meters equipped with appropriate register and signal transmitting device must be compatible with the following Neptune reading equipment and software:

CE 5320X Handheld Data collectors

MRX920 Mobile Date Collectors

HR2380 Radio Frequency Interface Unit and

Equinox Meter Reading Software

All meters must meet or exceed AWWA minimum standards for meter flow and accuracy

All meters must meet ANSI/NSF 61 Approved Lead Free requirements

All meters must meet or exceed the latest performance and accuracy requirements set by the AWWA C701 and C702 Requirements.

Exhibit B
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Item	Size (inches)	Type	Description	Qty	Unit Price	Ext Price	Product Offered	Delivery (Days)
1	2	Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$851.23	\$851.23	Neptune HP Turbine	2
2	3	Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$1,335.58	\$1,335.58	Neptune HP Turbine	2
3	4	Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$1,936.41	\$1,936.41	Neptune HP Turbine	2
4	6	Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	3	\$3,536.58	\$10,609.74	Neptune HP Turbine	2
5	8	Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	3	\$5,529.15	\$16,587.45	Neptune HP Turbine	2
6	10	Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	3	\$9,103.49	\$27,310.47	Neptune HP Turbine	2
7	12	Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	3	\$14,866.59	\$44,599.77	Neptune HP Turbine	2
Added	2	Turbine	Unitized Measuring Element Only	1	\$386.25	\$386.25	Neptune HP Turbine	2
Added	3	Turbine	Unitized Measuring Element Only	1	\$489.25	\$489.25	Neptune HP Turbine	2
Added	4	Turbine	Unitized Measuring Element Only	1	\$592.25	\$592.25	Neptune HP Turbine	2
Added	6	Turbine	Unitized Measuring Element Only	1	\$798.25	\$798.25	Neptune HP Turbine	2
Added	8	Turbine	Unitized Measuring Element Only	1	\$1,004.25	\$1,004.25	Neptune HP Turbine	2
Added	10	Turbine	Unitized Measuring Element Only	1	\$1,210.25	\$1,210.25	Neptune HP Turbine	2
Added	12	Turbine	Unitized Measuring Element Only	1	\$2,652.25	\$2,652.25	Neptune HP Turbine	2
8	2	Turbine	Meter Only	1	\$429.17	\$429.17	Neptune HP Turbine	2
9	3	Turbine	Meter Only	1	\$698.93	\$698.93	Neptune HP Turbine	2
10	4	Turbine	Meter Only	1	\$1,134.23	\$1,134.23	Neptune HP Turbine	2
11	6	Turbine	Meter Only	1	\$2,145.83	\$2,145.83	Neptune HP Turbine	2
12	8	Turbine	Meter Only	1	\$3,218.75	\$3,218.75	Neptune HP Turbine	2
13	10	Turbine	Meter Only	1	\$5,088.69	\$5,088.69	Neptune HP Turbine	2
14	12	Turbine	Meter Only	1	\$7,970.24	\$7,970.24	Neptune HP Turbine	2
15	2	Turbine	Strainer Only	1	\$269.76	\$269.76	Neptune	2
16	3	Turbine	Strainer Only	1	\$484.35	\$484.35	Neptune	2
17	4	Turbine	Strainer Only	1	\$649.88	\$649.88	Neptune	2
18	6	Turbine	Strainer Only	1	\$1,238.45	\$1,238.45	Neptune	2
19	8	Turbine	Strainer Only	1	\$2,158.10	\$2,158.10	Neptune	2
20	10	Turbine	Strainer Only	1	\$3,862.50	\$3,862.50	Neptune	2
21	12	Turbine	Strainer Only	1	\$6,744.05	\$6,744.05	Neptune	2
22	2	Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
23	3	Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
24	4	Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
25	6	Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
26	8	Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
27	10	Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
28	12	Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
29	2	Turbine	Signal Transmitting Unit Only	1	n/a	*Signal Transmitting unit included in register		
30	3	Turbine	Signal Transmitting Unit Only	1	n/a	*Signal Transmitting unit included in register		
31	4	Turbine	Signal Transmitting Unit Only	1	n/a	*Signal Transmitting unit included in register		
32	6	Turbine	Signal Transmitting Unit Only	1	n/a	*Signal Transmitting unit included in register		
33	8	Turbine	Signal Transmitting Unit Only	1	n/a	*Signal Transmitting unit included in register		
34	10	Turbine	Signal Transmitting Unit Only	1	n/a	*Signal Transmitting unit included in register		
35	12	Turbine	Signal Transmitting Unit Only	1	n/a	*Signal Transmitting unit included in register		
36	2	Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$1,794.42	\$1,794.42	Neptune TruFlo Compound	2
37	3	Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	50	\$2,554.66	\$127,733.00	Neptune TruFlo Compound	2
38	4	Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	8	\$3,345.55	\$26,764.40	Neptune TruFlo Compound	2

