

Monday, March 4, 2019

BOARD OF MAYOR AND ALDERMEN –SPECIAL CALLED MEETING

4:00 PM

1. Prayer
2. Pledge Of Allegiance
3. Roll Call
4. Approval Of Agenda
5. Consideration Of Resolution 8-2019 Approving Award Of RFP#2019-3 For City Services (Water, Sewer, Sanitation, And Stormwater) Metering, Billing And Collections Systems And Services

Documents:

[RESOLUTION 8-2019 APPROVING AWARD OF RFP 2019-3 CITY SERVICES SYSTEM.PDF](#)
[2019 MILLINGTON-FATHOM TECHNOLOGY SERVICES AGREEMENT V5.PDF](#)

6. Adjourn

ADA NOTICE

The City of Millington is in compliance with the Americans with Disabilities Act. Should you need accommodations for the above meeting, please call City Hall at (901)873-5701, at least 8 hours in advance of the meeting.

RESOLUTION 8-2019

RESOLUTION APPROVING AWARD OF RFP # 2019-3 FOR CITY SERVICES (WATER, SEWER, SANITATION AND STORMWATER) METERING, BILLING AND COLLECTIONS SYSTEMS AND SERVICES

WHEREAS, Request for Proposal (RFP) # 2019-3 was issued, advertised in the paper, and due on February 1, 2019 at 2:00 PM; and

WHEREAS, The RFP advertised for experienced, qualified proposers for installation and operation of a system providing remote reading of water meters, related billing of city services including water, sewer, sanitation and stormwater and related extra service fees and a customer service call center; and

WHEREAS, The RFP included the replacement of all existing water meters with intelligent meters and the deployment of a wireless data collection system and implementation of related software and call center functions, which collectively represent an initial cost of implementation; and

WHEREAS, The RFP includes the ongoing function of software as a service, as well as call center along with billing and collection functions, which will be an ongoing cost for the city services; and

WHEREAS, Proposals were received from two (2) companies with related experience and abilities; and

WHEREAS, The proposals were evaluated against the criteria in the RFP with additional information requested from both companies in order to clarify their proposals; and

WHEREAS, The best proposal was submitted by Global Water Management, LLC, doing business as FATHOM; and

WHEREAS, City Management has determined that adequate cash reserves exist to fund the initial cost of implementation in the amount not expected to exceed \$2,541,961.00 with existing cash in the appropriate funds rather than incurring debt for the acquisition; and

WHEREAS, The implementation cost will vary, depending on the exact number of meters installed versus the number included in the RFP, as well as the exact deployment location for wireless data collectors, which cannot yet be determined by any vendor.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the City of Millington, Tennessee, that RFP #2019-3 is awarded to Global Water Management, LLC, doing business as FATHOM.

BE IT FURTHER RESOLVED, That the Mayor is authorized to execute a fifteen year contract with Global Water Management, LLC, doing business as FATHOM, for the aforementioned purposes.

BE IT FURTHER RESOLVED, That the Finance Director shall allocate costs of the purchase and services between the related Funds served based on methodology that complies with the restrictions placed by the State Comptroller on use of Water and Sewer funds.

This Resolution is adopted as of the 4th day of March, 2019.

Terry G. Jones, Mayor

Karen Findley, City Clerk

FATHOM TECHNOLOGY SERVICE AGREEMENT

This Technology Service Agreement (the “**Agreement**”) is entered into effective as of March 4, 2019 (the “**Effective Date**”), by and between Global Water Management, LLC., a Delaware corporation (“**FATHOM**”), and the City of Millington (“**Client**”), a municipality of the State of Tennessee.

WHEREAS, FATHOM owns and operates certain proprietary software, technology, and infrastructure, known as “FATHOM” for the support and optimization of regulated water and wastewater utility management.

WHEREAS, FATHOM sells utility management services (as set forth and described on **Exhibit A** and **Exhibit B**, the “Services”) and advanced water metering infrastructure (as set forth and described on **Exhibit E** hereto, the “AMI”) to cities, municipalities and utility companies.

WHEREAS, Client wishes to replace its water metering infrastructure with the AMI and to automate its utility management function.

WHEREAS, FATHOM and Client now desire to enter into this Agreement pursuant to which FATHOM will sell AMI directly to the Client, install the meters and AMI equipment and provide the Services to the Client, and Client will use the AMI and the Services for the Client’s benefit, within Client’s capacity to serve the Customers (as defined below).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree as follows:

1. **Definitions.**

A. “**Confidential Information**” means any information disclosed by either party pursuant to this Agreement that is (i) in written, graphic, machine readable or other tangible form and is marked “Confidential,” “Proprietary” or in some other manner to indicate its confidential nature, or (ii) in the case of oral or visual disclosure is identified as confidential at the time of disclosure and reduced to tangible form, marked as confidential, and provided to the receiving party within a reasonable time not to exceed thirty days, or (iii) under the circumstances should in good faith be considered to be confidential. Confidential Information includes, without limitation, information related to: research, product plans, products, developments, inventions, processes, designs, markets, business plans, agreements with third parties, services, customers, marketing or finances of either party, the content or existence of any negotiations, and pricing. Notwithstanding the foregoing, all technology or proprietary information underlying the FATHOM Data and the FATHOM Platform, including without limitation any and all scripts, programming code, and algorithms related thereto, shall be deemed Confidential Information of FATHOM, and all Client Data and Client Content shall be deemed Confidential Information of Client, without any need for designating the same as confidential or proprietary.

B. “**CIS Go Live**” means that the implementation of the Customer Information System (CIS) is complete and that FATHOM is performing the billing processes, call center support (if applicable), and daily cash application support functions.

C. “**Client Content**” means any content uploaded or made available by Client (or Customers) via the FATHOM Platform, which may include Client Data.

D. “**Customer**” means a customer of Client who is also an end-user of the FATHOM Platform.

E. **“Client Data”** means data relating to Client or Customers that is provided or otherwise made available to FATHOM through FATHOM’s performance of the Services or otherwise through Client’s (and its Customers’) use of the FATHOM Platform.

F. **“Developments”** means the collective ideas, know-how, or techniques developed or conceived by FATHOM as a result of providing the FATHOM Platform to Client, including without limitation any derivative works, improvements, enhancements and/or extensions made to the FATHOM Data and/or the FATHOM Platform, as well as all suggestions, comments, or other feedback provided by Client or Customers related thereto or any other Confidential Information of FATHOM, and all Intellectual Property Rights therein and thereto throughout the world.

G. **“FATHOM Content”** means all content, including without limitation data, information, structural hierarchies, processes, HTML code, trademarks, images, illustrations, graphics, multimedia files and/or text, contained in the FATHOM Platform (except for Client Content).

H. **“FATHOM Data”** means all data generated by the FATHOM Platform, including without limitation, service and usage data, and aggregated, anonymized summaries of Client Data.

