



SUPPLY AGREEMENT NO. 1053

Gas and Water Meters

THIS **Gas and Water Meter Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Aclara Technologies LLC ("Supplier"), effective for all purposes upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Gas and Water Meters in response to Request for Bid No. N/A ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety,

NOW, THEREFORE, City and Supplier agree as follows:

1. **Scope.** Supplier will provide Gas and Water Meters in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
2. **Term.** This Agreement is for 12 months. This Agreement includes an option to extend the term for up to one additional 12-month periods ("Option Period"), provided, the parties do so prior to expiration of the original term or the then-current Option Period. The decision to exercise the option to extend the term of this Agreement is, at all times, within the sole discretion of the City and is conditioned upon the prior written agreement of the Supplier and the City Manager.
3. **Compensation and Payment.** The total value of this Agreement is not to exceed \$1,079,680.00, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Joanna Moreno
Department: Utilities Department
Phone: 361-826-1649
Email: JoannaM@cctexas.com

5. **Insurance.** Before performance can begin under this Agreement, the Supplier must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the Supplier shall endeavor to provide the City with 30 days' advance written notice of cancellation. The City will be provided for as an additional insured. The City Attorney must be given copies of all insurance policies within ten (10) business days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
6. **Purchase Release Order.** For multiple-release purchases of products to be provided by the Supplier over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner; any City department or division may send to Supplier a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Supplier until such time as the products are delivered and accepted by the City.
7. **Inspection and Acceptance.** Supplier shall replace or repair any products that are delivered but not accepted by the City at no charge to the City, provided that City notifies the Supplier in writing within 20 days ("Acceptance Period") of Supplier delivering the products to a particular place designated by the City. In the event City does not notify Supplier on or before the expiration of the Acceptance Period of the unacceptability of any delivered products, such products shall be deemed to be acceptable to City, and such goods shall be warranted pursuant to Paragraph 8.
8. **Warranty.** The Supplier warrants that all products supplied under this Agreement are new, quality items that are free from defects, and of good material and workmanship. The Supplier warrants that it has clear title to the products and that the products are free of liens or encumbrances. In addition, the products purchased under this Agreement shall be warranted by the Supplier or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.
9. **Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator

10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Supplier will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Supplier be considered an employee of the City.
12. **Subcontractors.** Supplier may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Supplier must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid. In using subcontractors, the Supplier is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Supplier. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Supplier and its employees had performed the work.
13. **Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Supplier covenants to pay its payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Joanna Moreno
Contracts / Funds Administrator, Utilities Department
2726 Holly Rd, Corpus Christi, TX 78415
Fax: 1-361-826-1715

IF TO SUPPLIER:

Aclara Technologies LLC
Attn: Legal Department
945 Hornet Drive
Hazelwood, MO 63042
Fax: (314)895-7373
Email: contracts@aclara.com

- 17. Indemnification. SUPPLIER AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") TO THE EXTENT CAUSED BY THE NEGLIGENCE OF THE SUPPLIER ITS EMPLOYEES OR AGENTS IN CONNECTION WITH THIS CONTRACT, FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES (INCLUDING DEATH AND WORKERS' COMPENSATION CLAIMS), PROPERTY LOSS OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, REASONABLE ATTORNEYS' FEES AND REASONABLE EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF NEGLIGENCE ACTS OR OMISSIONS IN CONNECTION WITH THIS AGREEMENT OR THE NEGLIGENT PERFORMANCE OF THIS AGREEMENT PROVIDED THAT: A. THE CITY PROMPTLY NOTIFIES SUPPLIER IN WRITING OF SUCH CLAIMS; B. CITY FULLY COOPERATES WITH SUPPLIER IN ASSISTING IN THE DEFENSE OR SETTLEMENT OF SUCH CLAIMS; AND C. SUPPLIER SHALL INVESTIGATE SUCH CLAIMS AND HAS THE SOLE RIGHT TO CONDUCT THE DEFENSE OF SUCH CLAIM OR TO SETTLE SUCH CLAIM. SUPPLIER SHALL DEFEND AT ITS OWN EXPENSE, WITH COUNSEL OF ITS CHOOSING, BUT REASONABLY ACCEPTABLE TO CUSTOMER, ANY SUIT OR ACTION BROUGHT AGAINST INDEMNITEES BASED UPON SUCH CLAIMS. THE INDEMNIFICATION OBLIGATIONS OF SUPPLIER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**
- 18. Termination.**
- a. The City Manager may terminate this Agreement for Supplier's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Supplier written notice of the breach and 30 days to cure. If the Supplier has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.
 - b. Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Supplier. The City Manager may also terminate this Agreement upon 24 hours written notice to the Supplier for failure to pay or provide proof of payment of taxes as set out in this Agreement.
- 19. Assignment.** No assignment of this Agreement by the Supplier, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Supplier is of the essence of this Agreement, and the City Manager's right to withhold consent