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39	6	Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	8	\$5,583.35	\$44,666.80	Neptune TruFlo Compound	2
40	6 X 8	Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	4	\$8,262.58	\$33,050.32	Neptune TruFlo Compound	2
Added	5/8	Positive Displacement	Meter Only	1	n/a	#Low Side meter included in the unitized measuring element		
Added	3/4	Positive Displacement	Meter Only	1	n/a	#Low Side meter included in the unitized measuring element		
Added	1	Positive Displacement	Meter Only	1	n/a	#Low Side meter included in the unitized measuring element		
41	2	Compound	Meter Only	1	\$1,220.06	\$1,220.06	Neptune TruFlo Compound	2
42	3	Compound	Meter Only	1	\$1,765.71	\$1,765.71	Neptune TruFlo Compound	2
43	4	Compound	Meter Only	1	\$2,391.07	\$2,391.07	Neptune TruFlo Compound	2
44	6	Compound	Meter Only	1	\$4,040.30	\$4,040.30	Neptune TruFlo Compound	2
45	2	Compound	Strainer Only	1	\$269.76	\$269.76	Neptune	2
46	3	Compound	Strainer Only	1	\$484.35	\$484.35	Neptune	2
47	4	Compound	Strainer Only	1	\$649.88	\$649.88	Neptune	2
48	6	Compound	Strainer Only	1	\$1,238.45	\$1,238.45	Neptune	2
49	2	Compound	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
50	3	Compound	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
51	4	Compound	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
52	6	Compound	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
** Neptune Compound use two registers, a low side and a high side. Pricing above reflects the price of either, not both ***								
53	2	Compound	Signal Transmitting Device Only	1	n/a	*Signal Transmitting unit included in register		
54	3	Compound	Signal Transmitting Device Only	1	n/a	*Signal Transmitting unit included in register		
55	4	Compound	Signal Transmitting Device Only	1	n/a	*Signal Transmitting unit included in register		
56	6	Compound	Signal Transmitting Device Only	1	n/a	*Signal Transmitting unit included in register		
57	4	Fire and Service Rated Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$6,496.73	\$6,496.73	Neptune Protectus III	2
58	6	Fire and Service Rated Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$8,427.98	\$8,427.98	Neptune Protectus III	2
59	8	Fire and Service Rated Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$10,790.54	\$10,790.54	Neptune Protectus III	2
60	10	Fire and Service Rated Compound	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$15,863.29	\$15,863.29	Neptune Protectus III	2
61	4	Fire and Service Rated Compound	Meter Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
62	6	Fire and Service Rated Compound	Meter Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
63	8	Fire and Service Rated Compound	Meter Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
64	10	Fire and Service Rated Compound	Meter Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
65	4	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
66	6	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
67	8	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
68	10	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
69	4	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
70	6	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
71	8	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
72	10	Fire and Service Rated Compound	Strainer Only	1	n/a	*Meter & strainer cannot be separated in a fire service compound		
73	4	Fire and Service Rated Compound	Signal Transmitting Device Only	1	n/a	*Signal Transmitting unit included in register		

