



**PREQUALIFIED REFERRAL PROGRAM:**  
**SPRINGNET SERVICES CUSTOMER**  
**REFERRAL PROGRAM**

City Utilities of Springfield, Missouri

**JUNE 2023**

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## I. OWNER AND PREQUALIFICATION PROCESS GENERAL INFORMATION

### A. About City Utilities of Springfield, Missouri

City Utilities of Springfield (CU) is a municipal utility located in Springfield, Missouri. CU offers the following services:

- The generation, transmission and distribution of electric power
- The acquisition, transportation and distribution of natural gas
- The acquisition, treatment and distribution of water
- The operation of the bus transportation system
- The operation of SpringNet broadband services

CU has approximately 110,000 electric customers, 82,000 natural gas customers and 80,000 water customers. CU's service territory is approximately 350 square miles, mostly within Greene County, and contains approximately 2,009 miles of electric transmission and distribution infrastructure, 1,259 miles of natural gas distribution infrastructure, and 1,254 miles of water distribution infrastructure. More information can be found at [www.cityutilities.net](http://www.cityutilities.net).

SpringNet is a division of CU that provides broadband services over fiber. As of April 2023, SpringNet has 1,799 customer contracts and 3,009 miles of fiber.

### B. What Does "Prequalified" Mean?

The Prequalification of Referrers for the SpringNet Referral Services is a screening process utilized to identify industry relevant Firms that are uniquely capable of understanding SpringNet's service offerings so those Firms can recommend SpringNet's services to their qualifying client networks and generate referral business opportunities for CU. Complete program details, including referral compensation, can be found in Section VII - SpringNet Services Customer Referral Program Agreement.

### C. Definitions

- 1) When used in this document, the terms "Project" and "Contract" are synonymous.
- 2) Wherever these documents refer to CU's "discretion" or "reserves a right" the meaning of these terms shall be interpreted to allow CU to make a decision based upon their sole judgement which may be based upon any reason whatsoever, or for no reason and the decision shall not be appealable by any other party.

\*\*\* END OF SECTION \*\*\*

## II. APPLICATION INSTRUCTIONS AND REQUIREMENTS

- A. The completed Prequalified Referral Application shall be submitted to:

City Utilities of Springfield  
Purchasing Department  
301 East Central (65802)  
P.O. Box 551  
Springfield, MO 65801-0551  
417-831-8363  
Or emailed  
Email: [Purchasing@cityutilities.net](mailto:Purchasing@cityutilities.net)

- B. The Prequalified Referral Application (Section III.A) shall be completed in full by typing or legibly hand lettering in ink. If more space is needed on any part of the application, additional sheets should be attached that clearly reference the appropriate section and item number to which the additional information pertains.
- C. All information submitted on or referenced/attached to a Prequalified Referral Application shall become the sole property of City Utilities.
- D. Submittal of the Prequalified Referral Application shall indicate a Firm's acceptance of the entire document.
- E. City Utilities is not liable for any cost incurred by Firms for preparation of the Prequalified Bidder Application.
- F. Material misstatements on the Prequalified Referral Application or any additional information submitted therewith may be grounds for rejection of that application. Any such misstatement, if discovered after a Purchase Order Notice of Award or Project Notice to Proceed is issued, may be grounds for immediate termination of the contract at no cost or liability to City Utilities. Additionally, a Firm will be liable to City Utilities for any additional costs or damages to City Utilities resulting from such misstatements, including costs and attorneys' fees for collecting such costs and damages.
- G. Noncompliance at any time with any of the requirements specified in the Prequalified Referral Application, or omissions of information in response to any question asked by City Utilities, will be reason for disqualification. Any incorrect contact information supplied for a contact person or reference may disqualify that reference. Additionally, City Utilities reserves the right to:
- waive irregularities in determining a Firm's qualifications
  - waive any informalities stated in this document
  - reject any and all information submitted in response to this document
  - require the submission of additional information
- H. A Contractor will be approved as a Prequalified Referrer on the basis of an evaluation of all factors judged to be in the best interest of City Utilities. These factors include, but are not limited to, responses and supplemental information provided in response to the Prequalified Referral Application, a Firm's previous performance of work for City Utilities, as well as for other utilities and/or other entities, and any other factor as determined by City Utilities regardless of whether that factor has been listed in this document.