to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

20. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
21. **LIMITATION OF LIABILITY.** Notwithstanding anything contained herein to the contrary, the total aggregate liability of Supplier to the City for all liability arising out of or in connection with the performance by Supplier of its obligations under this Agreement shall be limited to the aggregate sum of payments made by the City to Supplier under this Agreement. IN NO CASE SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES OR FOR THE LOSS OF BENEFIT, PROFIT, REVENUE, OR DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
22. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement and its attachments
 - B. the bid solicitation document, including addenda (Exhibit 1)
 - C. the Supplier's bid response (Exhibit 2)
23. **Certificate of Interested Parties.** Supplier agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
24. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
25. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

SUPPLIER: ACLARA TECHNOLOGIES

LLC Signature: Kurt R. Bruenning

Printed Name: Kurt R. Bruenning

Title: CFO

Date: 2/12/17

CITY OF CORPUS CHRISTI

Signature: Maria Pedraza

Printed Name: Maria Pedraza

Title: Procurement manager

Date: 2/1/17

ATTEST: Rebecca Huerta
REBECCA HUERTA
CITY SECRETARY

Attached and Incorporated by Reference:

Attachment A: Scope of Work

Attachment B: Bid/Pricing Schedule

Attachment C: Insurance Requirements

Attachment D: Warranty Requirements

Incorporated by Reference Only:

Exhibit 1: RFB No. NA

Exhibit 2: Supplier's Bid Response, NA

42017-033 AUTHORIZED
CITY COUNCIL 2/28/17
SECRETARY

Attachment A: Scope of Work

Supply Water Meters and associated catalog parts as per HGACBUY Contract
WM08-16

Attachment C: Insurance / Bond Requirements

No insurance is required for the supply agreement.

Aclara Warranties

- STAR® MTU Warranty

STAR® MTU Warranty

Basic Warranty

Aclara Technologies LLC warrants to the original PURCHASER of a STAR® Utility Meter Transmission Unit (MTU) that the MTU shall perform in accordance with the specifications in effect at the time of original product shipment and shall be free from defects in material and workmanship for a period often (10) years from the date of original product shipment (the "full warranty period").

Any STAR® Utility MTU manufactured by Aclara Technologies LLC that, within the full warranty period: (i) fails to perform in accordance with the specifications in effect at the time of original product shipment or (ii) fails as a result of a defect in material or workmanship, when returned to Aclara Technologies LLC, freight prepaid, will be repaired or replaced at the option of Aclara Technologies LLC without charge to the PURCHASER. A STAR® Utility MTU which has been repaired or replaced by Aclara Technologies LLC will be returned to the PURCHASER by Aclara Technologies LLC, freight prepaid. All costs associated with the removal and/or reinstallation of a defective STAR® Utility MTU shall be the responsibility of the PURCHASER. Aclara Technologies LLC warrants replacement MTUs for the longer of (i) the remaining term of the full warranty period applicable to the STAR® Utility MTU repaired or replaced or (ii) one year from the date the repaired STAR® Utility MTU or its replacement is returned to PURCHASER. Aclara Technologies LLC reserves the right to supply factory refurbished equipment, new equipment, or a newer model that provides equivalent or better performance.

