

**ONLINE BACKFLOW & CSI MANAGEMENT SYSTEM
SERVICE AGREEMENT**

This Service Agreement (this “Agreement”) is entered into effective as of the latest countersigned date appearing below by and between the City of Mansfield, (the “City”), and Vepo, LLC, a Texas limited liability company (“Vepo”). Each of the City and Vepo are a “Party” or “Parties”.

RECITALS

WHEREAS, the City has determined it is in the City’s best interest to engage a professional service provider for the services described herein; and

WHEREAS, the Parties have read and understood the terms and provisions set forth in this Agreement and have been afforded a reasonable opportunity to review this Agreement with their respective legal counsel;

NOW, THEREFORE, in consideration of the premises, mutual promises, covenants, obligations and benefits herein contained, the City and Vepo agree as follows:

I. SERVICES

Section 1.01. Services. Vepo shall provide a secured Internet based system allowing Backflow Prevention Assembly Testers (BPAT) to input Texas Commission on Environmental Quality (TCEQ) approved backflow Test and Maintenance (T&M) Reports, and Customer Service Inspectors (CSI) to enter TCEQ approved Customer Service Inspection Certificates, herein referred to as the "Online Backflow & CSI Management System" and make the information and reports available for review by the City at their discretion.

II. DATA

Section 2.01. Data. Data is defined as the electronic information provided by BPAT and required by the TCEQ for the submittal of backflow T&M Reports and/or CSI Certificates collected by Vepo’s Online Backflow & CSI Management System.

Section 2.02. Ownership. Vepo hereby assigns, without any requirement of further consideration, all right, title, or interest Vepo may have to the Data, including any copyrights or other intellectual property rights to the same. Subject to the provisions of this Agreement, the City hereby grants to Vepo a non-exclusive, non-transferable, right to internally use the Data for the sole purpose of enabling Vepo to develop, test, and support the Online Backflow & CSI Management System.

Section 2.03. Authorized Access to Data. Vepo will maintain a record of those persons in the employment of Vepo who have authorized access to the Data, and shall ensure all authorized persons maintain confidentiality and permissible use of the Data. Third party BPAT and CSI’s will be able to access the Data by account number only.

Section 2.04. Confidentiality and Other Uses of Data. Vepo shall not make use of the Data for any commercial purpose other than as outlined herein or subsequently approved by the City, whether to the benefit of Vepo or a third party.

Section 2.05. Export. Vepo acknowledges that the Data is solely owned by the City and Vepo will arrange for export of the Data to an SQL server, or to an FTP site or Cloud location in either a Microsoft Access database format or comma separated values (CSV) based on an agreed upon schedule.

III. FEES AND TERM

Section 3.01. Fees. Vepo offers the use of the Online Backflow & CSI Management System to the City at no cost to the City and the City shall not be liable to Vepo for any costs or fees. All fees will be paid directly to Vepo by the BPAT and/or the CSI.

Section 3.02. Term. The service shall begin on the countersignature date hereof and this Agreement will remain in effect for three (3) years thereafter (the “Initial Term”) unless sooner terminated under this Agreement, which term shall automatically renew for successive one-year terms, unless 60 days prior written notice is given by either party.

IV. GENERAL CONDITIONS

Section 4.01. Vepo’s Duties. Vepo covenants with the City to furnish its best skill and judgment in providing the Services for the City. Vepo agrees to furnish efficient business administration and superintendence and to use its best efforts to furnish at all times an adequate supply of workmen, materials and equipment to perform the Services in the most expeditious and economical manner. Vepo agrees to exercise reasonable diligence in performing the Services, using the degree of care and skill that a prudent person in the same or similar profession would use.

Section 4.02. Relationship of the City and Vepo. Vepo has been authorized by the City for the sole purpose and to the extent set forth in this Agreement. It is understood and agreed that all work so done by Vepo shall meet with the City’s reasonable approval, but that the detailed manner and method of performing the Services shall be under the control of Vepo. Vepo’s relationship to the City during the term of this Agreement is that of an independent contractor. The relationship between the City and Vepo is not exclusive.

Section 4.03. Insurance and Indemnification. Vepo shall maintain the insurance coverage outlined hereinbelow throughout the term of this Agreement. Certified copies of each policy shall be furnished to the City upon the City’s request. Vepo shall not violate or knowingly permit to be violated any condition of the insurance policies. Cancellation or expiration of any of said insurance policies shall not preclude the City from recovery thereunder for any liability arising under this Agreement. The duty to provide insurance coverage is independent of the defense and indemnity obligations set forth in this Section 4.03 of this Agreement. Promptly after signing of this Agreement and thereafter upon the City’s request, or the renewal, or the replacement of each required policy of insurance under this Agreement, Vepo shall provide the City with certificates of insurance and required endorsements under this Agreement.

Vepo's commercial general liability and cyber liability policies shall name the City as an additional insured for claims caused in whole or in part by Vepo's acts or omissions during Vepo's Services, and shall specify that it acts as primary insurance and that no insurance effected by the City shall be called upon to cover a loss under the policy so procured or caused to be procured by the City.

Vepo shall obtain the following insurance from companies having a Best's rating of B+/VII or better and licensed to transact business in the State of Texas:

- A. Commercial General Liability Insurance with limits not less than:
 - a. \$2,000,000 general aggregate limit
 - b. \$1,000,000 each occurrence, combined single limit

- B. Professional Liability Insurance with limits not less than \$1,000,000. This insurance shall have an effective date prior to the beginning of any work under this Agreement, with coverage of an extended reporting period of two years after the completion of any work done by Vepo under this Agreement, in the event that such policy expires, is cancelled, or not renewed during any term of this Agreement.