At the sole discretion of City Utilities, a Firm whose application generally indicates the ability to perform the work described in this Prequalified Referral Program, but lacks satisfactory detail or specific information that would support an unqualified approval, may be approved on a probationary basis. Any Firm that fits into this category will be designated as a "Restricted Prequalified Referrer."

- I. When there is a material change in any information that a Firm submitted for prequalification, the Firm shall promptly notify City Utilities of such change in writing. Additionally, if at any time after being approved by City Utilities as a Prequalified Referrer, a Firm experiences the loss or replacement of key personnel, then the Firm shall immediately report said loss or replacement to City Utilities' Purchasing Department. City Utilities may, without liability, in their sole discretion, terminate a Firm's prequalification status and any or all contracts with the Firm for any of the following reasons:
- Breach of contract
  - The Firm fails to notify City Utilities' Purchasing Department immediately of the loss or replacement of key personnel; or
  - The Firm fails to replace key personnel immediately with personnel satisfactory to City Utilities, in its sole discretion.
- J. Periodically as determined by City Utilities, Firms will be contacted to update their Prequalification Application and/or acknowledge changes in the program. City Utilities may terminate a Firm's status as a Prequalified Referrer and any or all Contracts/Purchase Orders then in force for failure to respond to requests for updates by the appointed due date.

\*\*\* END OF SECTION \*\*\*

# **III. PREQUALIFIED REFERRAL APPLICATION:**

## **SPRINGNET SERVICES CUSTOMER REFERRAL PROGRAM**

SECTION A: Prequalified Referral Application

SECTION B: Application Checklist

SECTION C: Referrer General Information

### III. SPRINGNET SERVICES CUSTOMER REFERRAL PROGRAM

#### SECTION A - PREQUALIFIED REFERRAL APPLICATION

Request is hereby made to be registered as a Prequalified Referrer for SpringNet Services Customer Referral Program for City Utilities of Springfield, Missouri.

By signing below, the Applicant agrees to be bound by all terms and conditions of the City Utilities of Springfield, Missouri document titled “*Prequalified Referral Program: SpringNet Services Customer Referral Program*”, dated **June 2023**.

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Company Email: \_\_\_\_\_

Company Type (circle one):    Corporation    Partnership    Sole Proprietor

Authorized Representative Name: \_\_\_\_\_

Authorized Representative Signature: \_\_\_\_\_

*If the Applicant is a partnership, the partnership name must be printed, followed by the signature of at least one of the partners.  
If the Applicant is a corporation, the corporate name must be printed, followed by the signature of a duly authorized officer and the corporate seal affixed.*

### III. SPRINGNET SERVICES CUSTOMER REFERRAL PROGRAM

#### SECTION B – APPLICATION DELIVERABLES CHECKLIST

Applicant shall include with submission of this Prequalified Referral Application sufficient and detailed responses to questions on the Forms identified below which are included in the pages following this Application. If unable to fit responses in the allotted spaces on the identified Forms, additional page(s) should be attached. Responses provided via attachment should be submitted in a clear form that corresponds to the numbering format provided. Failure to provide this information as instructed may result in rejection of an Application.

#	Deliverable	Reference Section(s)	Submittal Method
1	Prequalified Referral Application	III.A	Include with Application
2	Referrer General Information	III.C	Include with Application
3	E-Verify Proof of Enrollment	V.G	Include with Application
4	E-Verify Affidavit of Compliance	V.G	Include with Application
5	Certificate of Insurance	IV	Include with Application
6	<u>SpringNet Services Customer Referral Program Agreement</u>	VII	Include with Application

\*\*\* END OF SECTION \*\*\*

### III. SPRINGNET SERVICES CUSTOMER REFERRAL PROGRAM

#### SECTION C – REFERRER GENERAL INFORMATION

(page 1 of 2)

If more space is needed on any part of this form, additional sheets should be attached that clearly reference the appropriate section and item number to which the additional information pertains.

1. Provide a brief description of the products and services your company offers:

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2. Is your business accredited with the Better Business Bureau? If so, provide the rating and include explanations if your business has received complaint(s).

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3. Number of staff that will be focused on referring SpringNet services?