I. **“FATHOM Platform”** means the Software operated on FATHOM’s hosting servers or those of its hosting service provider intended to enable Client and/or Customers to interact with the same via the internet. Without limiting the foregoing, the FATHOM Platform shall include, individually and collectively, the Software, the FATHOM Content, and the User Interface.

J. **“Intellectual Property Rights”** means all rights of the following types, under the laws of any jurisdiction worldwide: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights; (ii) trade secret rights; (iii) patent and industrial property rights; (iv) other proprietary rights of every kind and nature; and (v) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the above.

K. **“Managed Account”** means an account that either (i) is actively being billed by FATHOM under this Agreement or (ii) has been previously billed by FATHOM under this Agreement and either has a move out date or has been provided a final invoice within the previous 12 months.

L. **“Network Hardware Installation Requirements”** means data collector hardware units and related network equipment necessary for the network to operate as intended has been installed, tested and deemed functioning properly with its related software application, if any.

M. **“Services”** means, collectively, the standard services set forth on **Exhibit A** and the services specific to Client or Customers as set forth on **Exhibit B**.

N. **“Software”** means the software and mobile application(s) set forth on **Exhibit A**, any accompanying documentation, and all updates, upgrades, and enhancements thereof that may be provided by FATHOM hereunder.

O. **“User Interface”** means: (i) the web-based interface located at <http://www.gwfathom.com/>, and all subdomains, subpages, and successors sites thereof, hosted by FATHOM by which Client and/or Customers may access the FATHOM Platform; and/or (ii) the mobile application interface provided by FATHOM by which Client and/or Customers may access the FATHOM Platform.

2. **FATHOM’s Responsibilities.**

A. FATHOM will host and maintain the FATHOM Platform on servers operated and maintained by or at the direction of FATHOM or otherwise. FATHOM may in its sole discretion modify, enhance or otherwise change the FATHOM Platform (or any part thereof), provided that these changes will not adversely impact the Scope of Services outlined in **Exhibit B**. FATHOM may delegate the performance of

certain portions of the FATHOM Platform to third parties, including but not limited to FATHOM's affiliates, provided that this delegation will not adversely impact the Scope of Services outlined in **Exhibit B**.

B. FATHOM will be solely responsible for obtaining and maintaining appropriate insurance coverage for the training activities conducted by FATHOM personnel under this Agreement, including but not limited to, comprehensive general liability insurance with limits of not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and for damage or destruction to property in any one occurrence, and professional liability insurance with limits of not less than \$500,000 per occurrence and \$1,000,000 in the aggregate. The insurance must certify that no alteration, modification, or termination of such coverage will be effective without at least thirty (30) days' advance written notice to Client.

3. **Client's Responsibilities.**

A. Client will, at FATHOM's reasonable request, provide FATHOM with detailed information regarding Customers' account information, billing rates, workflow, billing and collecting procedures, transaction volumes, and current and historical account data to assist FATHOM in establishing the FATHOM Platform for Client's and Customers' use, provided that such information is not otherwise subject to disclosure restrictions under applicable law. Such information shall be treated as Confidential Information of Client under Section 13. Any costs incurred by the Client to obtain the information are the Client's responsibility.

B. During Client's transition to the FATHOM Platform, Client will continue to operate its existing processing operations until the FATHOM Platform has been tested and is operational. Client acknowledges and agrees that FATHOM is not responsible for any damages that Client may suffer to its existing operations as a result of the transition to the FATHOM Platform (unless solely caused by FATHOM's gross negligence or willful misconduct).

C. Client will be responsible for obtaining and maintaining at its expense all necessary computer hardware, software, modems, connections to the internet, tablets, wireless data plans, and other items or services that may be required for Client's access and use of the FATHOM Platform and the User Interface.

D. The Client is responsible for ensuring that its responsibilities to execute certain responsibilities set forth in the Scope of Services are completed on a timely manner and as set forth in the Scope of Services. Delays to the Scope of Services caused by the Client and/or any customization or changes to the Scope of Services will result in additional cost which will be incurred by the Client.

4. **Mutual Responsibilities.** Each party will designate a project manager or an information technology team to coordinate and assist FATHOM in the installation, implementation, and support of the FATHOM Platform, including ongoing testing of the FATHOM Platform following installation. Such project managers' contact information will be provided in **Exhibit D, Contacts**, as amended from time to time.

5. **Support and Training Services.**

A. **Implementation Support.** FATHOM will provide the implementation support services set forth in **Exhibit A**.

B. **General Support.** FATHOM will provide the general support services set forth in **Exhibit A**.

C. **Training.** FATHOM will provide training for Client's personnel as set forth in **Exhibit A**. Client must request any training at least fifteen (15) business days in advance. Unless otherwise provided in **Exhibit A**, FATHOM's obligation to provide any training will expire one-hundred eighty (180) days following the Effective Date. On completion of training, each party's project manager will sign and execute the acknowledgment of receipt of training attached hereto in **Exhibit A**.

6. **License Grants; Restrictions.**

A. **License from FATHOM.** Subject to the terms and conditions of this Agreement, FATHOM hereby grants Client a limited, personal, non-transferable license during the Term to grant to its Customers and end users the rights to: (i) access and use the Software and FATHOM Content via the FATHOM Platform solely in the manner contemplated by this Agreement; (ii) use the FATHOM Data solely as necessary to use the features and functionality of the FATHOM Platform; (iii) access and use the User Interface as may be required to use the Software and FATHOM Content via the FATHOM Platform; and (iv) permit Customers to exercise the rights set forth above in subsections (i) through (iii) (inclusive).

B. **License to FATHOM.** Client hereby grants FATHOM a worldwide, non-exclusive, royalty-free, fully paid-up license to use, reproduce, electronically distribute, transmit, have transmitted, display, store, archive, and make derivative works of the Client Content in order to provide the FATHOM Platform.

C. **License Restrictions.** Client shall not, and shall not permit any third party, including without limitation any Customer, to: (i) use the FATHOM Data or the FATHOM Platform (or any part thereof) except to the extent permitted in Section 6(A); (ii) modify or create any derivative work of any part of the FATHOM Data or the FATHOM Platform; (iii) market, sublicense, publish, distribute, reproduce, resell, assign, transfer, rent, lease, or loan the FATHOM Data or the FATHOM Platform (or any part thereof); (iv) reverse engineer, disassemble, or otherwise attempt to gain access to the source code of all or any portion of the FATHOM Platform; or (v) use the FATHOM Data or the FATHOM Platform (or any part thereof) for commercial time-sharing or service-bureau use.

