## ORDINANCE 2019-20

## AN ORDINANCE AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR AND/OR THE MAYOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A SERVICE AGREEMENT WITH SUEZ

**WHEREAS,** the Village of Commercial Point owns and operates utilities for its citizens; and

**WHEREAS**, the Village desires to update its utility services; and

**WHEREAS**, SUEZ Utility Services Company is a comprehensive utility technology and maintenance service provider.

**NOW THEREFORE BE IT ORDAINED** by the Council of the Village of Commercial Point, Ohio that:

**SECTION 1:** The Council of the Village of Commercial Point does hereby grant approval of the service agreement attached as Exhibit "A."

**SECTION 2:** The Village Mayor/Administrator is hereby directed to execute said service agreement document on behalf of the Village of Commercial Point.

**SECTION 3:** This ordinance shall become effective upon the earliest date allowed by the laws of the State of Ohio.

Vote on Suspension of Readings:

Motion by: _____ 2nd _____

Roll Call:

___ Bruce Moore ___ Ben Townsend ___ Laura Wolfe
___ Aaron Grassel ___ Scott O'Neil ___ Jason Thompson

Vote on Passage of the Ordinance:

Motion by: Bruce Moore 2nd Jason Thompson

Roll Call:

Yes Bruce Moore Yes Ben Townsend Yes Laura Wolfe
Yes Aaron Grassel Yes Scott O'Neil Yes Jason Thompson

Adopted this 4th day of November, 2019.

Gary Joiner, Mayor

Wendy Hastings

Wendy Hastings, Fiscal Officer

Approved as to Form:

Frost Brown Todd, LLC, Law Director

MASTER SERVICES AGREEMENT
Terms and Conditions

This MASTER SERVICES AGREEMENT ("Agreement") is entered into by and between VILLAGE OF COMMERCIAL POINT with a principal business address of 10 West Scioto St, Commercial Point, OH 43116 ("Owner"), and UTILITY SERVICE CO., INC., a Georgia corporation with a principal business address of 1230 Peachtree Street, NE, Suite 1100, Atlanta, Georgia 30309 ("Company").

WHEREAS, the Owner and Company (collectively, "the Parties") desire for Company to provide goods and services to Owner under the terms set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Scope.** The Company agrees to provide the Owner with certain goods and services ("Services") set forth on each properly executed SOW to be attached hereto and incorporated herein by reference. Each SOW shall be subject to the general terms and conditions (the "Terms and Conditions") set forth in this Agreement. Each time Owner engages Company to perform Services, a new SOW shall be prepared specifying the scope of Services specific to that engagement. Unless otherwise indicated in any given SOW, Company shall be responsible for furnishing all labor and materials to perform the Services. Each new SOW represents a separate contract between Company and Owner that incorporates the Terms and Conditions and is governed by this Agreement. All changes to any SOW may only be made by a written amendment to such SOW and signed by an authorized representative of each Party. Owner may terminate a SOW in accordance with the terms of each SOW. In the event there is a conflict between any term of an SOW and this Agreement, the term(s) of the SOW shall control.

**2. Term.** The effective date of this Agreement shall be November 4, 2019 ("Effective Date"). The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for one year ("Term"). This Agreement will automatically renew for successive one-year terms ("Renewal Terms") unless terminated as set forth in Section 9 of this Agreement. The term of an SOW shall begin on the commencement date provided in that SOW and continue in effect for the agreed term provided in that SOW.

**3. Fees.** For all Services performed, Owner shall pay Company in accordance with the terms of each SOW. The fees paid in accordance with each SOW shall constitute the full and complete compensation to Company for the Services performed pursuant to the SOW. Unless otherwise expressly set forth in any given SOW, Company shall be responsible for expenses it incurs in connection with its provision of the Services.

**4. Independent Contractor.** Company is, and shall at all times remain, an independent contractor. Company and each of Company's employees and principals shall not be deemed for any purpose to be Owner's employees, and they shall not be entitled to any claims, rights, benefits and privileges to which an employee of Owner or any if its respective affiliates may be entitled under any retirement, pension, insurance, medical or other plans which may now be in effect or which may hereafter be adopted. Owner is not responsible to any governing body or to Company for paying or withholding payroll taxes and other employee expenses related to payments made to Company. Notwithstanding anything to the contrary, this Agreement does not, and shall not be deemed to, constitute a partnership or joint venture between the Parties and

neither Party nor any of their respective directors, officers, officials, or employees shall, by virtue of the performance of their obligations under this Agreement, be deemed to be an agent or employee of the other. No Party has the authority to bind another Party except to the extent approved in writing by the Party to be bound.

