

**PROVIDER SERVICES AGREEMENT
BETWEEN CORE & MAIN LP AND THE CITY OF
NAPERVILLE FOR DESIGN AND INSTALLATION OF A
WATER AMI PROJECT**

THIS PROVIDER SERVICES AGREEMENT (“Agreement”), entered into this _____ day of _____ 2020, between the City of Naperville, an Illinois municipal corporation and home rule unit of government, with offices at 400 South Eagle Street, Naperville, Illinois 60540 (“**City**”), and Core & Main LP, with offices at 220 S. Westgate Drive, Carol Stream, IL 60188, a Florida limited partnership authorized to do business in the State of Illinois (“**Provider**”).

RECITALS

WHEREAS, the City has undertaken the design and deployment of the Water Advanced Metering Infrastructure Project (hereinafter “**Water AMI Project**” or “**Project**”); and

WHEREAS, the City has decided to retain the products and services of a qualified and experienced firm to provide certain products and project management services related to the Water AMI Project, pursuant to RFP 19-214: Water Utilities Advanced Metering Infrastructure, and addenda in accordance with this Agreement; and

WHEREAS, the Provider herein was the successful respondent to RFP 19-214;

WHEREAS, this Agreement shall include the following exhibits (“**Exhibits**”) which are attached hereto and incorporated herein in full by reference:

- A. Statement of Work
- B. Pricing
- C. Sensus and Core & Main Warranties
- D. Sensus Software License and Spectrum Lease Agreement
- E. Sensus Propagation Study
- F. Agreement Re: City of Naperville RFP 19-214/Water AMI Project
(three-party agreement between Core & Main LP, Sensus USA, Inc. and the City)

WHEREAS, when used herein, Products and Services shall have the meaning set forth in Sections 5.1.1 and 5.1.2 hereof; and

WHEREAS, certain of the Products and Services to be provided hereunder will be provided by Sensus USA Inc. (“**Sensus**” or “**Manufacturer**”); the Provider is an authorized Sensus distributor.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

The Recitals set forth above are incorporated herein and made part hereof in their entirety.

SECTION 1 – Provider’s Products and Services

1.1 The Provider shall provide Products and perform Services in accordance with this Agreement, the Exhibits hereto, and all attachments to each Exhibit.

1.2 The Provider shall take all steps necessary to ensure that it has sufficient quantities of goods, which goods comply with the criteria and requirements of this Agreement, including but not limited to the meter interface units (“MIU” or “MIUs”) needed to meet the Project Schedule. Provider shall further take all steps necessary to ensure that it has adequate equipment, resources, and personnel to provide the Products and Services in the manner and pursuant to the requirements set forth in this Agreement.

1.3 The Provider shall serve as the City's project manager for the duration of the Project, as defined in “Project Schedule” included in the Statement of Work attached as Exhibit A and shall provide consultation and advice to the City during the performance of the Provider’s Products and Services.

1.4 The Provider shall not have any interest, and shall not acquire directly or indirectly any interest, which may conflict in any manner with the performance of its Products and Services under this Agreement.

1.5 The Provider shall designate in writing a person to act as its Project Manager for the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Provider’s policies and decisions with respect to the work covered by this Agreement.

1.6 The Provider shall employ only persons duly licensed by the State of Illinois to provide the Products and professional Services required under this Agreement for which applicable Illinois law requires a license, subject to prior approval of the City. The Provider shall employ only well qualified persons to provide the Products and perform any of the Services required under this Agreement, also subject to prior approval of the City. The Provider’s key personnel, identified in in the Statement of Work attached hereto as Exhibit A are considered essential to the completion of the Project and shall not be replaced without the written consent of the City. Notwithstanding the foregoing, the Provider reserves the right to remove personnel from the Project for failure to adequately perform. Further, upon request of the City, Provider shall remove any personnel from the Project that the City determines are not performing adequately. Any replacement personnel shall be subject to approval of the City.

1.7 The Provider and Provider’s subcontractors shall adhere to Provider’s QC/QA plan set forth in the Statement of Work attached hereto as Exhibit A and shall submit to the City a statement in writing that the Provider and Provider’s subcontractors are in compliance with its QC/QA plan. The Provider's statement of compliance shall be in the form of an additional statement on each invoice submitted to the City. The Provider's final statement of compliance shall be on a form prescribed by the City. The Provider may modify its QC/QA subject to written approval by the City.

1.8 The Provider shall complete the work required under this Agreement pursuant to the “Project Schedule” included in the Statement of Work attached hereto as Exhibit A unless a change in the Project Schedule is agreed to in writing by the City.

1.9 The Provider shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements now in force or which may be in force during the term of this Agreement, and shall require the same compliance from its subcontractors and Manufacturer.

1.9.1 This contract calls for the construction of a “public work” within the meaning of the Illinois Prevailing Wage Act (820 ILCS 130/1-12 *et seq.*). the Provider, and Provider’s subcontractor(s) shall comply with the requirements of the Illinois Prevailing Wage Act including, but not limited to, all wage requirements and notice and recordkeeping duties including paying laborers, workers and mechanics performing work under this contract no less than the currently prevailing rate of wages in the county where the work is performed and filing a certified payroll with the public body in charge of the project.

