

FULL SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, on _____, 2020, the City of Chanhassen ("City") entered into a contract ("Contract") with Ferguson Enterprises, LLC d/b/a Ferguson Waterworks ("Ferguson") for a Water Meter Replacement Project ("Project"); and

WHEREAS, the Project specifically included the purchase and installation of R450 Meter Interface Units on existing water meters ("R450 MIU"); and

WHEREAS, the R450 MIUs and accompanying equipment were furnished to Ferguson by Neptune Technology Group, Inc. ("Neptune"); and

WHEREAS, the Contract included a R450 MIU Warranty Statement supplied by Neptune and provided to the City by Ferguson ("R450 Warranty Statement"), attached as **Exhibit A**; and

WHEREAS, Ferguson began installing R450 MIUs in 2012 or early 2013 and completed installations of approximately 8,000 R450 MIUs; and

WHEREAS, in 2013, the R450 MIUs began to experience failures or non-communication of MIUs causing the Parties to replace the MIUs ("R450 MIU Problem"), and the City continues to experience failures with the MIUs; and

WHEREAS, the City asserts that the R450 MIU Problem is a breach of the Contract, but Ferguson and Neptune dispute that allegation ("Disputed Claim"); and

WHEREAS, between the original contract date to present, Ferguson, Neptune, and the City have cooperated with respect to replacement of failed R450 MIUs and have negotiated to remedy the R450 MIU Problem to the satisfaction of all Parties and resolve the Disputed Claim; and

WHEREAS, Ferguson, Neptune, and the City (collectively "the Parties" or individually as "Party") have arrived at a full and final settlement as set forth in this Full Settlement Agreement and Release ("Agreement") herein;

NOW, THEREFORE, for good and valuable consideration and the mutual promises and covenants herein, the sufficiency of which is hereby expressly acknowledged, the Parties mutually agree as follows:

1. MIU REPLACEMENT.

- a. R900 Replacement: From the date of this Agreement, failing R450 MIUs will be replaced with R900 v4 Wall Meter Interface Units, described on the attached **Exhibit B** ("R900 MIU").

- b. Unit Costs: The City product replacement cost for replacing failing R450 MIUs with R900 MIUs and a residential 5/8" Neptune T-10 water meters as described in **Exhibit C** ("Meters") shall be \$117 ("Bundled Price") for three years from the date of this Agreement. For each year thereafter, the Bundled Price for replacing failing R450 MIUs together with Meters shall be increased to reflect the increase in the Consumer Price Index – All Urban Consumers – Minneapolis-St. Paul-Bloomington, MN-WI ("CPI") published by the United States Department of Labor during the immediately preceding calendar year. In the future, the City may choose to replace R900 MIUs without Meters at a cost of \$45 per R900 MIU for three years from the date of this Agreement. Thereafter, the price for purchase of an R900 MIU only shall be subject to the price inflator provided above. The costs stated herein shall apply until all City Meters and MIUs are replaced.
- c. Warranty for R900 Replacement Units: Any R900 MIU installed as a replacement MIU will be covered under a 20-year Warranty Period for the R900 MIUs subject to the replacement schedule as listed in the R900 MIU Warranty provided in **Exhibit D** ("R900 Warranty Statement").
- d. Replacement Process: The City shall make the determination when to replace all failing MIUs.
- e. Installation of R900 MIUs: The installation of all replacement R900 MIUs shall be performed by the City. At the City's option, Ferguson shall install meters at a cost of \$58 per account.