D. **Use of Client Data.** Notwithstanding anything to the contrary in this Agreement, FATHOM may use Client Data for the purposes of: (i) providing the FATHOM Platform and the Services to Client and its Customers; (ii) for FATHOM's internal research and development purposes; (iii) enforcing its rights under this Agreement; and (iv) on an aggregated and anonymized basis, create FATHOM Data.

E. **Reservation of Rights.** FATHOM reserves all rights to the FATHOM Data and the FATHOM Platform (and all parts thereof) not otherwise expressly granted in this Section 6.

F. **Audit.** No more than once per year during the Term and one (1) year thereafter, FATHOM may request Client to provide FATHOM reasonable access and information to allow FATHOM to confirm Client is in compliance with Section 6(A) and 6(C), including inspecting Client's records relating to Client's use of the FATHOM Platform. FATHOM shall provide Client with SOC1 and/or SOC2 report(s) on an annual basis at FATHOM's expense and, when requested, provide copies of the reports directly to City Auditors.

7. **Payments and Taxes.**

A. **Fees.** The Client agrees to pay, and shall pay, the fees set forth on **Exhibit B** and **Exhibit C**. Client agrees that the fees are not commissions, royalties or rent in any way, shape or form. All amounts payable to FATHOM hereunder will be invoiced or "billable" to Client on a monthly basis or earlier, as specified for the fee type in question. All fees shall be payable within thirty (30) days of Client's receipt of each invoice issued from FATHOM, except for those Implementation Fee items described on the Fee Schedule in **Exhibit C** which are due within fourteen (14) days.

B. **Late Payments.** Client's failure to pay any past due fees within five (5) calendar days following written notice from FATHOM may, at FATHOM's sole discretion, result in FATHOM exercising any rights or remedies it may have, including but not limited to terminating Client's access to the FATHOM Platform and/or disconnecting Client from FATHOM's servers without notice. Client agrees to pay FATHOM all costs and expenses associated with the disconnection of services under this Section 7(B).

C. **Taxes.** Client is a Tennessee municipality and is exempt from all sales and use taxes pursuant to TCA 67-6-329(a)(4).

D. **Expenses.** Client will reimburse FATHOM for reasonable travel and living expenses incurred by FATHOM in performing Services at sites other than FATHOM facilities at the Client's request when the services would otherwise be performed at FATHOM facilities.

E. **Risk of Loss Upon Delivery.** The parties agree that title, risk of loss and FATHOM's obligation to deliver (1) all services, and (2) the equipment sold by FATHOM and purchased by Client in this Agreement shall pass from FATHOM to the Client at the place of delivery upon delivery. For purposes of clarity, FATHOM is selling to the Client, and the Client is buying from FATHOM the equipment described in this Agreement. Client agrees that the place of delivery and "ship to" address (if applicable) for all services and equipment provided to Client is 4910 Jack Huffman Boulevard, Millington, Tennessee 38053. Notwithstanding anything to the contrary in this agreement, to the extent FATHOM takes possession of the equipment for purposes of providing the necessary agreed upon services/installation, and while in FATHOM's possession the equipment is damaged, lost, or otherwise rendered unable to perform its intended purpose, FATHOM will repair or replace such equipment.

8. **Warranties and Disclaimers.**

A. **Mutual.** Each party represents and warrants that: (i) such party is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation, and has the full power and authority to enter into and perform its obligations under this Agreement; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder do not and will not violate any other agreement to which such party is a party or by which it is otherwise bound; (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms; and (iv) such party acknowledges that the other party makes no representations, warranties, or agreements related to the subject matter of this Agreement that are not expressly provided for in this Agreement.

B. **FATHOM's Warranties.** FATHOM represents and warrants that: (i) the FATHOM Platform will substantially conform to the full Scope of Service document summarized in Exhibit B (as may be updated during the life of the Agreement to incorporate additional industry best practices as they become available and made available to Client as requested by Client); and (ii) the Services will be performed in a professional and workmanlike manner in accordance with industry standards.

C. **Client's Warranties.** Client represents and warrants that: (i) the execution, delivery, and performance by Client of this Agreement, including without limitation the provision of any Client Content, does not and will not violate any applicable statute, regulation, or law, or infringe any intellectual property right or other legal right of any third party; and (ii) it will not, and will not permit any third party to, violate Section 6(C).

D. **Disclaimers.** EXCEPT AS PROVIDED IN THIS SECTION 8 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FATHOM PLATFORM AND ALL RELATED INFORMATION, TECHNOLOGY, AND SERVICES PROVIDED BY OR ON BEHALF OF FATHOM ARE PROVIDED "AS IS," "AS AVAILABLE," AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND FATHOM EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF WE ARE ADVISED OF THE PURPOSE), ACCURACY, AND/OR NON-INFRINGEMENT. IN ADDITION, DUE TO THE NATURE OF ELECTRONIC COMMUNICATIONS NOT BEING FULLY UNDER THE CONTROL OF FATHOM OR CLIENT, FATHOM DOES NOT WARRANT THAT ACCESS TO THE FATHOM PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE FATHOM PLATFORM WILL MEET CLIENT'S OR CUSTOMERS' NEEDS.

9. **Term, Termination, and Survival.**

A. **Term.** This Agreement shall commence on the Effective Date, and shall continue for fifteen (15) years (the "**Initial Term**"), unless earlier terminated in accordance with Section 7(B). At the conclusion of the Initial Term (or any subsequent Renewal Term), the Agreement shall automatically renew for additional renewal terms of one (1) year (each a "**Renewal Term**"), unless either Party gives written notice of non-renewal (for any reason or for no reason) at least one-hundred eighty (180) days prior to the expiration of the then-current term. The Initial Term and any Renewal Terms are collectively referred to herein as the "**Term**."

B. **Termination.** Either party may terminate this Agreement on ninety (90) days' prior written notice if the other party materially breaches any of the terms of this Agreement and such breach remains uncured ninety (90) days following such party's receipt of the terminating party's notice. Notwithstanding any provision to the contrary, neither the termination nor expiration of this Agreement relieves either Party from its obligations to pay the other any sums accrued under this Agreement.

C. **Effect of Termination.** Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate. In the event of any termination or expiration of this Agreement, each party will either promptly return or, at the disclosing party's request, promptly destroy the Confidential Information of the other party. For the avoidance of doubt, nothing herein shall require FATHOM to return or destroy the FATHOM Data. At the disclosing party's request, the receiving party must certify in writing the complete return or destruction of the disclosing party's Confidential Information within thirty (30) days of the request. Upon Client request, in connection with any termination or expiration of the Agreement, FATHOM will, at its then-current service fee rates, provide Client mutually agreed upon transition services ("Transition Services") and the Parties agree to confirm any such Transition Services in the form of an amendment to this Agreement.

D. **Survival.** The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 6(B), 6(C), 6(D), 6(E), 6(F), and 7 through 22 (inclusive).