The Provider is advised that the Illinois Department of Labor (IDOL) revises the prevailing wage rates and the Contractor/subcontractor has an obligation to check the IDOL website for revisions to prevailing wage rates. For information regarding the current prevailing wage rates, please refer to the DOL website: www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx.

If IDOL revises the prevailing rates of wage during the term of the contract, the Provider, and Provider’s subcontractor(s) are required to pay the then current prevailing rate of wages. Any increases in costs to the Contractor due to changes in the prevailing rate of wage during the term of any contract shall be at the expense of the Contractor and not at the expense of the Owner.

The Provider, and Provider’s subcontractor(s) shall defend and hold harmless the City, for any claim, suit or action, including costs of defense, expert witness and attorney fees, either at law, equity or in an administrative proceeding, arising from any alleged violation of the Prevailing Wage Act. The requirements of this Section shall survive the termination of the Agreement formed hereunder.

1.9.2. Provider will require its Subcontractors to comply with the foregoing and will incorporate the provisions of Section 1.9.1 in any Subcontracts with its Subcontractors performing work on the Project.

1.10 The Provider shall also enforce the City of Naperville’s safety guidelines, including but not limited to the following safety requirements, throughout the course of the Project as to its own agents and employees and as to the agents and employees of any subcontractors. Additionally, such requirement shall be made a part of any agreement with subcontractors:

- a. Individuals engaged in ground level field activities on or within 8 meters (25 feet) of a pavement open to traffic shall wear high visibility vests of equivalent high visibility outer garments. Flaggers shall wear high visibility vests at all times;
- b. Individuals shall wear either hard-hats/caps of high visibility orange when engaged in field activities within 8 meters (25 feet) of a pavement open to traffic or under construction, when not in vehicles or self-propelled mobile equipment;
- c. Individuals shall wear protective hard-hats/caps when they are in an area where there is a potential for injury from falling, moving, swinging or flying objects;
- d. Safety-toe footwear shall be worn by the individuals engaged in operations where the danger of injury to the foot may occur; and
- e. Individuals shall wear appropriate clothing for the work to be performed, including shirts when in public view.
- f. Individuals shall follow proper safety procedures and regulations when working around energized electrical equipment, including but not limited to work inside of electric substations.

1.11 The Provider shall obtain prior approval from the City before entering into any agreement with any entity or person to perform any of the work required under this Agreement. If the Provider enters into agreements with any subcontractor or Manufacturer to provide any of the Products or Services to be performed under this Agreement, such subcontractor or Manufacturer agreement shall provide that the obligations, under such agreement shall not be transferred, assigned or otherwise disposed of to another entity or person without the City's prior written consent. The Provider shall be responsible for the accuracy, quality, and timeliness of its work, and the accuracy, quality and timeliness of the work of its subcontractors and Manufacturer.

1.12 The Provider shall fully cooperate with and respond within two (2) business days to any requests made by the City which will provide overall support and coordination of the Project covered by this Agreement, and shall also fully cooperate and respond to any requests made by the City. This shall include attendance at meetings, discussions and hearings as requested by the City. These requirements shall be included in any contract with the Provider's subcontractors and Manufacturer. Failure of the Provider, or Provider's subcontractors and Manufacturer to promptly provide such cooperation and response shall be grounds for termination of this Agreement if Provider is furnished with written notice of default referencing this Paragraph 1.12 and Provider subsequently fails to cure the default within two (2) business days after receipt of the notice.

1.13 The Provider shall furnish the City with a reasonable number of original prints, electronic copies in the native format and a searchable PDF of all necessary reports, documents, and plans, as determined by the City.

The City may request provision of these documents in hard copy and/or electronically in a format approved by the City.

1.14 The Provider shall submit all reports required in the Scope of Work in a form and format approved by the City in the timeframe designated, or if a timeframe has not been designated, shall submit reports during each month this Agreement is in force, and shall provide the following items:

- a. A summary of the Provider's Project activities, and subcontractors' and Manufacturer's Project activities, that have taken place during the invoice period;
- b. A summary of the Provider's Project activities and any subcontractors' and Manufacturer's Project activities that shall take place during the next invoice period;
- c. A list of outstanding items due to or from the City; and
- d. The status of the Project Schedule included in the Statement of Work attached as Exhibit A.

1.15 The Provider shall perform the Services required under this Agreement pursuant to the applicable published standards promulgated by the City, including but not limited to: IEEE, ANSI, NESC, NEC, Building Codes, NIST, NERC, FERC, and OSHA. In the case of any conflict between any of the published standards set forth in this paragraph of which Provider becomes aware, the Provider shall identify such conflict to the City, and the Provider shall follow the instructions furnished by the City. Notwithstanding the foregoing, Products provided will comply with the standards set forth in the Manufacturer's data sheets. Such Products and Services shall also perform as set forth in the Statement of Work.

1.16 The Provider is an independent contractor and not an employee of the City. All employees, subcontractors and Manufacturer of the Provider shall likewise not be considered to be employees of the City.

1.17 The Provider shall promptly reimburse the City for its reasonable costs and fees, including but not limited to attorney's fees, for enforcement of the provisions of this Agreement in the event the City prevails in litigation enforcing this Agreement.