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74	6	Fire and Service Rated Compound	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
75	8	Fire and Service Rated Compound	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
76	10	Fire and Service Rated Compound	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
** Neptune Fire Service Compound use two registers, a low side and a high side. Price for each is \$152.30								
77	3	Fire Service Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$2,611.05	\$2,611.05	Neptune Fire Service Turbine	2
78	4	Fire Service Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$3,132.50	\$3,132.50	Neptune Fire Service Turbine	2
79	6	Fire Service Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$4,329.86	\$4,329.86	Neptune Fire Service Turbine	2
80	8	Fire Service Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$5,195.00	\$5,195.00	Neptune Fire Service Turbine	2
81	10	Fire Service Turbine	Complete Assembly (Meter, Strainer, Register and Signal Transmitting Device)	1	\$6,995.00	\$6,995.00	Neptune Fire Service Turbine	2
82	3	Fire Service Turbine	Meter Only	1	\$698.93	\$698.93	Neptune HP Turbine	2
83	4	Fire Service Turbine	Meter Only	1	\$1,134.23	\$1,134.23	Neptune HP Turbine	2
84	6	Fire Service Turbine	Meter Only	1	\$2,145.83	\$2,145.83	Neptune HP Turbine	2
85	8	Fire Service Turbine	Meter Only	1	\$3,218.75	\$3,218.75	Neptune HP Turbine	2
86	10	Fire Service Turbine	Meter Only	1	\$5,088.69	\$5,088.69	Neptune HP Turbine	2
87	3	Fire Service Turbine	Strainer Only	1	\$1,799.07	\$1,799.07	Neptune UL/FM Strainer	2
88	4	Fire Service Turbine	Strainer Only	1	\$1,812.80	\$1,812.80	Neptune UL/FM Strainer	2
89	6	Fire Service Turbine	Strainer Only	1	\$2,602.47	\$2,602.47	Neptune UL/FM Strainer	2
90	8	Fire Service Turbine	Strainer Only	1	\$3,378.40	\$3,378.40	Neptune UL/FM Strainer	2
91	10	Fire Service Turbine	Strainer Only	1	\$4,353.47	\$4,353.47	Neptune UL/FM Strainer	2
92	3	Fire Service Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
93	4	Fire Service Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
94	6	Fire Service Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
95	8	Fire Service Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
96	10	Fire Service Turbine	Register Only	1	\$152.30	\$152.30	Neptune Ecoder)R900i	2
97	3	Fire Service Turbine	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
98	4	Fire Service Turbine	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
99	6	Fire Service Turbine	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
100	8	Fire Service Turbine	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
101	10	Fire Service Turbine	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
102	3	Hydrant Meter	Complete Assembly (Meter, Shut Off Valve, Hydrant Coupling, Register and Signal Transmitting Device)	1	\$911.94	\$911.94	Neptune	2
103	3	Hydrant Meter	Meter Only	1	\$790.89	\$790.89	Neptune	2
104	3	Hydrant Meter	Register Only	1	\$121.05	\$121.05	Neptune	2
105	3	Hydrant Meter	Signal Transmitting Device Only	1	n/a		*Signal Transmitting unit included in register	
Sub Total							\$486,860.12	
Tax							\$1,678.96	
Total							\$488,539.08	
List discount on all other related parts and components <u>0</u> % - Water Parts Price List, <u>15%</u> discount off list price Distributor Price Schedule								
Tax Rate <u>8.3</u> % List taxable items								
<i>All items/components for 4" and larger meters are tax exempt</i>								
Prompt Payment Terms <u>Net 30/0%</u>								
<i>All registers and complete assemblies listed above (except Hydrant meter) include a 20' antenna per register in the price Registers only are \$121.05 each 20' antennas only are \$31.25</i>								

Neptune Certificate of Warranty

NEPTUNE T-10, HP TURBINE, TRU/FLO® COMPOUND COLD WATER METERS

1. Terms of Limited Warranty.

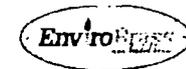
With respect to its Neptune T-10, HP TURBINE, TRU/FLO COMPOUND Water Meters (collectively the "Water Meters"), Neptune Technology Group Inc. ("Neptune") warrants the following on meters sold on or after 11/1/92:

The Water Meters will be, at the later of (i) the date of original purchase from Neptune or (ii) the date of original shipment from Neptune-authorized distributor of Water Meters (that later date is referred to as "the Date of Shipment") and will remain for a period of 18 months from the Date of Shipment, or 12 months from date of installation, free from manufacturing defects in workmanship and material.