**5. Insurance.** Company shall maintain statutory minimum Worker's Compensation as required by the laws of any jurisdiction in which Services are performed, and commerciai general liability insurance covering Company's liabilities hereunder and for injury to persons or damage to property with limits of not less than $2,000,000 per occurrence. Upon Owner's request, Company shall furnish Owner with a certificate of insurance evidencing this coverage.

**6. Representations.** Company represents and warrants that Company has the full power and authority to enter into and perform under this Agreement; that the execution, delivery and performance of this Agreement has been duly authorized and constitutes a valid and binding agreement of Company; and that the execution, delivery and performance of this Agreement will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Company is a party to a non-competition agreement or bound by any competitive restrictive covenant concerning or relating to, in any manner, the performance by Company of services similar to the Services to be performed hereunder.

**7. Indemnification.** Company shall indemnify Owner and its officers and officials from and against any claims, actions, and suits resulting from and to the extent of the Company's negligence while performing the Services hereunder. Company's indemnification obligations hereunder shall be subject to Owner's prompt notification to Company with respect to the pertinent third-party claim(s).

**8. Assignment of Receivables.** The Company reserves the right to assign any outstanding receivables from this Contract to its financial institutions as collateral for any loans or lines of credit.

**9. Termination.** Termination. This Contract or any individual SOW is subject to termination by the either party upon delivery to the other party a written notice of termination. Such notice of termination shall be given to the other party at least ten (10) days prior to the effective date of such termination. Such notice of termination may only be given for any one of the following reasons:

1) If the other Party becomes insolvent, commits any act of bankruptcy, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or
2) if a receiver or trustee of any property or income of the other Party is appointed; or
3) if the other Party:
    a. defaults in any material manner in its performance under this Agreement and
    b. fails within forty-five (45) days (or within such longer period as may be otherwise reasonable due to the circumstances) to take reasonable steps to remedy such default after written notice of default is received by the other Party.

However, in the event of termination by the Owner, the Company shall be entitled to immediate payment for all Services actually and properly performed up to and including the date of

termination. A "Contract Year" shall be defined as each consecutive 12-month period following the first day of the month in which the Contract is executed by the Owner and each subsequent 12-month period thereafter during the time the Contract is in effect. For illustrative purposes, if a contract is signed by an Owner on June 15, 2019, Contract Year 1 for that contract would be June 1, 2019 to May 31, 2020, and Contract Year 2 for that contract would be June 1, 2020 to May 31, 2021 and so on.

**10. Intellectual Property.** The Owner acknowledges that all intellectual property rights in the Services, their method of delivery, and all related know-how are owned by the Company or its licensors. The Owner hereby agrees and acknowledges that this Agreement and its SOWs shall not be construed as a license for the Owner to use, deliver, or exploit the intellectual property used by the Company in delivering the Services. To the extent that any new intellectual property or know-how is developed as a result of carrying out the Services, the new intellectual property rights will all be owned by the Company or its licensors, and the Owner agrees that it will not make a claim to any such new intellectual property rights.

**11. Limitation of Liability. IN NO EVENT WILL THE COMPANY OR ITS RESPECTIVE AFFILIATES, SUBSIDIAIRES, OFFICERS, DIRECTORS, OFFICIALS, AND EMPLOYEES OR ITS SUPPLIERS (INCLUDING, BUT NOT LIMITED TO, ACLARA TECHNOLOGIES LLC) BE LIABLE FOR ANY LOSS OF REVENUE, PROFITS, OR DATA, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) WHICH ARISES OUT OF THE COMPANY'S OR ITS SUPPLIERS' PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. THE TOTAL LIABILITY OF THE COMPANY, ITS AFFILIATES, SUBCONTRACTORS, AND EMPLOYEES ARISING OUT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER ANY SOW, INCLUDING BUT NOT LIMITED TO, THE SALE, DELIVERY, STORAGE, INSTALLATION, REPAIR, MODIFICATION OR USE OF THE EQUIPMENT OR THE RENDITION OF OTHER SERVICES IN CONNECTION THEREWITH SHALL NOT EXCEED, IN THE AGGREGATE, A SUM EQUAL TO FIFTEEN PERCENT (15%) OF THE TOTAL OF INVESTMENT FEES SET FORTH IN THE APPLICABLE SOW.**

**12. Rules of Construction.** In construing this Agreement and the SOWs, the following principles shall be followed: (a) no meaning may be inferred from any presumption that one Party had a greater or lesser hand in drafting this Agreement; (b) examples do not limit, expressly or by implication, the matter they illustrate; (c) the plural shall be deemed to include the singular and vice versa, as applicable; and (d) the headings are for convenience only and do not affect the meaning or construction of any such provision. The Parties specifically acknowledge and agree: (a) that they have a duty to read all of the documents constituting this Agreement, including its SOWs, and that they are charged with notice and knowledge of the terms in this Agreement, including its SOWs; and (b) that it has in fact read this Agreement, including its SOWs, and is fully informed and has full notice and knowledge of the terms, conditions and effects of this Agreement, including its SOWs. **Each Party further agrees that it will not contest the validity or enforceability of any provision of this Agreement on the basis that it had no notice or knowledge of such provision or that such provision is not conspicuous.**

**13. Third Party Liability Cap.** Notwithstanding any contrary provisions contained in

this Agreement, the Company's indemnification obligations for third-party claims pursuant to Section 9 shall be capped at and shall not exceed the applicable insurance policy limit(s) set forth in Section 5.