1.18 The Provider shall be responsible for the management and resolution of claims occurring during the Water AMI Project, (including but not limited to issues pertaining to the installation of MIUs and Base Stations, restoration of landscaping, and property damage) and shall be responsible for promptly and courteously processing, addressing, and resolving such claims at Provider's expense. The contact information for Provider or Provider's Subcontractor (telephone number and email address) shall be provided on communications to residents, and such communications shall notify residents that if they have any questions, concerns, or complaints regarding any aspect of Provider's installation of an MIU on the meter located on their property, they shall contact the Provider or Provider's Subcontractor at (email/address).

1.19 The Provider shall be financially responsible for damages to City-owned equipment or property and for damages to customer-owned equipment or property due to negligence, misuse, or abuse by Provider's personnel and their actions.

SECTION 2 - Additional Products and Services

2.1 If a representative of the City verbally requests the Provider's Project Manager to provide products or services which the Project Manager believes are not included in Exhibit B: Pricing, it shall be the responsibility of that individual to verbally notify the requesting party from the City that such request calls for products or services which are *not* included in Exhibit B: (hereinafter "Additional Products" or "Additional Services").

Said verbal notification shall be promptly followed by a written notification from the Provider to the City's Project Manager that Additional Products or Additional Services have been requested, who made the request, when the request was made, why such products or services are deemed to be Additional Products or Additional Services and seeking confirmation and approval of the provision of such Additional Services or Additional Products.

No Additional Products or Additional Services shall be performed or provided unless and until City's Project Manager has confirmed approval of said Additional Products or Additional Services in writing. Failure of the City to respond to the Provider's request for confirmation and approval of said Additional Products or Additional Services within thirty (30) calendar days of the City's receipt of such request for confirmation shall be deemed rejection of, and refusal by the City to pay for the Additional Products or Additional Services.

If authorized in writing by the City's Project Manager, the Provider shall furnish, or obtain from others, Additional Products or Additional Services of the following types, which shall be paid for by the City as set forth in Section 5 of this Agreement:

- a. Additional Products or Additional Services due to significant changes in scope of the Project or its design, including, but not limited to, changes in size, complexity or character or construction, or time delays for completion of work when such delays are beyond the control of the Provider;
- b. Revisions of previously approved studies, reports, design documents, drawings or specifications;
- c. Preparation of change orders requested by the City;
- d. Additional Products or Additional Services in connection with the Project not otherwise provided in this Agreement or in the Scope of Work;

2.2 The City may, upon written notice and without invalidating this Agreement, require changes resulting in the revision or abandonment of work already performed by the Provider, or require other elements of the work not originally contemplated and for which full compensation is not provided in any portion of this Agreement. Any Additional

Products or Additional Services, abandonment of products or services which were authorized by the City, or changes in products or services directed by the City which result in the revision of the Provider's Technical Proposal Response provided for in Exhibit A that cause the payment due to the Provider to exceed the amount of Pricing Proposal set forth on Exhibit B shall be addressed in an amendment to this Agreement.

2.3 Notwithstanding Subsections 2.1 and 2.2 above, if it is determined that it is necessary, during the period of the applicable Sensus AMI System Performance Warranty provided by Sensus USA Inc., to add or replace equipment in order to achieve the agreed upon MIU read success rate as set forth in the Scope of Work for the area covered in the Sensus Propagation Study attached hereto as Exhibit E, such additional or replacement equipment (including but not limited to additional or replacement Base Stations), and the costs and services associated therewith, shall be promptly provided by the Provider at no cost to the City and the same shall not be considered Additional Products or Additional Services under this Agreement.

SECTION 3 – City's Responsibilities

3.1 The City shall make available to the Provider information in the City's possession, which it believes is pertinent to the Project.

3.2 The City shall make all reasonable efforts to provide access to, and provision for the Provider, or the Provider's subcontractors and Manufacturer to enter upon public and private lands as required to perform the work under this Agreement.

3.3 The City shall examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the Provider and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the Provider. The Provider shall promptly notify the City in writing in the event that it believes that a delay in the Project Schedule, included in the Statement of Work attached as Exhibit A, has occurred, or will occur, due to the lack of promptness of the City's review as provided herein.

3.4 The City shall designate in writing a person to act as the City's Project Manager with respect to the work to be performed under this Agreement.

3.5 The City shall give prompt written notice to the Provider whenever the City observes or otherwise becomes, aware of any defect in the Project.

3.6 The City may furnish or direct the Provider to provide, at the City's expense, necessary Additional Products or Additional Services pursuant to Section 2 of this Agreement, or other products or services as required.

3.7 The City may, as its discretion, and to the extent determined necessary by the City, evaluate the Provider's, and Provider's subcontractors' and Manufacturer's performance. Timeliness in meeting the Project Schedule and the overall relationship with the Provider are factors that will be considered in the Provider's performance rating. An

unfavorable performance rating shall be a factor when future assignments are being considered.

3.8 The City makes no representation or warranty of any nature whatsoever as to the accuracy of information or documentation provided by the City to the Provider, which were generated or provided by third parties.