10. **Limitation of Liability.** THE AGGREGATE LIABILITY OF A PARTY ARISING FROM ITS ACCESS TO OR USE OF THE FATHOM PLATFORM, OR FATHOM'S PROVISION OF THE SERVICES IN CONNECTION THEREWITH, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION CONTRACT, STRICT LIABILITY, NEGLIGENCE AND/OR OTHER TORT, SHALL IN NO EVENT EXCEED ONE MILLION UNITED STATES DOLLARS (\$1,000,000). IN NO EVENT WILL A PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA, OR DATA USE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY RELATED TO THE PROCUREMENT OF SUBSTITUTE GOODS. THE FOREGOING LIMITATIONS FORM AN ESSENTIAL BASIS FOR THIS AGREEMENT AND SHALL SURVIVE REGARDLESS OF THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE.

11. **Ownership.**

A. **FATHOM's Ownership Rights.** Subject only to the limited license expressly granted under this Agreement, FATHOM shall retain all right, title, and interest in and to the FATHOM Platform (and all parts thereof, excluding Client Content) and FATHOM Data, and all Intellectual Property Rights therein. Nothing in this Agreement will confer on Client or Customers any right of ownership or interest therein. To the extent Client has or obtains any right, title, or interest in the FATHOM Platform (or any part thereof, excluding Client Content) or the FATHOM Data, Client hereby assigns, and agrees to assign, without further consideration, to FATHOM all such right, title, and interest Client may have or obtain.

B. **Client's Ownership Rights.** Subject only to the limited license expressly granted hereunder, as between Client and FATHOM, Client shall retain all right, title and interest in and to the Client Content, and all Intellectual Property Rights therein. Nothing in this Agreement will confer on FATHOM any right of ownership or interest in the Client Content, or the Intellectual Property Rights therein.

C. **Execution of Documents.** During the Term, and at any other time thereafter, at FATHOM's request Client shall execute any and all documents and perform any and all acts that FATHOM may reasonably require in order to protect and perfect any FATHOM Intellectual Property Rights, or to apply for, obtain, and vest in the name of FATHOM alone all patents, copyrights, trademarks, or other similar protection for any FATHOM Intellectual Property Rights, and, when so obtained or vested, to maintain, renew, and restore the same.

12. **Indemnity.**

A. **Mutual Indemnity.** To the extent permissible by law, each party shall indemnify, defend, and hold the other party and its affiliates, and its and their officers, members, directors, employees, elected officials, agents, successors and assigns (each an “**Indemnified Party**”) harmless from and against all liabilities (including liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, fines, claims, penalties, actions, suits, judgments, costs, expenses, and disbursements (including reasonable legal fees and expenses and reasonable costs of investigation) (“**Losses**”) as described herein.

B. **FATHOM Indemnity.** FATHOM shall indemnify, defend, and hold Client and its Indemnified Parties harmless from and against all third-party claims and Losses arising from: (i) FATHOM’s breach of its representations and warranties in Section 8; (ii) FATHOM’s (or its agents’) gross negligence or intentional misconduct; or (iii) any claim that the Software or the FATHOM Platform infringes or otherwise violates any third-party’s U.S. Intellectual Property Rights. FATHOM expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by FATHOM shall in no way limit the responsibility to indemnify, defend, save and hold harmless Client or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

C. **Client Indemnity.** To the extent permissible by law, Client shall indemnify, defend, and hold FATHOM and its Indemnified Parties harmless from and against all third-party claims and Losses caused by or otherwise arising only from the gross negligence or intentional misconduct of Client in: (i) Client’s use of and access to the FATHOM Platform, including any data or content transmitted or received by Client (or anyone else utilizing Client’s credentials); or (ii) any infringement or misappropriation claim that arises from Client’s breach of its representations and warranties in Section 8. Except as expressly provided herein, Client has no obligation for the payment of any judgment or the settlement of any claims against FATHOM as a result of or relating to obligations under this Agreement. The Client has no obligation to provide legal counsel or defense to FATHOM or its sub-contractors in the event that a suit, claim or action of any character is brought by any person not party to this Agreement against FATHOM as a result of or relating to FATHOM’s obligations under this Agreement.

D. **Process.** The indemnified party shall promptly notify the indemnifying party in writing of any claim for which it seeks indemnification hereunder; provided that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The indemnifying party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any such claim; provided, however, that (i) the indemnifying party shall keep the indemnified party informed of, and consult with the indemnified party in connection with the progress of such litigation or settlement and (ii) the indemnifying party shall not have any right, without the indemnified party’s written consent, to settle any such claim in a manner that does not unconditionally release the indemnified party.

E. **Remedies.** In the event any portion of the FATHOM Platform is held or believed by FATHOM, or any portion of the Client Content is held or believed by the Client, to infringe intellectual property rights of any third party (such portion to be deemed the “**Infringing Materials**”) in any place where the FATHOM Platform is used or accessed, then in addition to any other rights in this Section 12, FATHOM (where the Infringing Materials are the FATHOM Platform) or Client (where the Infringing Materials are the Client Content) shall, at its sole expense and at its option: (i) obtain from such third party the right for the other party to continue to use the Infringing Materials; or (ii) modify the Infringing Materials to avoid and eliminate such infringement or misappropriation, as the case may be; or (iii) upon mutual agreement with the other party, remove and disable the Infringing Materials; or (iv) if none of the foregoing remedies is commercially feasible, terminate this Agreement.

F. **Sole Remedy for Intellectual Property Violations.** This Section 12 contains each party’s sole and exclusive remedy, and each party’s entire liability, with respect to infringement or alleged infringement of third-party Intellectual Property Rights relating to the FATHOM Platform and the subject matter of this Agreement.

13. **Confidentiality.** During the Term and for three (3) years thereafter (and perpetually with respect to any source code or trade secrets of the disclosing party in the receiving party's possession), each party shall treat as confidential all Confidential Information of the other, shall not use such Confidential Information except as set forth in this Agreement, and will not disclose such Confidential Information to any third party except as expressly permitted herein without the disclosing party's written consent. The receiving party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of the disclosing party's Confidential Information, but in no event less than reasonable care. The receiving party shall promptly notify the disclosing party of any actual or suspected misuse or unauthorized disclosure of any of the Confidential Information.

Notwithstanding the foregoing, the obligations set forth in this Section 13 shall not apply with respect to any information to the extent that it is: (A) already in the possession of the receiving party prior to the first disclosure hereunder as shown by records or files; (B) is already part of the public knowledge or becomes part of the public knowledge after the time of disclosure other than as a result of any improper action by the receiving party; (C) is approved in writing by the disclosing party; (D) is required to be disclosed by applicable legal authority provided that, if practicable, adequate notice and assistance is given by the receiving party to the disclosing party for the purpose of enabling the disclosing party to prevent and/or limit the disclosure; or (E) is independently developed by either party without use of the Confidential Information from the other party.