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4. Number of current local and regional customers your company actively provides products and services to today? Stability within, and familiarity of, the market that SpringNet serves is vital to the success of this program. Referrer must be able to prove that it has been conducting business locally and regionally for services relevant for the last 3 years.

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5. Anticipated number of customers that your company believes will be referred to SpringNet per month?

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6. Referrer is to provide complete details as to how it is qualified to perform the work identified within this program. Details are to include, but not necessarily be limited to the following.

- General company information (years in business, name changes, how expertise has been acquired/maintained, etc.)
- Details, expertise, and/or resumes for employees that will work on this contract. Include listing of pertinent personnel and qualifications for each key position.

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7. List any Arbitration/Litigation of projects undertaken in the past 5 years which have resulted in a partial or final settlement for each project. Include the following.
- Name of client and project
  - Original Contract amount
  - Total claims arbitrated or litigated
  - Amount of settlement of claims

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\*\*\* END OF SECTION \*\*\*

#### IV. INSURANCE REQUIREMENTS

Without limiting any of the other obligations or liabilities of the Referrer, the Referrer shall secure and maintain at its own cost and expense, throughout the duration of this Agreement and until the Service is completed, insurance of such types and in such amounts as may be necessary to protect it and the interests of City Utilities against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Agreement. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by City Utilities. Regardless of such approval, it shall be the responsibility of the Referrer to maintain adequate insurance coverage at all times during the term of the Agreement. Failure of the Referrer to maintain coverage shall not relieve him of any contractual responsibility or obligation or liability under the Agreement.

The certificate of insurance, including evidence of the required endorsements hereunder or the policies shall be filed with City Utilities within ten (10) days after the date of the receipt of Notice of Award of the Agreement to the Referrer and prior to the start of service. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question prior to material reduction in coverage or protection of City Utilities or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

Risk Manager  
 City Utilities of Springfield, Missouri  
 301 E. Central Street  
 P.O. Box 551  
 Springfield, MO 65801-0551

The minimum coverage for the insurance referred to herein shall be in accordance with the requirements established below:

- (A) Workers' Compensation\* \*\* ..... Statutory Employer's Liability
  - ..... Bodily Injury by Accident—each accident..... \$1,000,000
  - .....Bodily Injury by Disease—each employee limit..... \$1,000,000
  - .....Bodily Injury by Disease—policy limit..... \$1,000,000

**\* Workers' Compensation: Policy or self-insurance plan with statutory limits formally approved by the State of Missouri will be required, even if no employees other than owners. \*\* Workers' Compensation coverage shall include a waiver of subrogation in favor of City Utilities where permitted by law.**

- (B) Commercial General Liability Insurance\*\*\*, Including Premises, Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Consultants, Such Coverage Shall Apply to Bodily Injury and Property Damage on an "Occurrence Form Basis" with each Occurrence Limit of..... \$1,000,000  
 In the Aggregate..... \$2,000,000

- (C) Automobile Liability Insurance\*\*\* Covering Bodily Injury And Property Damage for Owned, Non-owned and Hired Vehicles with a Combined Single Limit of..... \$1,000,000

**\*\*\* The City of Springfield, Missouri including The Board of Public Utilities of the City of Springfield, Missouri dba City Utilities of Springfield, Missouri" shall be added as an Additional Insured for the full limits of the Liability Insurance coverages, using the ISO Additional Insured-Owner endorsement, CG 20 10, for premises/operations and CG 20 37 for completed operations, or substitute endorsement providing equivalent coverage.**

- (D) Professional Liability Insurance Providing Coverage for Acts, Errors, or Omissions Committed

By Referrer and Theft by Employee with a Per Occurrence Limit of..... \$1,000,000  
In the Aggregate..... \$1,000,000

- (E) Cyber Liability Insurance\*\*\*Coverage shall be sufficiently broad to respond to claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations, with an Each Occurrence Limit of..... \$100,000

Referrer shall require any and all subcontractors with whom he enters into a contract to perform Service under this Agreement to protect, through insurance, against applicable hazards or risks and shall, upon request of City Utilities, provide evidence of such insurance. Referrer shall be liable for all deductible amounts from such insurance and shall indemnify and hold City Utilities harmless there from. These Insurance Requirements are intended to be minimum coverages, and City Utilities does not warrant that coverages or amounts will be sufficient protection for contractors or City Utilities. Referrer will be responsible for any deficiencies thereof.