SECTION 4 - Period of Service

4.1 The Provider shall commence work on this Project within ten (10) calendar days, or a mutually agreed to timeframe between the parties, after receipt of a written notice from the City to proceed and complete the work pursuant to the Project Schedule included in the Statement of Work attached as Exhibit A. The City shall determine when the Provider has completed the work required pursuant to this Agreement.

SECTION 5 - Payment For Products, Services and Reimbursements

5.1 The City shall pay the Provider an amount not to exceed seven million, one hundred and fifty-five thousand, eight-hundred and sixty dollars (\$7,155,860.00) for the Products and Services provided pursuant to this Agreement, as those terms are defined below (“**Contract Amount**”), and may pay up to an additional three percent (3%) of said amount as contingency (“**Contingency**”). Together the Contract Amount and the Contingency shall be referenced as the “**Not to Exceed Amount**”. An amendment of this Agreement, approved by the Naperville City Council, shall be required in order for the Provider to be entitled to any payment in excess of the Not to Exceed Amount. The City’s Project Manager shall be responsible to track expenditures under this Agreement to ensure the Not to Exceed Amount is not exceeded without an appropriate change order. The Provider’s Project Manager will work with the City’s Project Manager to assist in that process and shall notify the City’s Project Manager if there is any question or concern regarding expenditures that could exceed the Not to Exceed Amount.

5.1.1 Products. Products as defined herein, shall mean those products identified as such on Exhibit B as more fully described in Exhibit A (“**Products**”).

5.1.2 Services. Services as defined herein, shall mean those services identified as such on Exhibit B as more fully described in Exhibit A (“**Services**”).

5.2 Retainage. The City shall retain 10% (“**Retainage**”) of approved invoices for costs of Services as set forth on Exhibit B (“**Services Subject to Retainage**”) until Provider has invoiced the City for 50% of the total proposed price of such Services Subject to Retainage. When the Provider has invoiced the City for 50% of the total proposed price for said Services Subject to Retainage, the City will pay Provider half of the amount of Retainage withheld to date. From that point, the City will retain 5% Retainage of approved invoices for costs of such Services Subject to Retainage. Said Retainage shall be paid to the Provider within ninety (90) days of Project Completion as defined in Scope of Work.

5.2 Payment shall be made within forty-five (45) days of approval of invoices as set forth in the Scope of Work.

5.3 In the event the City questions or seeks clarification of any invoice item, the City shall give Provider written notice and the City shall pay to Provider the remainder of the approved invoice according to the provisions hereof.

5.4 The City shall have the right to withhold payment, or partial payment, to the Provider if the quality of all or a portion of the Products or Services provided or performed hereunder are not in compliance with the requirements of this Agreement, or to the City's satisfaction, or if the Provider, or Provider's subcontractors fail or refuse to perform any of the obligations contained herein. The City may further refuse to make payment to the Provider of the full amount of an approved invoice because of any of the following:

- 5.4.1 Claims have been made against the City as a result of Provider's performance hereunder, or as a result of the performance of Provider's subcontractors or Manufacturer hereunder;
- 5.4.2 Liens have been filed in connection with the Provider's performance;
- 5.4.3 There are other items entitling the City to a set-off against the amount, or portion thereof, of an approved invoice;
- 5.4.4 The City has actual knowledge that any of the Products or Services provided hereunder are defective or damaged, requiring correction, repair, or replacement; or
- 5.4.5 The City has undertaken to correct defective Products or Services provided by the Provider, or Provider's subcontractors.

5.5 The provisions set forth herein supersede and replace all provisions of the Illinois Local Government Prompt Payment Act.

5.6 The Provider shall submit partial waivers of lien to the City for any Products or Services provided to the City (by Provider and by each subcontractor), for the period covered by the prior invoice.

5.7 Products provided pursuant to this Agreement shall be deemed accepted by the City when it is determined by the City that they comply with the requirements of this Agreement, including applicable Exhibits, and that they function as intended.

5.8 The unit costs of Products and Services identified in Exhibit B, Schedule of Prices shall not increase prior to Project Completion as defined in the Statement of Work.

5.9 Upon Project Completion, the Provider shall submit an affidavit and a final waiver of its lien, and all final waivers of liens of every subcontractor(s) and Manufacturer, stating that all obligations incurred in performance of the professional services have been paid in full. The affidavit will also include a statement stating that the Products provided and Services were performed in compliance with this Agreement, including but not limited to Quality Control and Quality Assurance requirements set forth in the Statement of Work. The affidavit and all final waivers of liens shall be on a form prescribed by the City and agreed by Provider.

5.10 The Provider shall be liable for risk of loss or damage to any goods or products to be provided under this Agreement until such time as said goods or products are properly delivered to the City per the requirements of the Statement of Work attached as Exhibit A.

5.11 All invoices shall be sent to:

Water AMI Project Manager
Water Utilities
City of Naperville
1200 W. Ogden Avenue
Naperville, IL 60540

SECTION 6 – Termination

6.1 Upon written notice from the City of the Provider’s substantial failure to perform, which notice references this Paragraph 6.1, the Provider shall, within five (5) business days, substantially commence efforts to cure the failure. Further, Provider shall cure the failure within seventy-five (75) days of receipt of the City’s original notice or such longer period as may be otherwise mutually agreed upon in writing by the Provider and the City. In the event Provider fails to comply with the foregoing, this Agreement may be terminated by the City upon not less than thirty (30) days written notice to the Provider.