- (a) **Maincase.** The EnviroBrass™ II or Brass maincase of the Water Meters will be at the Date of Shipment free from manufacturing defects in workmanship and material for the life of the Water Meter.
- (b) **Frost Protection.** All Neptune T-10 Cold Water Meters shipped with a synthetic polymer or cast iron bottom cap will, commencing upon the Date of Shipment, be warranted against chamber damage for a period of 10 years.
- (c) **Registers.** Standard, roll sealed registers of the Water Meters will be at the Date of Shipment, and shall remain for the following periods, free from manufacturing defects in workmanship and material for a period of 10 years. The performance of the Water Meters Pulser RM remote is guaranteed for 1 year from Date of Shipment. The ARB®, ProRead™ (ARB VI), and E-Coder™ (ARB VII) system registers are warranted for 10 years from Date of Shipment. All ProRead encoder receptacles shipped after January 1, 2001 shall be warranted for five years from the Date of Shipment. All other components and parts are covered under Neptune's standard one year material and workmanship guarantee.
- (d) **Meter Accuracy for Neptune T-10.** Neptune T-10 Meters are warranted to meet or exceed, as listed herein, accuracy standards of the AWWA Standard C700-95 for a period of: (i) five (5) years from Date of Shipment for 5/8", 3/4" and 1" meters; (ii) for a period of two (2) years from the Date of Shipment for 1 1/2" and 2" meters; or (iii) the applicable registration shown below, whichever occurs first. Neptune further guarantees that the Neptune T-10 will perform to at least Repaired Meter Accuracy Standards, according to AWWA Manual M-6 Chapter 5 (1999) Table 5.3 for an additional ten (10) years or the registration shown below, whichever occurs first:
- (e) **Meter accuracy for HP Turbine and TRU/FLO.** The HP Turbine and TRU/FLO Compound Cold Water Meters will perform, for a period of one (1) year from the Date of Shipment, to American Water Works Association ("AWWA") accuracy standards for new water meters.

SIZE	EXTENDED LOW FLOW ACCURACY	NEW METER ACCURACY	REPAIRED METER ACCURACY
5/8 & 5/8" x 3/4"	1/8 US gpm @ 95% 5 years or 500,000 gallons	500,000 gallons	1,500,000 gallons
3/4"	1/4 US gpm @ 95% 5 years or 750,000 gallons	750,000 gallons	2,250,000 gallons
1"	3/8 US gpm @ 95% 5 years or 1,000,000 gallons	1,000,000 gallons	3,000,000 gallons
1 1/2"	3/4 US gpm @ 95% 2 years or 1,600,000 gallons	1,600,000 gallons	5,000,000 gallons
2"	1 US gpm @ 95% 2 years or 2,700,000 gallons	2,700,000 gallons	8,000,000 gallons

AW METER 05 C2



2. Warranty Return.

If a Neptune Water Meter fails an accuracy test during an applicable warranty period, it may be returned to Neptune for repair or replacement at Neptune's option. An accuracy test shall be conducted by the customer according to AWWA standards. If foreign material causes the meter not to perform appropriately, all such material shall be removed prior to the customer conducting the test. Any meter being returned for repair to Neptune under this performance guarantee must be returned with a copy of the customer's test results. If the meter is returned to Neptune without a copy of the test results or if Neptune's factory test shows the meter to meet current AWWA standards the customer will be charged a nominal testing fee by Neptune in such cases. Neptune will repair or replace the meter at Neptune's option after the meter has been tested by Neptune. Meters repaired or replaced under the performance guarantee will be guaranteed to perform to AWWA repaired meter accuracy standards.