**NOTE:**

Acord certificate changes regarding cancellation notifications do not lessen the responsibility of vendors to comply with obligations set forth in these insurance requirements. Specifically, the requirement “All insurance policies shall provide thirty (30) days written notice to be given by the *insurance company* in question prior to material reduction in coverage or protection of City Utilities or cancellation of such insurance.” must be met wherever permitted by law.

Since the requirement cannot be met using the Acord certificate, the requirement must be met by specifically endorsing CU onto each policy to receive notifications.

\*\*\* END OF SECTION \*\*\*

\*\*\* The remainder of this page is intentionally blank \*\*\*

## **V. PREQUALIFIED REFERRAL PROGRAM INSTRUCTIONS TO REFERRER**

### **A. BIDDER'S RESPONSIBILITY**

By submitting an application, each Firm represents that he is familiar with, assumes full responsibility for having familiarized himself with and will comply with the content of the Agreement associated with a Prequalified Referral Program, the nature of the work, the locality, permits, licenses and all local conditions, together with all applicable Federal, State and local laws and ordinances.

### **B. PROPRIETARY INFORMATION**

Proprietary Information: Pursuant to Section 610.010.15 R.S.Mo, City Utilities may close records that relate to scientific and technological innovations in which the owner has a proprietary interest. If you plan to submit such information with your bid and wish to keep it confidential, please submit it in a separate envelope with your bid and clearly mark it "CONFIDENTIAL AND PROPRIETARY SCIENTIFIC AND/OR TECHNOLOGICAL INFORMATION." This information must not include prices, terms and conditions, Bidder's qualifications, or any other information submitted in response to this Prequalification Process. Any information that does not fall within Section 610.010.15 or other exception to Missouri's Sunshine Law (Section 610.010 R.S.Mo., et seq.) is a public record and will be disclosed upon request.

### **C. ERRORS IN APPLICATION**

Each bidder must carefully examine their application prior to submission. Failure to do so is at the Firm's risk. The Firm is responsible for any errors therein.

### **D. PURCHASE ORDER/NOTICE TO PROCEED**

The Purchase Order acts as the Notice to Proceed and officially identifies the terms and conditions of the project, as provided in the Prequalified Referral Program, and closes the application process.

### **E. NON-EXCLUSIVE AGREEMENT**

Any Prequalified Referrer award will result in a nonexclusive contract, and City Utilities reserves the right to purchase same or like materials and/or services from other sources as City Utilities deems necessary and appropriate.

### **F. CONDITIONS AFFECTING THE WORK**

Each bidder should take such steps as they determine necessary to ascertain the nature and location of the work pertaining to a Prequalified Referral Program and any peculiar local conditions which can affect the work or its cost. Failure to do so will not relieve the bidder of their responsibility for proper estimation of the difficulty or cost of the work. City Utilities assumes no responsibility for any understanding or representation made by any person at any time, unless it is addressed in writing in the Bid Documents, including addenda.

### **G. REQUIRED AFFIDAVIT FOR CONTRACTS OVER \$5,000.00 DOLLARS (US)**

Company shall comply with the provisions of Section 285.525 through 285.550 R.S.Mo. Contract award is contingent on Company providing an acceptable notarized affidavit stating:

1. that Company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and
2. that Company does not knowingly employ any person who is an unauthorized alien in connection the contracted services.

A copy of the affidavit can be found and downloaded online at: <https://www.cityutilities.net/purchasing/general/> Additionally, Company must provide documentation evidencing current enrollment in a federal work authorization program (e.g. electronic signature page from E-Verify program's Memo of Understanding (MOU)).

H. CONFLICT OF INTEREST

The submission of an application pursuant to this request shall be deemed a certification that to the best of the bidder's knowledge, no employee of City Utilities or board member has any direct or indirect financial interest in any agreement, contract or bid for work or supplies to be furnished to City Utilities. Contractor further certifies that such bidder has not and will not, either directly or indirectly, entered into any agreement, or understanding; participated in any collusion; or otherwise taken any action in restraint of free competitive pricing in connection with such agreement, contract or bid nor will knowingly provide gratuities to City Utilities' employees or board members, or to their family members. Referrer shall require all subcontractors (at all tiers) to be bound by this conflict of interest provision.