6.2 In addition, the City shall have the right to terminate this Agreement upon not less than thirty (30) days written notice for any reason, including but not limited to lack of funding. Mailing of such notice by certified mail or by FedEx shall be equivalent to personal notice and shall be deemed to have been given at the time of receipt. In that event, the City will pay Provider for Products and Services delivered or provided through the date of termination, plus amounts for special order Products, Products not returnable to the manufacturer for credit and Products in the course of production, manufacturer cancellation fees, as well as return freight charges and reasonable restocking fees.

6.3 This Agreement may be terminated by the Provider for cause upon prior written notice to the City as provided herein. As used in this Paragraph 6.3 “for cause” is defined as: (i) the City’s failure to pay Provider one or more undisputed invoices as identified by the Provider in its notice; or (ii) the City’s failure to approve an invoice for Products or Services which conform to the requirements of the Scope of Work, as identified by Provider in its notice. Upon receipt of such notice the City shall have thirty (30) days to cure the failure, or such longer period as may be otherwise mutually agreed upon in writing by the Provider and the City. The Provider shall have all rights and remedies hereunder or at law or in equity without terminating this Agreement for cause. The City shall also be subject to any claim the Provider may have against it under other provisions of this Agreement or as a matter of law. The Provider may not terminate this Agreement for convenience.

6.3 Within thirty (30) days of termination of this Agreement, the Provider, and Provider’s subcontractors, shall turn over to the City any products, documents, drafts, and materials, including but not limited to, outstanding work product, data, studies, test results, source documents, and such other items specifically identified by the City, and all items identified in

Section 9. All hard and soft copies of files pertaining to outstanding deliverables shall be surrendered. Upon receipt of said items, the Provider shall be paid for labor and expenses incurred to the date of termination as provided in Section 5. If this Agreement is terminated due to the City's substantial failure to perform, the Provider shall be paid for labor and expenses incurred to date as provided in Section 5, subject to set off for any damages, losses or claims against the City resulting from or relating to Provider's performance or failure to perform under this Agreement. This Agreement is subject to termination by either party if either party is restrained by a state or federal court of competent jurisdiction from performing the provisions of this Agreement. Upon such termination, the liabilities of the parties to this Agreement shall cease, but they shall not be relieved of the duty to perform their obligations through the date of termination.

6.4 If because of death or any other occurrence, including, but not limited to Provider becoming insolvent, it becomes impossible for any principal or principals of the Provider to render the services set forth in this Agreement, neither the Provider, nor its surviving principals shall be relieved of their obligations hereunder. However, in such an occurrence, the City at its own option may terminate this Agreement if it is not furnished evidence that competent professional services can still be furnished as scheduled.

SECTION 7 – Insurance and Bonds

At the Provider's expense, the Provider shall procure and maintain in effect throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Provider, its agents, representatives, employees, subcontractors, or Manufacturer. The Provider must furnish Certificates of Insurance to the City before staff recommends award of the Agreement to City Council. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A-: VII according to the A.M. Best Company. Should any of the insurance policies be canceled before the expiration date, the issuing company will mail thirty (30) days written notice to the City and Provider shall provide replacement insurance in compliance with the provisions of this Section 7 that covers all periods not covered by the prior insurance as evidenced by replacement certificates of insurance and applicable additional insured endorsements. The Provider shall require and verify that all sub-contractors maintain insurance with limits acceptable to the Provider and approved by the City. In no event shall there be lapse in insurance coverage maintained by the Provider or Provider's subcontractors.

Any deductibles or self-insured retentions must be declared to and approved by the City.

7.1 The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law. If the Provider maintains higher limits than the minimums shown below, the City shall be entitled to coverage for higher limits maintained by the Provider. Insurance limits can be met through a combination of general liability, excess liability and/or umbrella coverage.

7.2

A. Commercial General Liability:

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability Occurrence Form CG 00 01 and include Premise/Operations, Products/Completed Operations, Independent Proposers, Contractual and Personal Injury/Advertising Injury.

Limits:

General Aggregate	\$2,000,000.00
Products/Completed Operations	\$2,000,000.00
Each Occurrence	\$1,000,000.00
Personal/Advertising Injury	\$1,000,000.00
Excess Liability	\$5,000,000.00
Umbrella	\$5,000,000.00

B. Automobile Liability:

Coverage shall be at least as broad as Insurance Services Office Form CA 00 01 to include all Owned, Hired, Non-owned vehicles.

Limits:

Combined Single Limit Per Accident	\$2,000,000.00
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C. Workers' Compensation:

Coverage shall be in accordance with the provisions of the laws of the State of Illinois.

D. Employer's Liability:

Limits:

Each Accident	\$1,000,000.00
Each Employee Bodily Injury by Disease	\$1,000,000.00
Policy Limit Bodily Injury by Disease	\$1,000,000.00

E. Errors & Omissions Liability/Professional Liability:

Errors & Omissions Liability insurance will be provided by Sensus USA, Inc. only.