3. Warranties are exclusive.

THE WARRANTIES SET FORTH IN THIS CERTIFICATE OF LIMITED WARRANTY ARE IN LIEU OF ANY OTHER WARRANTY, GUARANTEE OR REPRESENTATION, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

4. Damages limited to costs of replacement and repair.

If the Water Meter fails to meet the warranties set forth in Paragraph 1 of this Certificate of Limited Warranty, Neptune, at its option shall, without charge of labor or materials, repair or replace the Water Meter or part thereof, provided that (a) the Water Meter is delivered to a Neptune representative, (b) the Water Meter is accompanied by a Material Return Authorization, and (c) all costs of delivery to Neptune are assumed by the purchaser of the Water Meter. Neptune's liability is limited to its costs of replacement and repair of the defective water meter. Damages resulting from miscalculation of water usage or lost revenue or profit are not recoverable from Neptune. It is the responsibility of the customer to periodically verify the operation and accuracy of its meters.

5. Warranties are inapplicable under certain conditions.

The warranties set forth in this Certificate of Limited Warranty do not apply to any Water Meter that has been damaged by, or subjected to, conditions which, in the opinion of Neptune, have affected the Water Meter's ability of performance, including but not limited to: misuse; improper handling, application or installation; excessive operating conditions; foreign materials in the water; aggressive water conditions; tampering or unauthorized repairs or modifications; accidental or intentional damage; acts of God. This Certificate of Limited Warranty shall not apply if product is placed in non-recommended installation, is connected or altered by other than Neptune recommended procedures, is used with other than genuine Neptune meter registers and components or read by equipment not approved or licensed by Neptune. Neptune makes no claims concerning operability and/or compatibility or third party reading systems. In addition, this Certificate of Limited Warranty shall not apply if third party reading equipment is believed to have caused damage to the meter or register. In order to determine its liability, if any, under this certificate of Limited Warranty, Neptune shall have the right to inspect any Water Meter or part thereof that is claimed to be defective at Neptune or other location designated by Neptune.

Neptune's liability with respect to breaches of the foregoing limited warranty shall be limited as stated herein. Neptune's liability shall in no event exceed the purchase price. NEPTUNE SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY NEPTUNE, OR ANY UNDERTAKINGS, ACT OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.

Neptune Certificate of Warranty

NEPTUNE FIRE SERVICE WATER METERS

1. Terms of Limited Warranty.

With respect to its Neptune Fire Service Cold Water Meters, which include: (1) the HP Protectus III Meter and; (2) HP Fire Service Turbine; and (3) Neptune Fire Hydrant Meter, Neptune Technology Group Inc. ("Neptune") warrants the following on meters sold on or after 11/1/92:

The Neptune Fire Service Water Meters will be, at the later of (i) the date of original purchase from Neptune or (ii) the date of original shipment from Neptune-authorized distributor of Neptune Fire Service Water Meters (that later date is referred to as "the Date of Shipment") and will remain for a period of 18 months from the Date of Shipment, or 12 months from date of installation, free from manufacturing defects in workmanship and material.

(a) Registers.

Standard, roll sealed registers of the Neptune Fire Service Cold Water Meters will be at the Date of Shipment, and shall remain for the following periods, free from manufacturing defects in workmanship and material for a period of 10 years. The performance of the Neptune Fire Service Water Meters Pulser RM remote is warranted for 1 year from Date of Shipment. The ARB and ProRead system registers are warranted for 10 years from Date of Shipment. All ProRead encoder receptacles shipped after January 1, 2001 shall be warranted for five years from Date of Shipment. All other components and parts are covered under the Neptune standard one year material and workmanship guarantee.

(b) Meter accuracy for Neptune Fire Service Cold Water Meters.