Notwithstanding anything to the contrary contained herein or within any other document supplied to Client by FATHOM, FATHOM understands and acknowledges that Client is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to Client by FATHOM due to services performed pursuant to this contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

14. **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing, addressed to the applicable party at its address set forth in this Agreement, and shall be deemed effectively delivered only: (A) upon personal delivery, (B) upon delivery by a courier service as confirmed by written delivery confirmation, (C) upon delivery by facsimile as confirmed by transmission receipt, or (D) three (3) business days after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid. Either party may change its address for notice by giving notice to the other party in accordance with this section. A copy of any required notice must be sent via email delivery to contracts@gwfathom.com (if to FATHOM).

15. **Governing Law, Jurisdiction, Venue, and Dispute Resolution.** This agreement will be interpreted in accordance with the laws of the State of Tennessee. In the event a dispute arises out of or in connection with this Agreement, the parties will attempt to resolve the dispute through friendly consultation. By execution of this Agreement FATHOM agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

16. **Force Majeure.** Other than for payment of money, a party shall be excused from any delay or failure in performance hereunder due to causes beyond its reasonable control. Circumstances deemed to be beyond the control of the party hereunder shall include but are not limited to: Acts of God; acts of war or terrorism; military authority, earthquakes; strikes; and loss or interruption of electrical power. Such party shall use commercially reasonable efforts to cure any such failure or delay in performance arising from such a condition and shall timely advise the other party of such efforts.

17. **Relationship of the Parties.**

A. **Limited Appointment as Agent.** Client confers upon FATHOM the limited authority to act as an agent of the Client solely with regard to the receipt of Client's customers' payments for utility services ("Payments"). In this regard, as a limited agent of the Client, FATHOM shall be authorized to (i)

utilize FATHOM's designated lockbox to receive mailed Payments; (ii) endorse and negotiate all Payments for deposit into a bank account legally titled in FATHOM's name; (iii) at all times hold all Payments for the use and benefit of the Client; and (iv) transfer Payments to an account designated by the Client for receipt of such Payments.

B. Paying Agent. As part of the Services provided by FATHOM pursuant to this Agreement, FATHOM will collect payments from Customers for subsequent remittance to Client. In order for FATHOM to do so, and notwithstanding anything in the Agreement to the contrary, Client hereby appoints FATHOM as the limited authorized payment collection agent of Client. Client acknowledges and agrees that a Customer's obligation to pay Client will be extinguished once such payment has been received by FATHOM in its capacity as a limited authorized payment collection agent of Client.

C. Independent Contractors. The relationship between the parties shall only be that of independent contractors. Neither party is an agent (except the limited exception in Section 17.A), representative, partner, employer, or employee of the other party. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

18. Publicity. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation, or sponsorship without obtaining the express prior written consent of the other party.

19. Injunctive Relief. The parties acknowledge and agree that either party's breach of its confidentiality obligations hereunder or violation of the other party's Intellectual Property Rights may cause irreparable injury to the other party for which such other party may not have an adequate remedy at law. Under such circumstances, and in addition to any other rights or remedies they may have, the parties agree that the non-breaching (or non-violating) party shall be entitled to seek injunctive relief from a court of competent jurisdiction.

20. General. This Agreement, together with its Exhibit(s), is the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, and all prior and contemporary proposals and discussions relating to the subject matter of this Agreement, and controls over the preprinted terms of any purchase order or similar document. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or different kind. All notices, modifications and waivers under this Agreement must be in a writing executed by a duly authorized representative of each of the parties. If any provision of this Agreement is determined to be unenforceable, that provision will be replaced with the valid one that most closely achieves the parties' intent and the remainder of this Agreement will remain enforceable. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

21. Cooperative Purchases. To the extent applicable law permits other state, municipal, or other government entities to buy off of this Agreement without going to bid, Client and FATHOM agree that such entities may do so.

22. Assignment. Neither party may assign or delegate, by operation of law or otherwise, this Agreement in whole or in part to any third party without the other Party's prior written consent; provided, however, that: (i) FATHOM may assign this Agreement in whole to a third party that acquires, is acquired by, merges with, or acquires all or substantially all of the assets of FATHOM, (ii) FATHOM may assign this Agreement in whole or in part without any permission to any Subsidiary (entities FATHOM owns and/or controls) or Affiliate (entities a Subsidiary owns and/or controls). Any other attempted assignment or delegation shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

The parties have caused their duly authorized representatives to execute and deliver this Agreement as of the Effective Date.

Global Water Management, LLC

City of Millington, TN

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
SOFTWARE AS A SERVICE

1. **Software as a Service.**

See **Exhibit B** for a description of the Software as a Service.

2. **Additional Services; Travel and Expenses.**

A. **Additional Services.**

The following services will be billed on a time and materials basis unless otherwise agreed upon between the parties:

- Any services relating to maintenance of the Software or the FATHOM Platform identified by FATHOM as out of scope and mutually agreed upon by the parties.
- Any other Support Services identified by FATHOM as out of scope, including but not limited to implementation services and mutually agreed upon by the parties.
- Any services identified as requiring significant effort, requiring extensive test environment development and support, and significantly increasing facility or support level of effort.

All consulting services not covered under the fees described in **Exhibit B** shall be billed at FATHOM's prices and hourly rates as stated herein. Such prices and rates shall be adjusted during the Term of the Agreement in an amount not to exceed the annual adjustment based on the Index further described in Exhibit C.

Over the Term of the Agreement, Client may request certain modifications to the Software and/or the FATHOM Platform, for which the following approach shall apply:

- Formal Statement of Work submitted.
- Specifications created
- Solution quoted
- Specification review
- Programming
- Quality assurance
- Modification of delivery
- Client acceptance

FATHOM shall not be required to provide any requested modification, and will agree to provide such modifications only at its sole and absolute discretion and in exchange for such fees as are mutually agreed upon between the parties.

B. **Travel and Expense Charges.**

Client acknowledges and agrees that: (i) Client is responsible for reasonable travel and lodging expenses associated with all applicable Implementation/Consulting days and/or onsite training days, if any, at the time such additional services are delivered; (ii) Client will be invoiced additionally for such time and expenses; and (iii) Client shall pay the amount invoiced in accordance with the payment terms specified in the Agreement. Notwithstanding the preceding, FATHOM shall not be reimbursed for any additional expenses unless prior written approval is given by Client. FATHOM shall not undertake any such work without prior written approval of Client.

3. **General Support Services.**

A. **Software Maintenance Services.**

During the Term, FATHOM shall provide the following support services (“**Support Services**”), including all modifications created by FATHOM that are made generally available to FATHOM's customers.