Limits:

Per Occurrence	\$2,000,000.00
Aggregate per policy period of one year	\$2,000,000.00

If Errors & Omissions Liability coverage is written on a claims-made form:

1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Proposer must purchase extended reporting period coverage for a minimum of three (3) years after completion of contract work.

F. Cyber Liability:

Cyber liability coverage will be provided by Sensus USA, Inc. only. Cyber liability insurance with limits of not less than \$2,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

Cyber insurance can be a standalone cyber policy or combined with the Professional Liability.

Limits:

Per Occurrence	\$2,000,000.00
Annual Aggregate	\$2,000,000.00

G. Other Insurance Provisions

The insurance policies set forth in Items A, E and F above shall continue to be maintained for a period of three (3) years following the termination or expiration of this Agreement.

The insurance policies set forth in Items A, B and E above are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Provider; and with respect to liability arising out of work or operations performed by or on behalf of the Provider including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement to the Provider’s insurance policy.
2. For any claims related to the performance of the Provider’s work, Provider’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Provider’s insurance and shall not contribute with it.

The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Provider, its employees, agents and subcontractors.

The Provider understands that the acceptance of Certificates of Insurance, policies and any other documents by the City in no way releases the Provider from the requirements set forth herein.

7.3 Performance and Payment Bonds

The Provider shall, at its own expense, secure and maintain in effect throughout the duration of this contract, performance and payment bonds as described herein.

7.3.1 Performance Bond.

At the same time as execution of this Agreement, the Provider shall provide a performance bond, in a form approved by the City, for the goods and services under this Agreement with a bonding entity deemed acceptable by the City. Said performance bond, unless otherwise specified by the City of Naperville's Purchasing Manager, shall be for 100% of the total contract price. Default, or partial default, provisions in the said performance bond shall include, without limitation, failure to provide Services or Products as specified herein pursuant to the Project Schedule included in the Statement of Work attached as Exhibit A, or within any such other timeframe agreed to by the City in writing. To the extent the City is the prevailing party in such action, the Principal agrees to pay all reasonable attorney's fees and costs incurred by the City in making any claim(s) under said Performance Bond.

7.3.2 Payment Bond(s).

The Principal agrees to pay for any material and all labor charges for work relating to this Agreement promptly when due. Prior to the execution of this Agreement, it will furnish the City with a good and solvent payment bond, in a form and with a bonding entity deemed acceptable by the City. Said bond shall secure payment of material and labor and shall be in the penal amount of all work provided hereunder not performed solely by the Provider and shall, at a minimum, comply when applicable with the provisions of the Illinois Public Construction Bond Act, 30 ILCS 550/0.01, *et seq.*

7.3.3 Failure to Furnish Bond(s).

In the event that the Provider fails to furnish either of the bonds as described above within the required timeframe, or any extension agreed to in writing by the City, then at the sole option of the City this Agreement may be terminated and the parties hereby agree and stipulate that this City shall be entitled to the full amount of Provider's bid bond submitted by Provider pursuant to RFP 19-214: Water Utilities Advanced Metering Infrastructure.

7.3.4 Maintenance Bond(s).

Maintenance bond will be in place for one year following Project Completion.

SECTION 8 – Defense, Indemnification, and Hold Harmless

8.1 The Provider shall defend, indemnify and hold harmless the City and its officers, agents, and employees from any and all actual and direct liability, losses or damages as a result of claims, demands, suits, actions, or proceedings, including but not limited to costs, and fees, including reasonable attorney fees, resulting from any negligent or willful act or omission on the part of the Provider or Provider’s subcontractors, or their respective employees, agents and representatives, during the performance of this Agreement. Such defense, indemnification, and hold harmless provisions shall not be limited by reason of any insurance coverage herein provided.

8.2 Nothing contained herein shall be construed as prohibiting the City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them at the City’s expense.

8.3 Nothing herein shall be construed as a limitation or waiver of defenses available to the City and employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

8.4 The Provider shall not be responsible for any delay in the performance or progress of the Project, or liable for any costs or damages sustained by the City resulting from such delay, caused by any errors, omissions and/or negligent acts of the City or their agents, or by changes ordered in the work. In the event of such delay, the Provider will proceed with due diligence to alleviate the delay and continue the performance of its obligations under this Agreement.

8.5 The Provider shall not be responsible for any damages, which may occur as a result of any modifications made to the plans of the Provider by others without the Provider's knowledge, or for damages that may occur because of the improper or negligent acts of others.

8.6 **Intellectual Property Indemnity.** The Provider shall defend, indemnify, and save and hold harmless the City from and against any losses, damages, fees, costs, and expenses related to any claim (“**Claim**”) alleging that Products or Services (including but not limited to any software) furnished pursuant to this Agreement (hereinafter cumulatively referenced as “**products**”) infringe any United States patent, copyright, trademark, trade or business secret, service mark, or any other proprietary right, where such products were used by the City strictly in conformance with the terms of this Agreement, provided that:

1. the City promptly, and in any event, within ten (10) business days of becoming aware of the Claim, notifies the Provider in writing of such Claim;
2. the City fully cooperates with the Provider in assisting in the defense or settlement of such Claim; and

3. Provider has the sole right to select counsel and conduct the defense of such Claim or to settle such Claims.

In the event any such products are held in such suit to be infringing or misappropriating, or their use by the City is enjoined or limited in any way, or Provider believes that such holding or enjoining is likely, Provider shall promptly, at its sole discretion and at its expense:

1. Procure for the City the right to continue to use such products; or
2. Replace or modify the same with an equivalent non-infringing product with functionality substantially similar to the products it is replacing to the reasonable satisfaction of the City.