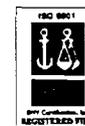
Neptune Fire Service Cold Water Meters will perform, for a period of one (1) year from the Date of Shipment, to American Water Works Association ("AWWA") accuracy standards for new water meters.

2. Warranty Return.

If a Neptune Water Meter fails an accuracy test during an applicable warranty period, it may be returned to Neptune for repair or replacement at Neptune's option. An accuracy test shall be conducted by the customer according to AWWA standards. If foreign material causes the meter not to perform appropriately, all such material shall be removed prior to the customer conducting the test. Any meter being returned for repair to Neptune under this performance guarantee must be returned with a copy of the customer's test results. If the meter is returned to Neptune without a copy of the test results or if Neptune's factory test shows the meter to meet current AWWA standards the customer will be charged a nominal testing fee by Neptune in such cases. Neptune will repair or replace the meter at Neptune's option after the meter has been tested by Neptune. Meters repaired or replaced under the performance guarantee will be guaranteed to perform to AWWA repaired meter accuracy standards.

3. Warranties are exclusive.

THE WARRANTIES SET FORTH IN THIS CERTIFICATE OF LIMITED WARRANTY ARE IN LIEU OF ANY OTHER WARRANTY, GUARANTEE OR REPRESENTATION, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.



4. Damages limited to costs of replacement and repair.

If the Neptune Fire Service Cold Water Meter fails to meet the warranties set forth in Paragraph 1 of this Certificate of Limited Warranty, Neptune, at its option shall, without charge of labor or materials, repair or replace the Neptune Fire Service Cold Water Meter or part thereof, provided that (a) the Neptune Fire Service Cold Water Meter is delivered to Neptune, (b) the Neptune Fire Service Cold Water Meter is accompanied by a Material Return Authorization, and (c) all costs of delivery to Neptune are assumed by the purchaser of the Neptune Fire Service Cold Water Meter. Neptune's liability is limited to its costs of replacement and repair of the defective Neptune Fire Service Cold Water Meter or damages resulting from miscalculation of water usage or lost revenue or profit are not recoverable from Neptune. It is the responsibility of the customer to periodically verify the operation and accuracy of its meters.

5. Warranties are inapplicable under certain conditions.

The warranties set forth in this Certificate of Limited Warranty do not apply to any Neptune Fire Service Cold Water Meter that has been damaged by, or subjected to, conditions which, in the opinion of Neptune, have affected the Neptune Fire Service Cold Water Meter's ability of performance, including but not limited to; misuse; improper handling, application, or installation; excessive operating conditions; foreign materials in the water; aggressive water conditions; tampering or unauthorized repairs or modifications; accidental or intentional damage; acts of God. This Certificate of Limited Warranty shall not apply if product is placed in non-recommended installation, is connected or altered by other than Neptune recommended procedures, is used with other than genuine Neptune meter registers and components or read by equipment not approved or licensed by Neptune. Neptune makes no claims concerning operability and/or compatibility or third party reading systems. In addition, this Certificate of Limited Warranty shall not apply if third party reading equipment is believed to have caused damage to the meter or register. In order to determine its liability, if any, under this certificate of Limited Warranty, Neptune shall have the right to inspect any Neptune Fire Service Cold Water Meter or part thereof that is claimed to be defective at Neptune or other location designated by Neptune.

Neptune's liability with respect to breaches of the foregoing Certificate of Limited Warranty shall be limited as stated herein. Neptune's liability shall in no event exceed the purchase price. NEPTUNE SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY NEPTUNE, OR ANY UNDERTAKINGS, ACT OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.

E-Coder)R900i Warranty Statement

E-CODER) R900i

ARB[®] Utility Management Systems[™]

I. Integrated E-Coder and R900 meter interface unit (IMIU)

Neptune Technology Group Inc. warrants that the a fully integrated self-contained solid state absolute encoder register and a radio frequency meter interface unit shall be free from defects in manufacture and design for a period of twenty (20) years for the electronics from the "date of shipment" (such period being the "Warranty Period") Neptune shall not be responsible for any defects in the E-Coder)R900i (whether due to design, materials, manufacture, or otherwise) which manifest themselves after the expiration of the Warranty Period. Neptune will repair or replace a non-performing E-Coder)R900i free of charge for the first ten (10) years and at a prorated replacement cost of the current list price during the remaining ten (10) years per the table.