13. **Miscellaneous.**

a. **Notices.** All notices hereunder shall be in writing and shall be sent by certified mail, return receipt requested, or by overnight courier service, to the address set forth below each Party's signature, or to such other addresses as may be stipulated in writing by the Parties pursuant hereto. Unless otherwise provided, notice shall be effective on the date it is officially recorded as delivered by return receipt or equivalent.

b. **Entire Agreement; Amendment.** This Agreement and each properly executed SOW supersedes all prior agreements, arrangements, and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter thereof. This Agreement may not be amended except by written instrument executed by both Parties. In the event of a conflict between the terms of any given SOW and this Agreement, the terms of the SOW shall prevail. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

c. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party. Any attempt to assign this Agreement without the prior written consent of the other Party shall be null and void. A change in control of a Party shall not be deemed an assignment of this Agreement.

d. **Force Majeure.** If either party is prevented from performing any of its duties or obligations hereunder (other than duties or obligations with respect to payment) in a timely manner by reason or act of God, strike, labor, dispute, flood, public disaster, equipment or technical malfunctions or failures, power failures or interruptions or any other reason beyond its reasonable control, such condition shall be deemed to be a valid excuse for delay of performance or for nonperformance of any such duty or obligation for the period during which such conditions exist.

e. **Survival of Certain Provisions.** Notwithstanding the termination or expiration of this Agreement, the provisions of Sections 6, 10, and 11 shall survive and continue and bind the parties and their legal representatives, successors and permitted assigns.

f. **No Waiver.** The waiver of any breach or failure of a term or condition of this Agreement by any party shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other breach or failure of a term or condition of this Agreement.

g. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. The Parties may utilize electronic means (including facsimile and e-mail) to execute and transmit the Agreement and all such electronically executed and/or transmitted copies of the Agreement shall be deemed as valid as originals.

h. **Dispute Resolution.** In the event a dispute arises among the Parties, to include a contested invoice, the disputing Party shall provide the other Party with written notice of the dispute, and within five (5) days after receipt of said notice, the receiving Party shall submit to the other a written response. The notice and response shall include a statement of each Party's position and a summary of the evidence and arguments supporting its position. Each Party shall designate a high level manager to work together in good faith to resolve the dispute; the name

and title of said employee shall also be included in the notice and response. The managers shall meet at a mutually acceptable time and place within ten(10) days of the date of the disputing party's notice and thereafter as they deem reasonably necessary to resolve the dispute. If the managers, having acted in good faith, have not resolved the dispute within thirty (30) days of receipt of the initial written notice, then the Parties shall try in good faith to resolve the dispute by non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. If either Party is unsatisfied with the results of mediation and cannot resolve the dispute and/or claim at mediation, it shall be submitted to binding arbitration. Any such dispute and/or claim will be resolved by binding arbitration in accordance with the Rules for Commercial Arbitration of the American Arbitration Association before a panel of three (3) arbitrators, one appointed by each Party, and the third appointed by the agreement of the first two arbitrators. The decision or award of a majority of the arbitrators shall be final and binding upon the Parties. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. Each Party's costs and expenses attributed to the negotiation, mediation, and/or arbitration shall be borne by such Party. The parties agree that any mediation or arbitration shall be located in Memphis, Tennessee, as the closest major city to the Owner.

**h. Jurisdiction.** Any claims or disputes under this Agreement are subject to the laws and jurisdiction of the state of Ohio, except for the Host Software License, which shall be subject to the laws of the state of Delaware.

WHEREFORE, for the purpose of being bound, the Parties execute this Agreement by their duly authorized representatives as of the date(s) set forth below.

**OWNER**

VILLAGE OF COMMERCIAL POINT

By: _____

Name: D. Ross Grego

Title: Village Administrator

Date: November 6.2019

**COMPANY**

UTILITY SERVICE CO., INC.

By: _____

Name: J. Shane Albritton

Title: Vice President, Legal

Date: October 4, 2019

**Notice Address for Each Party:**

VILLAGE OF COMMERCIAL POINT, OHIO

Attn: Wendy Hastings

P.O. Box 56

Commercial Point, OH 43116

Utility Service Co., Inc.

Attn: Customer Service Department

Post Office Box 1350

535 General Courtney Hodges Boulevard

Perry, Georgia 31069