Notwithstanding the foregoing, the Provider shall not be liable for any Claim based on (i) the combination of the use of the products with any other equipment or software not supplied or authorized by Provider if it is determined by Provider and the City (or if they cannot agree, by a court of competent jurisdiction), that the combination or use of other City equipment or software was the cause of the infringement, or (ii) the City's possession or use of any altered version of the products unless such alteration has been performed or expressly authorized by Provider if it is determined by Provider and the City, (or if they cannot agree, by a court of competent jurisdiction), that the use of any altered version of the products was the cause of the infringement or (iii) the City's failure to use the most recent version of the Software or to otherwise take any corrective action as reasonably directed by Provider provided such new release or corrective action would resolve the alleged infringement and provided that Provider provided the City's Director of Department of Public Utilities – Water with written notice of new versions of the products and/or corrective actions that need to be taken by the Provider or taken by the City at Provider's cost; or (iv) any use of the products other than for reading the City's MIUs in the area covered in the Sensus Propagation Study attached hereto as Exhibit E if it is determined by Provider and the City (or if they cannot agree, by a court of competent jurisdiction), that the use of the products other than for reading the City's MIUs in the area covered in the Sensus Propagation Study attached hereto as Exhibit E was the cause of the infringement. THIS SECTION STATES CITY'S SOLE AND EXCLUSIVE REMEDY AND PROVIDER'S ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

8.7 The City will release and hold harmless the Provider from delays or costs experienced by the City which result from the discovery of hazardous wastes, contaminants or pollutants which require additional design, disposal, mitigation or other remedial action. It is Provider's responsibility to demonstrate the existence of hazardous wastes, contaminants or pollutants and the Provider shall give written notice to the City within three (3) business days of the discovery of hazardous wastes, contaminants or pollutants or shall be deemed to have waived the issue.

8.8 EXCEPT AS OTHERWISE PROVIDED IN SECTION 14, IN NO EVENT, WHETHER ARISING OUT OF WARRANTY, INDEMNITY, TORT, CONTRACT OR OTHERWISE, SHALL PROVIDER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND.

8.9 The provisions of this Section 8, and each subsection hereof, shall survive the completion, expiration or termination of this Agreement.

SECTION 9 - Documents, Drawings, and Intellectual Property

9.1 The Provider shall provide the City with all reports, records, and materials described in the Scope of Work.

9.2 Prior to Project Completion, or prior to the effective date of any termination of this Agreement, Provider shall provide the City with: (i) all outstanding reports, records, and materials described in the Scope of Work; (ii) copies of all photographs or other documentation pertaining to MIU and Base Station installations (or access to such photographs or other documentation for purposes of City retention thereof or access thereto); and (iii) copies of “material cut sheets” and specifications sheets for each Base Station. The foregoing are cumulatively referenced in this Agreement as “**Documents**”. The City shall not acquire any rights to any of Provider’s or its Manufacturer’s or subcontractors’ proprietary computer software, or any other intellectual property owned by Provider or its Manufacturer or subcontractors. It is expressly agreed that, notwithstanding the foregoing or anything contained herein to the contrary, no interest or rights in any intellectual property will be transferred or conveyed to the City whatsoever related to the Project. All intellectual property and any rights thereto owned by Provider, its Manufacturer or subcontractors will remain the exclusive property of such party.

9.3 During the course of the Agreement, the Provider, and Provider’s subcontractors shall provide Documents as required in the Scope of Work and as requested by the City’s Project Manager. Files delivered in an electronic medium must be compatible and work with the City’s then-current systems and software.

9.4 Within thirty (30) days of completion, expiration or termination of the Agreement, a hard copy and an electronic set of original Documents as defined in paragraph 9.1 above, including but not limited to those required in the Scope of Work, shall be delivered to the City’s Project Manager and shall be labeled “Original-Final”. In the event of a conflict between any specifications, reports, or other documents, the Documents labeled “Original-Final” will govern. Files delivered in an electronic medium must be compatible and work with the City’s then-current systems and software.

9.5 The Provider shall maintain for a minimum of three (3) years after the completion of this Agreement, or for three (3) years after the termination of this Agreement, whichever comes later, adequate books, records and supporting documents in conjunction with the Agreement. The Provider shall make its non-confidential books, records, digital files, and any other supporting documents related to the Agreement promptly available for review and audit by the City and/or by the federal funding entity, if applicable. For purposes of this Paragraph 9.4, non-confidential documents include this Agreement, any purchase orders or other form of order from the City, delivery tickets, acceptance certificates from the City, Provider’s invoices, payment advice from the City, and any other documents exchanged between the City and Provider during the course of the project. The Provider agrees to cooperate with any audit conducted by the City, or federal funding authority, and to provide access, to materials related to

this Agreement. The Provider shall include a similar provision in any agreement it enters into for work under this Agreement with any subcontractor.