II. Integrated E-Coder and R900 meter interface unit (IMIU) batteries

Neptune warrants that any Neptune-supplied batteries installed in the fully integrated self contained solid state absolute encoder register and a radio frequency meter interface unit (the "Batteries") shall be free from defects in manufacture and design for a period of twenty (20) years from the "date of shipment" (such period being the "Battery Warranty Period"). Neptune shall not be responsible for any defects in, or failure of, batteries (whether due to design, materials, manufacture, or otherwise) which occur after the expiration of the Battery Warranty Period. Neptune will repair or replace a non-performing E-Coder)R900i Battery free of charge for the first ten (10) years and at a prorated replacement cost of the current list price during the remaining ten (10) years per the table

III. Warranties are inapplicable under certain conditions

This warranty does not include field replacement labor or materials costs, which are the responsibility of the utility. This warranty does not apply if product is placed in non-recommended installations, may have been repaired with parts not recommended by Neptune, converted, altered or connected by other than Neptune recommended procedures, is used with other than genuine Neptune meter registers and components or read by equipment not approved or licensed by Neptune; or damaged due to improper care or maintenance, or improper periodic testing (please refer to E-Coder)R900i installation manual and quick install guides). This warranty does not apply to any MIU that has been damaged by, or subjected to, conditions which, in the opinion of Neptune, have affected the E-Coder)R900i MIUs ability of performance, including but not limited to, misuse, improper handling, application or installation; excessive operating conditions, tampering or unauthorized repairs and modifications, accidental or intentional damage; or acts of God. In no event shall Neptune be liable for special, incidental, indirect or consequential damages, including, without limitation, lost revenue.

Year of Failure	Battery Replacement Cost*
1 - 10	Full Replacement
11	30%
12	35%
13	40%
14	45%
15	50%
16	55%
17	60%
18	65%
19	70%
20	75%

* Replacement cost percentages will be applied towards published parts list prices in effect for the year product is accepted by Neptune under warranty conditions. Replacement batteries are warranted for one (1) year after date of shipment or balance of original battery warranty, whichever is greater.

THE ABOVE WARRANTY FOR THE MIU AND NEPTUNE-SUPPLIED BATTERY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY NEPTUNE WITH RESPECT TO THE E-Coder)R900i MIU AND NEPTUNE-SUPPLIED BATTERY. ALL OTHER WARRANTIES, CONDITIONS, TERMS, REPRESENTATIONS, OR OTHER LEGALLY OPERATIVE PROVISIONS CONCERNING THE MIUs AND NEPTUNE-SUPPLIED BATTERY ARE HEREBY EXPRESSLY EXCLUDED. THIS INCLUDES, WITHOUT LIMITATION, ANY WARRANTY, CONDITION, TERM, AND REPRESENTATION OR OTHER LEGALLY OPERATIVE PROVISION AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS PARAGRAPH IS EXPRESSLY INTENDED TO EXCLUDE FROM THIS CONTRACT ALL STATUTORY AND COMMON LAW WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW. TO AVOID ANY AMBIGUITY OR MISUNDERSTANDING, ALL PROBLEMS ARISING WITH AN MIU OR NEPTUNE-SUPPLIED BATTERY AFTER THIS POINT ARE BUYER'S RESPONSIBILITY. NEPTUNE'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE. NEPTUNE SHALL NOT BE SUBJECT TO AND DISCLAIMS THE FOLLOWING: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY NEPTUNE, OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, MULTIPLE, EXEMPLARY, AND PUNITIVE DAMAGES WHATSOEVER.

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NEPTUNE
TECHNOLOGY GROUP INC.