I. VENDOR APPLICATION

City Utilities reserves the right to issue an executed contract to only those Firms who have a completed and approved Vendor Application on file at City Utilities.

J. INSURANCE IN GENERAL

City Utilities will require the successful Referrer to have the proper insurance on file within the given timeframe and in the forms and limits as specified in each Prequalification Process.

L. CHANGES IN FIRM

The Firm must report to City Utilities in writing any significant changes in the Firm's organization, personnel or other information that could or would affect the qualifications of that Firm. Failure to report such information may result in a Firm not being included in future Prequalification Processes.

M. ASSIGNMENT

Neither party shall assign or transfer a Purchase Order awarded from a Prequalification Process without written consent of the other.

N. AUTHORIZED PERSONNEL

The Referrer shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.

O. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

To the extent that is applicable, Referrer is subject to all requirements of 29 CFR – Part 471.

P. SMOKE FREE POLICY

Smoking is prohibited at all times within all City Utilities' facilities, company vehicles and equipment, as well as all property owned or operated by City Utilities, including parking lots. This applies to all employees, contractors, clients, and visitors. Additionally, smoking will be prohibited in proximity of all entrances to City Utilities' buildings and property.

\*\*\* END OF SECTION \*\*\*

## VI. ONLINE REFERENCED ATTACHMENTS

Any order arising from a Prequalified Referral Application will be subject to current versions of the following documents which are hereby referenced and made a part of this *Prequalified Referral Program*:

- City Utilities' Standard Bidding Instruction (Rev 4-20-23)
- City Utilities' Standard Purchase Order Terms and Conditions (Rev 4-20-23)

**Note:**

Current versions of the purchasing documents (Standard Bidding Instruction and Standard Purchase Order Terms and Conditions) can be viewed and downloaded by navigating to the following website and searching under the *Prequalified Bidder Programs* section:

<https://www.cityutilities.net/purchasing/prequal/>

or go to

[www.cityutilities.net](http://www.cityutilities.net) and follow these links:

- For Business
- Purchasing
- Bidding Opportunities
- Prequalified Bidder Programs
- SpringNet Prequalified Referral Program

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VII. SPRINGNET SERVICES CUSTOMER REFERRAL PROGRAM AGREEMENT

**SPRINGNET SERVICES CUSTOMER REFERRAL PROGRAM AGREEMENT**

THIS AGREEMENT is entered into as of this \_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”), by and between City Utilities of Springfield, Missouri (“City Utilities”), and \_\_\_\_\_ (“Referrer”).

**RECITALS**

**WHEREAS** City Utilities is engaged in the business of providing Ethernet and IP broadband services (the “Services”) through its SpringNet division; and

**WHEREAS** Referrer desires to refer potential customers to the Services of City Utilities in exchange for a commission on the revenue City Utilities receives from service contracts arising from such referrals.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Referrals.**

- (a) During the Term, the Referrer will make recommendations of SpringNet Services to potential customers for purposes of promoting the Services to such potential customers. The Referrer will use its professional judgment as to the appropriateness of a particular recommendation (recognizing that some recommendations may not be appropriate at a particular time or at any time). If a potential customer is interested in the Services, the Referrer may request an initial service quote from SpringNet and provide it to the potential customer. If the Referrer provides the initial service quote to the potential customer, the Referrer or potential customer must submit to City Utilities a designated referral form (“Referral Form”) including the signatures of the Referrer and the potential customer, the date of the referral, and a description of the services discussed in order for the Referrer to be eligible for compensation under this Agreement.
- (b) City Utilities will conference and negotiate independently with a potential customer after a Referral Form has been submitted with respect to a potential SpringNet service contract and the terms applicable to such potential service contract. The Referrer may not object to any decisions made by City Utilities regarding the terms or conditions of a particular service contract entered into after a Referral Form has been submitted to City Utilities. Further, City Utilities will have sole discretion to enter into or not enter into a service contract arrangement with a potential customer.