Extended Warranty

Subject to the limitations set forth below, Aclara Technologies LLC, will replace any STAR® Utility MTU that, after expiration of the full warranty period but before the expiration of the twentieth (20th) full year after the date of original product shipment (the "extended warranty period"): (i) fails to perform in accordance with the specifications in effect at the time of original product shipment or (ii) fails as a result of a defect in material or workmanship. The cost of replacement will be prorated in accordance with the following table based on the number years of service before failure:

Years of Service	Replacement Cost Percentage
11	55%
12	60%
13	65%
14	70%
15	75%
16	80%
17	85%
18	90%
19	95%
20	100%

The cost of replacement will be calculated by multiplying the applicable replacement cost percentage by the STAR® Utility MTU price in effect at the time of replacement. The defective MTU must be returned to Aclara Technologies LLC by the PURCHASER, freight prepaid; Aclara Technologies LLC will pay the freight charges for the return of the replacement to the PURCHASER.

All costs associated with the removal and/or reinstallation of a defective STAR® Utility MTU shall be the responsibility of the PURCHASER. Aclara Technologies LLC warrants MTUs replaced pursuant to the Extended Warranty for ten (10) years (in accordance with the terms of the Basic Warranty) from the date the replacement is returned to the PURCHASER. Aclara Technologies LLC reserves the right to supply factory refurbished equipment, new equipment, or a newer model that provides equivalent or better performance.

The STAR® Utility MTU warranties do not cover repairs or replacements required as a result of: misuse, mishandling, improper storage, accident, modification, improper operation, installation

Aclara Warranties
Aclara Technologies LLC

errors, meter failures, theft, vandalism, repair by unauthorized personnel, or battery life for MTUs that are configured and operated for more than two (2) to four (4) transmissions per day.

Aclara Technologies LLC makes no warranty whatsoever with respect to the minimum communication distance or reliability of the radio propagation path of STAR® Utility MTUs.

Each MTU includes software which is proprietary to Aclara Technologies LLC and which is protected by United States Copyright Laws with which the PURCHASER must comply. PURCHASER has the right to utilize the software in the MTU with the MTU, but PURCHASER may not disassemble, decompile, or modify the software. The software is confidential and the property of Aclara Technologies LLC and shall not be disclosed to others.

THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

THE LIABILITY OF ACLARA TECHNOLOGIES LLC SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IN NO EVENT SHALL ACLARA TECHNOLOGIES LLC BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, RESULTING FROM PRODUCT INSTALLATION, USE, REMOVAL OR REINSTALLATION. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND IN NO EVENT SHALL THE LIABILITY OF ACLARA TECHNOLOGIES LLC EXCEED THE PRICE OF THE PRODUCT ON WHICH SUCH LIABILITY IS BASED. THE LIMITATION OF REMEDIES SET FORTH HEREIN IS IN RECOGNITION OF THE DIFFICULTIES OF PROOF OF LOSS AND THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE MEASURING DAMAGES AND OBTAINING AN ADEQUATE REMEDY.

THE WARRANTIES CONTAINED HEREIN MAY NOT BE ALTERED, AMENDED, OR MODIFIED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ACLARA TECHNOLOGIES LLC.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2017-157176

Date Filed:
01/23/2017

Date Acknowledged:

3/1/2017 *ms*

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Aclara Technologies LLC
Hazelwood, MO United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Corpus Christi, Texas

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

1053

The sale of hardware for customer's STAR Network.

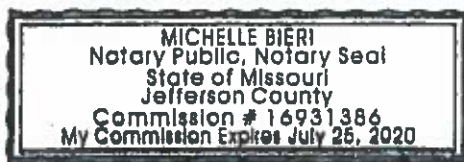
4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



[Signature]

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Robert Engard Jr, this the 22nd day of Jan, 2017, to certify which, witness my hand and seal of office.

Michelle Bieri
Signature of officer administering oath

Michelle Bieri
Printed name of officer administering oath

Notary Public
Title of officer administering oath