The following maintenance releases will be issued by FATHOM from time to time at FATHOM's sole discretion to subscribers of Support Services:

- Bug fixes
- Updates
- Enhancements contained within new releases
- New releases
- New versions of the Software and/or the FATHOM Platform

Maintenance releases contain proprietary and confidential information and are provided to Client for Client's internal use only, and shall be treated as Confidential Information of FATHOM.

The Support Services to be provided by FATHOM shall not include: (i) support of software operation on equipment not identified by FATHOM as an authorized device; (ii) support of software not supplied by FATHOM; (iii) support of software not properly used or used in an operation environment not designated by FATHOM; or (iv) support of business processes not identified during the implementation of the project.

Client shall designate those employees of Client who shall be authorized to contact FATHOM for provision of Support Services, and shall maintain and provide FATHOM with an updated list of employees, including all relevant contact information (such as email addresses). Only those employees so designated by Client shall contact FATHOM for the provision of Support Services. In addition, FATHOM shall designate those employees of FATHOM who Client may contact for provision of Support Services, and shall maintain and provide Client with all relevant contact information for such employees.

4. **Training Services.**

FATHOM's standard training consists of the following:

A. **FATHOM Advanced Metering Infrastructure (AMI)**

Session One – Advanced Metering Infrastructure Hardware Training

- Digital Collector Operations and Level One Troubleshooting
- AMI Endpoint Replacement, Repair, and Programming
- FATHOM Warranty Management Program

Session Two – Advanced Metering Infrastructure Software Training

- Manufacturer AMI Interface Software Review
 - DC look up and diagnostics
 - Endpoint look up, read, and transmission reports, diagnostics

Session Three – Head-end System/MDM Training

- Head-end System/MDM user interface
- Standard reporting for AMI
- Data exports, reporting, and data analysis

B. **FATHOM Customer Information System (CIS) with Utility Billing and Customer Care**

Session One – Customer Service Training:

- Remittance management and cash receipting (front counter solution)
- Account inquiries
- Electronic work order management system for field customer service integration to customer service
- Client Extranet Portal

Session Two – Financial System Integration Process:

- Daily journal entry CIS payment transactions from the FATHOM Platform to the municipal financial system
- Reconciliation of transactions from CIS
- Reporting package from CIS

Session Three – Utility Billing Reporting Package Training:

- Access to reporting interface
- Security

We, the undersigned, acknowledge and agree that the above-listed training has taken place as of the following date:

Date: _____

Client Project Manager

FATHOM Project Manager

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

EXHIBIT B
SCOPE OF SERVICES

Scope of Services – Customer Information System with Utility Billing and Customer Care

FATHOM services will be provided in accordance with our full Scope of Service (SOS) document—summarized below as key deliverables and responsibilities for the project for convenience. In the event of any conflict between this document and the SOS document, the SOS will control. The SOS may be updated during the life of the contract to incorporate additional industry best practices as they become available. Any modifications and/or additional services requested may be subject to additional fees.

EQUIPMENT DELIVERABLES:

No additional equipment is required for this portion of the project. Client will access system via the internet and their existing computers. As such, FATHOM will not provide or install any equipment.

Minimum infrastructure requirements for internet access to software systems is required, and will be reviewed during the implementation phase of the project.

PROJECT MANAGEMENT SERVICES:

- PM1) Project schedule provided prior to start work and updated monthly during implementation
- PM2) Weekly calls with Client assigned project manager during implementation
- PM3) Monthly Project Management Meetings at Client site as needed during implementation, written agendas and meeting notes

PROJECT SERVICES:

- P1) FATHOM Customer Information System Client Preferences and Project Checklist:
 - Client Checklist and Configurations
 - Customer Checklist and Configurations
 - Field Services Checklist and Configurations
 - Financial Services Checklist and Configurations
- P2) FATHOM Paper Meter Audit and Results
- P3) Account and Billing Code Reconciliation, Final Action Report and Loading into Billing System
- P4) Customer Education and Outreach Plan
 - i) Includes one (1) mass mailing
 - ii) Frequently asked questions handout and/or website postings
- P5) Council and Client Management Project Package:
 - Customer most frequently asked questions package.
- P6) FATHOM customer portal for Client's Customers with access to the following:
 - Account Information:
 - i) Account Details
 - ii) Account Balance

- iii) Billing History
 - iv) Payment History
 - v) Usage History
 - vi) Customer Forms
 - Bill Payment:
 - i) Credit or debit card
 - ii) Checking account
 - iii) Sign up for automatic payments. Client to provide FATHOM necessary customer information to allow for customer ebill setup at launch of services.
 - Notifications/Alerts (to be sent via text or email):
 - i) Bill Ready
 - ii) Bill Past Due
 - Conservation Messaging
- P7) FATHOM utility administration portal for Client with access to customer care information, including account details including usage, billing and payment history
- P8) Support Desk Access via ticketing system
- P9) System Training:
 - Client Portal Training
 - Electronic Work Order system training

RECURRING SERVICES FOR LIFE OF CONTRACT:

FATHOM services will be provided in accordance with our full Scope of Service (SOS) document—summarized below as key deliverables and responsibilities for the project for convenience. In the event of any conflict between this document and the SOS document, the SOS will control. Any modifications and/or additional services requested may be subject to additional fees.

- R1) [SOS #21] User log-in and security configuration, provided as needed
- R2) [SOS #22] Software maintenance and IT hardware renewal
- R3) [SOS #02, #03, #05 and #06] Provide cycle billing services for Client water, sewer, stormwater and trash accounts to include:
 - Cycle billing reads loaded into the billing system for billing. Cycle billing reads include all read types, not exclusive to read file.
 - i) Review and processing of exceptions within seven (7) calendar days from receipt of the cycle billing reads.
 - Preparation and management of one billing calendar per year which includes all billing and subsequent collections related events.
 - i) Billing calendar will be provided to Client 60 days prior to effective date and Client must approve in writing not less than 30 days prior to the effective date.
 - ii) Once Client approval is received, if additional changes are requested to the calendar during course of year, Client may be quoted at an additional fee.
 - Calculate and prepare bills in accordance with FATHOM business best practices.
 - i) Each customer will receive one (1) bill each billing cycle.
 - ii) Prepare a digital version of each bill that is accessible through the FATHOM customer portal.