- (c) The parties acknowledge this Agreement is not exclusive and that City Utilities will retain sole discretion to enter into referral agreements with other potential referrers on terms identical to or different from those in the present Agreement, without limitation as to the total number of agreements in effect at any time.

## 2. **Commission Payments.**

- (a) During the Term, City Utilities will pay Referrer a commission (the “Compensation”) on Service Contract Revenue generated from its qualifying Referrals in accordance with **Schedule A**. For purposes of this Agreement, Service Contract Revenue shall be defined as actual revenues received by City Utilities through bills paid by a customer for SpringNet Services where the customer and Referrer have executed and submitted a qualifying Referral Form designated by City Utilities on or before the date the customer enters into a new service contract or renewing an existing service contract with SpringNet. A Referral Form will not qualify the Referrer for Compensation under this Agreement if SpringNet directly provided the customer a quote for the Services before the date of the referral indicated on the Referral Form.
- (b) Service Contract Revenue shall not include any revenue received from non-recurring charges to customers, including but not limited to charges associated with installation, activation, disconnection, reconnection, late payment or change-in-service fees, any fees received by City Utilities associated with any hardware purchase or rental, or taxes of any form.
- (c) The Compensation shall be considered complete consideration for all qualifying Referrals made by Referrer during the Term that result in Service Contract Revenue to City Utilities. Referrer shall be responsible for any and all income and other taxes applicable to it in connection with its receipt of Compensation pursuant hereto and as an independent contractor of City Utilities. City Utilities will not be responsible for any expenses of the Referrer in the course of the performance of its obligations hereunder unless such expenses have been previously approved in writing by City Utilities.

## 3. **Term and Termination.**

- (a) The term of this Agreement shall commence on the Effective Date and shall continue until terminated (the “**Term**”). This Agreement may be terminated by either party upon thirty (30) days prior written notice. After termination of this Agreement by either party, City Utilities will continue to pay Referrer for any compensation earned under the terms set out in **Schedule A** for Referrals made during the effective dates of this Agreement for which City Utilities is still receiving Service Contract Revenue.
- (b) The following provisions shall survive the termination date of this Agreement: Sections 4 (Representations and Warranties), 5 (Indemnification), 6 (Limitation of Liability), 7 (Confidentiality), 8 (Non-Disclosure) and 9 (Attorneys’ Fees and Collection Costs) and 9 (Miscellaneous).

4. **Representations and Warranties.**

- (a) Both Referrer and City Utilities represent and warrant that: (i) it has the right to enter into this Agreement and the right to grant the rights and licenses granted herein; (ii) it is not a party to any agreement, contract, or understanding that would prevent, limit or hinder its performance of this Agreement; (iii) during the Term, it will not enter into any contract, agreement or understanding which is in conflict or which would interfere with the full and complete performance of any of the duties or grants hereunder; and (iv) it is not a party to any pending claims or litigation which might affect its performance of this Agreement.
  
- (b) **EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, CITY UTILITIES DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO ITS OBLIGATIONS UNDERTAKEN HEREUNDER, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF REFERRER HAS BEEN INFORMED OF SUCH PURPOSE), OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. FURTHER, CITY UTILITIES DOES NOT MAKE ANY WARRANTY THAT THE QUALITY OF THE SERVICES PURCHASED OR OBTAINED BY A CUSTOMER AFTER A REFERRAL WILL MEET SUCH CUSTOMER'S EXPECTATIONS.**

5. **Indemnification.**

- (a) Referrer shall indemnify, defend and hold harmless City Utilities, its affiliates, and each of their directors, officers, employees, and agents from and against all claims, suits and proceedings and any and all related liabilities, losses, expenses, damages and costs (including, without limitation, reasonable attorneys' fees) incurred by City Utilities relating to or arising out of the breach by Referrer of any of its duties, obligations, representations or warranties under this Agreement.
  
- (b) City Utilities will (i) promptly notify Referrer of any claim, suit, or proceeding for which indemnity is claimed (Referrer shall be relieved from liability only to the extent any delay in providing such notice prevents Referrer from defending such claim, suit or proceeding); (ii) cooperate reasonably with Referrer; and allow Referrer to control the defense or settlement thereof. City Utilities will have the right to participate in any defense of a claim and/or to be represented by counsel of its own choosing at its own expense.