2. NETWORK.

- a. Neptune shall supply six (6) R900 Gateway v4 Fixed Network Data Collectors, described on the attached **Exhibit E** (individually "Neptune Gateway" or "Gateway"), configured to the City's preference for backhaul (e.g. fiber or cell phone) at no cost to the City. The Neptune Gateways shall be installed by Ferguson at Ferguson's expense.
- b. The City will purchase one (1) additional Neptune Gateway, which shall be installed by the City. The cost to the City for purchase of the Neptune Gateway is \$8,250.00.
- c. Ferguson shall manage the project for the Gateway installations identified in Section 2(a). Ferguson shall engage the services of a qualified contractor to install the Gateways at the locations depicted in the attached **Exhibit F**. The Gateways will be synchronized with the current location of the R450 Gateways.
- d. If the City requires that Ferguson install Gateways at different location than described on **Exhibit F**, the City agrees to bear those additional costs, directly related to the new locations. Such additional costs shall be demonstrated to the City's reasonable satisfaction.

- e. Neptune shall be responsible for Gateway maintenance for one-year from the date of installation. Neptune shall provide a schedule of services and costs for maintenance by Neptune. The City will maintain an active maintenance contract for the Neptune software.
 - f. The City will migrate to the Neptune 360 hosted AMI software with the assistance of Neptune. The City shall pay for the hosted software as follows:
 - Year 1: \$1.47/account
 - Year 2: \$1.97/account
 - Year 3: \$1.97/account
 - g. The City shall be responsible for providing electrical and fiber to each Gateway installation site.
3. INSTALLATION SERVICES. Ferguson's installation of the Gateways as contemplated in Section 2(a) above, shall be performed consistent with and as provided by the Installation Services Terms, attached as **Exhibit G**.
4. NO ADMISSION. By entering into this Agreement, neither Ferguson nor Neptune admit any liability or fault with respect to the Contract or the R450 MIU Problem, and specifically denies any liability, fault, or violation of law claimed by the City.
5. MUTUAL RELEASE. Each Party shall release and forever discharge the others including all of their past, present and future officers, directors, officials, attorneys, principals, representatives, insurers, administrators, executors, successors and assigns, attorneys employees and agents, from any and all claims, demands, causes of action, obligations, damages, security interests, and liabilities of any nature whatsoever whether known or not now known, suspected or claimed which the releasing Party ever had, now has, or claims to have against the others from the beginning of time to the date of this Agreement, arising out of the Project, the R450 MIU Problem, and the Disputed Claim.
6. ENTIRE AGREEMENT. It is understood and agreed this Agreement contains the full extent of the agreement between the Parties to resolve the R450 MIU Problem and the Disputed Claim, and the terms of the Agreement are contractual and not a mere recital. To be binding, amendments shall be in writing and signed by the Parties and approved by written resolution of the City Council.
7. CONSENT AND ADVICE OF COUNSEL. Each Party acknowledges that it has been represented by independent legal counsel of its choice and each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.
8. COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be deemed to be an original, all of which together shall constitute one document.
9. NOTICES. Required Notice to the parties shall be in writing, and shall be either hand delivered or

mailed to the party by certified or registered mail at the following address:

a. FERGUSON Ferguson Enterprises, LLC
 12500 Jefferson Avenue,
 Newport News, VA 23602
 Attn: Assistant General Counsel Waterworks

Copy to: Ferguson Enterprises, LLC
 1649 91st Ave NE
 Blaine, MN 55449
 Attn: Kim Foster

b. NEPTUNE Neptune Technology Group, Inc.
 1600 Alabama Highway 229
 Tallahassee, AL 36078
 Attn: Ian Coburn

c. CITY OF CHANHASSEN 7700 Market Boulevard
 P.O. Box 147
 Chanhassen, MN 55317

Copy to: Campbell Knutson, P.A.
 860 Blue Gentian Road
 Suite 290
 Eagan, MN 55121
 Attn: Roger Knutson

10. MUTUAL COOPERATION. The Parties agree to cooperate to effectuate this Agreement. There shall be no expectation of any future agreement related to the R450 MIU failure rate as contemplated in this section and the failure of any Party to meet the other Parties' expectations as to their assessment of the failure rate of the R450 MIUs and any proposed response or non-response thereto shall not constitute a breach of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last written below.

The remainder of this page left intentionally blank; signature pages and exhibits follow.