- iii) Print and mail one paper bill per active account on a single 8.5" x 11" page for those customers requesting a paper bill with a return envelope included.
 - Bill print template that may be changed once every five (5) years at no charge. Updates to the billing language or disclaimers will be provided when necessary and/or as directed by City management with reasonable advance notice.
 - Customer notification messages on the bills, up to twelve (12) unique messages per year.
 - Include Client-provided billing inserts up to twelve (12) times per calendar year (single page, 8.5 x 11 inch or 1/3-page inserts). The fees for printing and shipping inserts to mail house are not included and shall be Client's responsibility.
 - Additional mailings separate from the utility bill will be considered additional services.
 - Collections management campaign, limited to one (1) FATHOM standard mailed notice and one (1) FATHOM standard IVR outbound campaign.
 - i) Collections management includes FATHOM standard process for closed account collection processing, which is one (1) file per month sent to FATHOM selected vendor.
- R4) [SOS #20] Weekly transfer of collected funds via ACH
- R5) [SOS #14] Implementation of one rate value modification event per calendar year per service type, if needed. Client must provide FATHOM the Rate Change Control Form at least 60 days in advance of rate effective date or Client may be responsible for additional labor costs associated with delay.
- Average billing modification events or structure modifications will be quoted on a case by case basis.
- R6) [SOS #17] Monthly Reporting, provided to Client by the 5th of the following month
- Consumption Detail Report – Account details reported by customer class and service.
 - Consumption Summary Report – Usage summary reported by customer class and service type.
 - Commercial Greater than 20% – Comparison between current month usage and prior month usage, identifying commercial customers/accounts with a variance of greater than 20%.
 - Top 20 Users by Customer Class – Reports the highest usage users in each customer class.
 - Residential Greater than 50% – Comparison between current month usage and prior month usage, identifying residential customers/accounts with a variance of greater than 50%.
 - Transaction Detail – Reports every transaction in the fiscal month (includes cancel/rebilled details completed in the current month but related to a previous month).
 - Transaction Summary – Reports transactions by GL account and A/R type.
 - A/R Roll Forward – Reports the beginning A/R balance, transactions by type and the ending A/R balance. This is compared to the actual A/R Aging, and the variance is displayed.
 - A/R Aging Details – Reports aging in 30, 60, 90, 120 and 120+ increments by customer / account and status.
 - A/R Aging Summary – Reports aging, A/R and Prepaid balances.
 - Income Statement – Reports year-to-date revenue by month for each service type for the fiscal year.
- R7) [SOS #26] One on-demand outbound Interactive Voice Response (IVR)/Automated Phone System Campaign with unique message per calendar year.
- R8) [SOS #19] Support and management of payment interfaces & processes:
- Paperless billing.
 - Pay by phone.
 - Pay by mail.
 - Pay by credit or debit card.

- Pay locally.
 - Pay by electronic check.
 - Pay by ACH.
- R9) [SOS #19] Credit card processing services. Credit card fees, in accordance with state law, and other returned item/payment fees shall be the responsibility of the Customer.
- R10) Industry-leading best practices to include, but not limited to, returned check fees, unapplied payments, customer callbacks, payment arrangements and bankruptcies.
- R11) [SOS #23] Access to and support and management of the FATHOM customer portal
- R12) [SOS #23] Access to and support and management of the FATHOM utility administration portal for Client
- R13) [SOS #04] Support and management of the electronic service order system and the standard FATHOM service orders to support customer care, billing and field customer service.
- R14) [SOS #11] Dedicated ticketing support management system to effectively manage Client inquiries and concerns.
- R15) [SOS #16] 24/7 customer care with call center support, including
- Live customer care representatives available Monday through Friday, 8:00 a.m. to 5:00 p.m., Client local time, excluding holidays observed by FATHOM. A schedule of observed holidays will be provided yearly but will typically include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve and Christmas Day.
 - i) Includes monthly call volume of up to ten percent (10%) of the total number of managed accounts, rounded up to the next whole number. Calls in excess of the monthly call volume shall be charged at a rate of ten dollars (\$10) per call. Monthly call volume applies to calls handled by live customer care representatives only. Monthly call volume does not apply for one (1) year after CIS Go Live.
 - ii) Should the monthly call volume as described above exceed 10% after the first year of service, a modification to the call center pricing and/or the service level described below may be requested by the Client.
 - Average Speed of Answer (ASA) equal to or less than three (3) minutes on a monthly basis, provided that the monthly call volume does not exceed ten percent (10%) of the total number of managed accounts. ASA service level does not apply for the first sixty (60) days after CIS Go Live.
 - i) Monthly call center report will be provided to Client by 15th of the following month
 - Call recording and call storage of all calls for two (2) years.
 - Provide customer caller the contact information to appropriate Client Staff, when relevant.
 - After-hours service outside FATHOM operating hours including holidays.
 - i) In cases of emergency, after-hours support will contact/transfer to utility on-call operations personnel, and/or police and fire, where applicable.
- R16) [SOS #25] IVR system with functionality to
- Report an emergency.
 - Access general information.
 - Make payments.
 - Provide balances & payment history.
- R17) [SOS #17] As needed support for custom report development and delivery (at additional cost)

Any billing errors or omissions, whether human or mechanical, on FATHOM's part shall be corrected, in an expeditious manner, at no cost to the Client. Costs incurred to correct any error caused solely by the Client shall be charged as an additional service in an amount negotiated and approved by both FATHOM and the Client.

Scope of Services – Advanced Metering Infrastructure

The following outlines the key deliverables and responsibilities for the AMI and metering installation portion of the project. Any modifications and/or additional services requested may be subject to additional fees.

PROJECT MANAGEMENT SERVICES:

- PM1) Project schedule provided prior to start of work and updated monthly during implementation
- PM2) Weekly calls with Client-assigned project manager during implementation
- PM3) Monthly Onsite Project Management Meetings at client site as needed during implementation, with written agendas and meeting notes

PROJECT SERVICES:

- P1) Customer Education and Outreach Plan
 - Includes one mass mailing
 - Frequently asked questions handout and/or website postings
- P2) Council and Client Management Project Package
 - Customer most frequently asked questions package
- P3) AMI Network propagation study
- P4) Meter exchange process documentation and sign-off document
- P5) Installation of metering and AMI equipment, includes gaskets for replaced meters and standard box cleanout where applicable
 - Meter exchanges assume replacement meter is the same size as the meter to be replaced
- P6) Deployment of head-end system/meter data management system
- P7) Extranet site for Support Desk Access via ticket system
- P8) System Training
 - AMI Module Repair and Replacement Training
 - AMI Software Training
 - Client Portal and Reporting System Training
 - Electronic Work Order Training
- P9) Data Collector Installation Plan and Inspection
- P10) Verification report showing that 100% of AMI modules have successfully reported to head-end system
- P11) Quality control reports at 30, 120 and 300 days from completed installation

RECURRING SERVICES FOR LIFE OF CONTRACT

- R1) User log-in and security configuration, provided as needed
- R1) Access to and support and management of meter data management system
- R2) Software maintenance and hosted IT hardware maintenance
- R3) Monthly reads loaded into the billing system for billing
- R4) Quarterly review of system performance with a dedicated account manager

**EXHIBIT C
FEE SCHEDULE**

This schedule defines the fees to be paid by Client to FATHOM under this Agreement.