6. **Limitation of Liability.**

- (a) **NEITHER PARTY HERETO WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE**

POSSIBILITY OF SUCH DAMAGES) SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS.

- (b) A party's failure to bring a claim against the other party within one (1) year after the date on which the claiming party becomes aware of the existence of a potential claim, constitutes a waiver of such claim.

#### 7. **Approval of Marketing Materials.**

- (a) City Utilities must approve any references to this Agreement or City Utilities Referral Program prior to use by Referrer.

#### 8. **Confidentiality.**

- (a) Referrer and City Utilities, and either party's affiliates, and their or their affiliates' officers, directors, trustees, employees, advisers, agents and other personnel, shall use at least the same care and discretion to prevent disclosure of Confidential Information (as hereinafter defined) of the other party as it uses with similar Confidential Information of its own that it does not desire to disclose, but in no event with less than a reasonable degree of care. Either party may use Confidential Information of the other party in order to carry out its obligations hereunder, but in doing so will only allow dissemination of Confidential Information internally on a need-to-know basis (provided such persons are first informed of the confidential nature of such information and directed to use or disclose it only as permitted herein). If either party must disclose any Confidential Information of the other party as required by law, then that party may make such disclosure after providing the other party with reasonable notice so that the other party may seek protective relief.
- (b) Nothing herein shall be construed as granting either party any property rights, by license or otherwise, to any Confidential Information of the other party, or to any invention or any patent, copyright, trademark, or other intellectual property right of the other party except as specifically provided for in this Agreement. Neither party shall make, have made, use or sell any product or service or other item using, incorporating or derived from any of the other party's Confidential Information except as provided in this Agreement.
- (c) The obligations under this Section 7 will survive the Termination Date, but Confidential Information that is not a trade secret will cease to be protected hereunder two (2) years after the Termination Date. On or before the Termination Date, each party will return to the other party all of that other party's Confidential Information embodied in tangible form, and will destroy, unless otherwise agreed, all such other Confidential Information in that party's possession.
- (d) For purposes of this Section 7, "**Confidential Information**" means (1) business or technical information or data (oral, written, electronic or otherwise), including, without limitation, a trade secret (as defined under applicable law), of or about a party provided or made available by such party to the other party that is competitively or commercially valuable to that party and not generally known or

readily available by legal means to others, and (2) information regarding the existence, content or status of the business relationship described herein, except to the extent that the information is subject to disclosure under the Missouri Sunshine Law, Chapter 610 RSMo. Confidential Information shall not include information which (i) at the time of disclosure, was published, known publicly, or otherwise in the public domain, (ii) after disclosure, is published, becomes known publicly, or otherwise becomes part of the public domain through no fault of the party receiving the Confidential Information, (iii) prior to the time of disclosure, is known by that receiving party or, after disclosure, is independently developed by that receiving party as evidenced by its written records, (iv) after disclosure, is made available to that receiving party in good faith by a third party who is under no obligation of confidentiality or secrecy to the party disclosing the Confidential Information, or (v) is information agreed to be disclosed in accordance with Section 8 hereof or which must be disclosed as required by law.

9. **Non-Disclosure.**

- (a) Referrer shall not disclose in any manner the specific terms and conditions of this Agreement as it applies to them to any third party (including customers or potential customers) without the prior written consent of City Utilities. This consent requirement shall not apply to any disclosure of the mere existence of the Agreement by Referrer to customers or potential customers of SpringNet Services, nor shall it apply to the disclosure of specific terms and conditions of the Agreement to Referrer's employees, agents, or contractors who require knowledge of the terms of the Agreement, or to affiliates, successors-in-interest and assigns, or as may be required by law. This provision shall survive the expiration or any termination of the Agreement. Payment by City Utilities to Referrer of the Compensation set forth in Schedule A is conditioned upon Referrer's compliance with the terms of this Section.

10. **Attorneys' Fees and Collection Costs**

- (a) In the event that a Referred Customer fails to pay any amount due City Utilities, City Utilities may, at its sole discretion, refer the matter to an attorney or collections agency or refer the same to its in-house counsel.
- (b) For any such referred customer, Referrer will be responsible for seventeen percent of any such costs, not to exceed the amount of compensation due Referrer pursuant to this agreement.
- (c) City Utilities, in its sole discretion, may settle the dispute in any matter it deems fit, including acceptance of a lesser amount than is required by the Service Contract.
- (d) For situations where this Section 9 is applicable, the Service Contract Revenue shall be defined the revenue actually accepted and received by City Utilities, less the cost of collection.