- C. Workers Compensation. If required by applicable law, Vepo shall maintain workers compensation insurance, in statutory form. The employer's liability insurance shall have limits of not less than \$1,000,000 per accident or occurrence and in the aggregate.

VEPO SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, OR CAUSES OF ACTION (AND ALL LOSSES, LIABILITIES, EXPENSES, AND JUDGMENTS INCURRED IN CONNECTION THEREWITH, INCLUDING ATTORNEYS' FEES AND EXPENSES, COURT COSTS, AND OTHER EXPENSES INCURRED IN ENFORCING THIS INDEMNITY PROVISION) BROUGHT BY ANY THIRD PARTY, BASED UPON, OR IN CONNECTION WITH, RESULTING FROM, OR ARISING OUT OF, THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VEPO'S AUTHORIZED AGENTS. ANY INDEMNIFIED PARTY SHALL GIVE PROMPT NOTICE TO VEPO OF ANY CLAIM OR OF THE COMMENCEMENT OF ANY PROCEEDING AGAINST THE INDEMNIFIED PARTY BROUGHT BY ANY THIRD PARTY WITH RESPECT TO WHICH SUCH INDEMNIFIED PARTY SEEKS INDEMNIFICATION PURSUANT HERETO. THIS SECTION SHALL NOT AFFECT ANY OTHER REMEDIES EITHER PARTY MAY HAVE UNDER THIS AGREEMENT.

The indemnity and insurance provisions set forth in this Section 4.03 shall survive the expiration or termination of this Agreement for a period of one (1) year.

Section 4.04. Termination. Upon a breach of this Agreement, either Party may terminate this Agreement upon thirty (30) days written notice to the other Party. The City and Vepo do not waive any other remedy allowed under Texas law. Vepo shall be entitled to payment for all outstanding amounts owed and for all Services performed during such thirty (30) day post-termination notice period.

Section 4.05. Breach. Subject to the termination provisions of Section 4.04, any failure by a Party to comply with any of its material obligations contained herein shall constitute a material breach and shall entitle the Party not in breach (“Non-Breaching Party”) to give to the Party in breach (“Breaching Party”) written notice specifying the nature of the breach. Such notice shall require the Breaching Party to make good or otherwise cure such breach. If such breach is not cured within 30 days after the receipt of notice (or, if such default cannot be cured within such 30-day period, and the Breaching Party does not commence actions to cure such breach within such period and thereafter diligently continue such actions and cure such breach within 60 days after the receipt of such notice), then the Non-Breaching Party shall be entitled, without prejudice to any of the other rights conferred on it by this Agreement, to terminate this Agreement upon written notice to the Breaching Party.

Section 4.06. Notice. Notice provided for in this Agreement shall be sent by certified mail, return receipt requested, or nationally recognized overnight courier with postage thereon fully prepaid, to the addresses designated for the parties on the last page of this Agreement.

Section 4.07. Agreement Controls. To the extent that there is any inconsistency between the provisions of this Agreement and any attachments or exhibits hereto, the terms of this Agreement shall control.

Section 4.08. Modifications. This Agreement shall be subject to amendment, change or modification only with the prior mutual written consent of both Parties.

Section 4.09. Force Majeure. In the event either Party to this Agreement is rendered unable, wholly or in part, by force majeure including an act of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders of any kind of superior government of the United States or the State of Texas or any civil or military authority (other than a Party to this Agreement); insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; droughts; arrests; civil disturbances; explosions; or other inability similar to those enumerated; to carry out its obligations under this Agreement, it is agreed that Party shall give written notice of such act to the other Party as soon as possible after the occurrence of the cause relied on and shall, thereafter, be relieved of its obligations, so far as they are affected by such act, during the continuance of any inability so caused, but for no longer.

Section 4.10. Agreement Subject to Applicable Law. This Agreement and the obligations of the parties hereunder are subject to all rules, regulations and laws which may be applicable by the United States, the State of Texas or any other regulatory agency having jurisdiction.

Section 4.11. Governing Law. This Agreement is governed in accordance with the laws of the State of Texas and shall be enforceable in any of the courts of competent jurisdiction in Tarrant County, Texas.

Section 4.12. Waiver. No waiver or waivers of any breach or default by a Party hereto of any term, covenant or condition or liability hereunder of performance by the other Party of any duty or obligation hereunder will be deemed a waiver thereof in the future, nor will any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 4.13. Intended Beneficiaries. This Agreement is for the sole and exclusive benefit of the City and Vepo and will not be construed to confer any benefit upon any other third party.

Section 4.14. Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons or circumstances will not be affected hereby.

Section 4.15. Authority. The City and Vepo represent and warrant that each have the right and capacity to enter into this Agreement and fully perform all obligations hereunder.

Section 4.16. Entirety of Agreement. This Agreement and any exhibits attached hereto contain the entire understanding between the Parties and supersede any prior understanding or written or oral agreements between them respecting this subject matter. There are no representations, agreements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement not fully expressed in this Agreement.

Section 4.17 Section Headings. Section Headings are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.

Section 4.18 Signatures. This Agreement may be signed in any number of counterparts, in original or scanned formats, with the same effect as if the signatures thereon were original and upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, as of the date set forth on the first page hereof.

City of Mansfield:

Vepo, LLC:

John S. DeCell

Date Signed: _____

Date Signed: _____

City of Mansfield
620 Wisteria St
Mansfield, TX 76063

Vepo, LLC
25740 Century Oaks Blvd.
Hockley, Texas 77447