1. Implementation Fee.

The Implementation Fee is a one-time fee based on providing the required AMI equipment and non-recurring deliverables described in **Exhibit B**. The total Implementation Fee shall be a maximum of \$2,541,961 and will be invoiced and paid as detailed below, dependent upon the fee type.

| Fee Type | Fee Basis | Fee Amount |
|---|---|-------------------|
| Agreement Signing | One Time: billable upon agreement signing | \$175,000 |
| Third Party Expenditures (Fees charged for metering and AMI equipment and related services outlined in Exhibit E , received from third party vendors as part of implementation.) | As Incurred: billable upon issuance of purchase orders or similar authorizations from FATHOM to Third Party suppliers for goods and services, excluding equipment installation. Such purchase orders or similar authorizations will be approved by Client prior to issuance. | \$1,266,983 |
| Equipment Installation | As Incurred/Installed: billable upon the start of the meter exchange and invoiced monthly. Fees determined by the number of installed or retrofitted water meters for the period. | \$409,960 |
| Implementation Project Milestones (Remainder of Implementation Fee net of Agreement Signing, Third Party Expenditures and Equipment Installation fee types) | Milestone Based: billable based on completed milestones of the Agreement as follows: <ol style="list-style-type: none"> 1. Network Hardware Installation: 30% 2. CIS Go Live: 60% 3. Project Completion: 10% | \$690,018 |

FATHOM will provide the applicable invoice(s) for the Implementation Fee only after FATHOM has, in its sole and absolute discretion, deemed the criteria met. All invoiced payments are due to FATHOM within fourteen (14) business days.

2. Recurring Services Fees.

The Recurring Services Fees will be billed monthly as follows, based on the number of Managed Accounts. The number of Managed Accounts will be calculated once per month and will be equal to the maximum number of Managed Accounts since the previous calculation, beginning at CIS Go Live.

| Fee Type | Monthly Fee | Adjustments |
|--------------------------------|--------------------------------------|---|
| Monthly Recurring Services Fee | \$4.33 per Managed Account per month | <i>Inflation Adjuster.</i> The monthly fee shall be subject to an increase each year equivalent to the CPI factor for the applicable region commencing on the date specified below. |

All Recurring Services Fees shall be adjusted annually on July 1st based on the 12-Month change in the Consumer Price Index – United States City Average – for All Urban Consumers and all Items published by the United States Department of Labor, Bureau of Labor Statistics (the “**Index**”) per the Index for the month of March prior to the annual adjustment date. Written notification of the adjustment will be provided to the Client by May 1st prior to the adjustment. The first adjustment will occur on July 1, 2021. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be utilized, and modified as necessary, to obtain substantially the same result as would have been obtained if the Index had not been discontinued or revised. Annual adjustments will be calculated based on the prior year’s fees for the Recurring Services, plus the inflation adjuster as described above. At no point will any change result in a reduction of fees and not-with-standing any provision herein the annual adjustment shall not exceed four (4%) percent in any single year.

FATHOM’s Recurring Services Fee is designed to cover normal operating and predictable costs for the services detailed in the Scope of Services. Additional fees in excess of the Recurring Services Fee may be charged for out of scope services and non-estimated costs, including but not limited to the following:

- Client calls exceeding the call volume cap detailed in the Scope of Services, effective one (1) year after CIS Go Live.
- Holdover bills due to outstanding Client service orders. Bills held for more than 15 days awaiting a service order from the client shall be assessed a \$10 charge for each month they are not billed. Client can avoid this charge by allowing FATHOM to estimate bills or completing services order within 15 days of bill dates. This helps ensure regular billing for customers and offsets additional FATHOM costs for mitigating customer issues with non-regular billing.
- Returned banking items. Returned banking items shall be billed to Customer at \$20 per item. This includes both non-sufficient fee (NSF) charges and the submittal of incorrect banking information by the Customer on web or other payment platforms.
- Credit Card use fees. For those Customers electing to use a credit card to make a payment, credit card use fees shall be charged at the current rate the credit card processor charges FATHOM (currently 2.85% of the amount charged). These fees shall be charged to the Customer at FATHOM’s costs plus 10%subject to the maximum allowed by Tennessee law.

3. **Payments**

All payments from Client to FATHOM will be made via ACH, Wire or check. Payment instructions to be provided with invoice. If paying by check, Client must send payment with a tracking number and provide that number to FATHOM in advance of the payments' arrival.

**EXHIBIT D
CONTACTS**

CLIENT PROJECT MANAGER

Finance Director

Name: John Trusty

Address: 7930 Nelson Road

City, State, Zip: Millington, TN 38053

Phone: 901-873-5701

Fax: 901-872-4133

Email: j.trusty@millingtontn.gov

FATHOM PROJECT MANAGER

Global Water Management, LLC.

Name: Jessica Cole

Address: 21410 N. 19th Avenue, Suite 201

City, State, Zip: Phoenix, AZ 85027

Phone: 512-656-6269

Fax: (623) 580 9659

Email: jessica.cole@gwfathom.com

EXHIBIT E
SALE OF METERS AND ADVANCED METERING INFRASTRUCTURE (AMI)

FATHOM will sell the meters and Advanced Metering Infrastructure (AMI) required under this Agreement directly to the Client. The Client will purchase the AMI directly from FATHOM, and will issue FATHOM a purchase order, and an exemption certificate, upon FATHOM's request.

The following is a list of meters and AMI expected to be sold:

- E1) 2,243 – 5/8" x 3/4" Positive Displacement Meters with Encoder Register and Endpoint
- E2) 826 – 1" Positive Displacement Meters with Encoder Register and Endpoint
- E3) 23 – 1-1/2" Positive Displacement Meters with Encoder Register and Endpoint
- E4) 54 – 2" Positive Displacement Meters with Encoder Register and Endpoint
- E5) 8 – 2" Turbine Meters with Encoder Register and Endpoint
- E6) 2 – 1" Turbine Meters with Encoder Register and Endpoint
- E7) 1 – 4" Turbine Meters with Encoder Register and Endpoint
- E8) 9 – 2" Compound Meters (non-fire) with Encoder Registers and Endpoints
- E9) 5 – 4" Compound Meters (non-fire) with Encoder Registers and Endpoints
- E10) 13 Solar Powered Data Collectors
- E11) AMI Manufacturer Software

The Implementation Fee is based on the metering scope above. Any changes in metering scope due to additional meters found in the system or discrepancies in sizes and quantities may increase the overall project cost and those additional costs will be the sole responsibility of the City.

DELIVERY ADDRESS OF AMI. This Agreement establishes the AMI delivery address for AMI purchased from FATHOM by Client. The Parties agree that Client's ship-to address for all purchases of AMI and any licenses associated with AMI (if applicable), is the physical location of delivery at Client's place of business or warehouse.