11. **Miscellaneous.**

- (a) **Notice.** All notices under this Agreement will be given in writing or by written telecommunications via overnight mail, facsimile, or electronic mail to the addresses set forth below or such other address as either party may substitute by notice hereunder and all such notices given in accordance hereunder will be deemed as given as of the date of sending:

If to City Utilities:

If to Referrer:

City Utilities of Springfield,  
Missouri.  
Attn: Director - SpringNet  
Phone: 417-575-7000  
Email: sales@springnet.net

Name: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

- (b) **Partial Invalidity.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination will not affect the validity or enforceability of any other part or provision of this Agreement.
- (c) **Waiver.** The waiver by any party of any breach of any provision of the Agreement by any other party will not be construed to be a waiver of that party's rights regarding any succeeding breach of any such provision or a waiver of the provision itself.
- (d) **Entire Agreement.** This Agreement incorporates by reference the "SpringNet Services Customer Referral Pilot Program Request for Proposal" and the Contract Documents referred to in Section J therein. Together with those incorporated documents, this Agreement constitutes the entire agreement between the parties with respect to this subject matter and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications among the parties. This Agreement may not be released, discharged or modified except by an instrument in writing signed by the parties.
- (e) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to any applicable conflicts of laws, except to the extent that certain matters may be governed by federal law by reason of preemption. The parties agree to exclusive jurisdiction and venue in the state and federal courts located in Greene County, Missouri.
- (f) **Relationship of Parties.** Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between City Utilities and Referrer. Neither party, by virtue of this Agreement, is authorized as an agent, employee or legal representative of the other. Except as specifically set forth herein, neither party will have the power to control the activities and operations of the other and their status is, and at all times will continue to be, that of independent contractors.

- (g) Assignment; Effect of Change in Control. Neither party may assign its rights or obligations under this Agreement (whether by merger, consolidation, sale of assets, sale of stock or otherwise) without the other parties' written consent.
  
- (h) Waiver of Jury Trial. Both city utilities and referrer specifically waive any right to trial by jury in any court with respect to any contractual, tortious or statutory claim, counterclaim or cross-claim against the other arising out of or connected in any way to this agreement because the parties hereto, each of whom is represented by counsel, believe that the complex commercial and professional aspects of their dealing with one another make a jury determination neither desirable nor appropriate.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereof.

**City Utilities of Springfield, Missouri**

By: \_\_\_\_\_

**Date:** \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to form and content:**

\_\_\_\_\_  
City Utilities Legal Counsel

**REFERRER:** \_\_\_\_\_

**Date:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Schedule A

### **Compensation to Referrer**

When a customer enters into a contract for SpringNet services with City Utilities and indicates on a qualifying Referral Form that the customer was referred to SpringNet by the Referrer that is party to this Agreement, compensation will be as follows:

1. A commission of seventeen (17%) of the total Service Contract Revenue received by City Utilities each month from a customer referred by the Referrer will be paid to the Referrer for the duration of the initial term of the service contract, provided it is a new service contract and not a renewal. No commission will be paid on renewal terms.
2. A commission of fifteen percent (15%) of the total Service Contract Revenue received by City Utilities each month from a customer referred by the Referrer will be paid to the Referrer for the duration of the initial term of the service contract, provided it is a renewal of an existing service contract, and not a new service contract. No commission will be paid on renewal terms.

### **Payment Terms:**

If a referred customer pays for its Services on a monthly basis, all compensation earned by Referrer pursuant to this agreement shall be due and payable within sixty (60) days of City Utilities' receipt of the monthly Service Contract Revenue.

If a referred customer prepays any amount in excess of its monthly bill, the payment will be prorated on a monthly basis and Referrer's compensation will be paid on the prorated monthly amount. The compensation shall then be due and payable to Referrer within sixty (60) days of the original due date of the monthly payment which has been prepaid.

**\*\*\*\*End of Document\*\*\*\***