9.6 Prevailing Wage. Provider, and any subcontractor, shall make and keep for a period of not less than three (3) years, records of all laborers, mechanics, and other workers employed by them on the Project. The records shall include each worker's name, address, telephone number when available, last 4 digits of the worker's social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day, and shall otherwise comply with the requirements of 820 ILCS 130/1 et seq. of the Illinois Prevailing Wage Act.

9.7 The provisions of this Section 9, and each subsection hereof, shall survive completion, expiration or termination of this Agreement.

SECTION 10 - Successors and Assigns

10.1 The City and the Provider each bind themselves and their partners, successors, executors, administrators and assigns to the other party of the Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all provisions of this Agreement. Neither the City nor the Provider shall assign, sublet or transfer any interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, nor shall it be construed as giving any right or benefits hereunder to anyone other than the City and the Provider.

SECTION 11 - Force Majeure

11.1 Whenever a period of time is provided for in this Agreement for the Provider or the City to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform if such delay is caused by an event beyond its control and without its fault or negligence, including: (1) earthquakes, floods, hurricanes, tornadoes, or other similar calamities; (2) acts of war; (3) acts of civil or military authority; (4) embargoes; (5) major environmental disturbances; (6) public disorders, civil violence or disobedience; (7) riots, sabotage, insurrection or rebellion; (8) epidemics; (9) terrorist acts; (10) fires or explosions; or (11) nuclear accidents. If a delay is caused by any of the Force Majeure circumstances set forth above, the time period shall be extended for only the actual amount of time said party is so delayed. Further, either party claiming a delay due to an event of force majeure shall give the other party written notice of such event within three (3) business days of its occurrence or it shall be deemed to be waived.

SECTION 12 - Amendments and Modifications

12.1 Except as otherwise provided herein, the nature and Scope of Work specified in this Agreement may only be modified by written amendment to this Agreement, approved by both parties. This Agreement may be modified or amended from time to time provided,

however, that no such amendment or modifications shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the parties.

SECTION 13 - Standard of Care/Obligations to Remedy, Repair, and Replace

13.1 The Provider, and Provider's subcontractors shall perform all of the provisions of this Agreement to the reasonable satisfaction of the City and with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar conditions, including but not limited to the standards referenced in Section 1.15 above. The City shall base its determination of fulfillment of the Scope of the Work in accordance with applicable policies, standards, laws and regulations.

13.2 Throughout the term of this Agreement, and as set forth in Section 13.4 below, the Provider shall be responsible for the integrity and successful operation of its Products and Services under this Agreement, and shall be responsible for the successful operation of the Products deployed under this Agreement. The Provider shall promptly make necessary revisions or corrections resulting from its errors, omissions, or acts, or resulting from the errors, omissions, or acts of its subcontractors, without additional compensation. The Provider shall further, at no cost to the City, promptly take those steps necessary to remedy any service or product provided hereunder that does not function or operate as intended under this Agreement. The City's acceptance of any of the Provider's Products or Services, or Products and Services provided by Provider's subcontractors, shall not relieve the Provider of its responsibility to subsequently correct any errors or omissions, or its responsibility to achieve successful operation of said Products and Services.

13.2.1 If the Provider has furnished the City with specifications for this Project which are determined to be incorrect, or which require revision during the solicitation process (including but not limited to Requests for Proposals, Requests for Qualifications, or bids), the Provider shall make such corrections or revisions to the specifications at no cost to the City. Further, upon receipt of an invoice from the City, the Provider shall promptly reimburse the City for the reasonable costs associated with the preparation and dissemination of said corrections or revisions to appropriate parties, including but not limited to preparation of the corrected or revised documents, and printing and distribution costs. If such invoice is not fully paid within thirty (30) days of receipt by Provider (by fax, e-mail, personal service, mail, or certified mail), the City shall have the right to deduct that amount from any outstanding payments due to the Provider.

13.3 The Provider shall respond to any notice of errors, omissions, or issues with the Products or Services under this Agreement within forty-eight (48) hours of notification by the City. The Provider shall be required to promptly visit the project site if directed by the City. The Provider shall include this requirement in its agreements with any subcontractors.

13.4 If, within one year from the date of Substantial Completion as defined in the Statement of Work, any of the Provider's work, or the work of Provider's subcontractors is

found to be not in accordance with the requirements of the Agreement, or in need of warranty repair or replacement, the Provider shall cause such correction, or warranty repair or replacement to be promptly completed per the provisions of the warranty. Notwithstanding the foregoing or anything contained herein to the contrary, the extent of the warranty to be provided by Provider hereunder is set forth in Exhibit C. This remedy is in addition to any other remedies the City may have under this Agreement or the law. Provider shall assume responsibility for submitting and processing warranty claims with the Manufacturer as such warranties are set forth in Exhibit C, and any other warranties applicable to the Project.

13.5 Within thirty (30) days of notice from the City, the Provider shall pick up Products, as defined in Section 5 hereof, which the City has determined to be defective or non-operational due to a manufacturing defect, and shall cause them to be replaced in accord with the RMA procedures set forth in the Scope of Work. Notwithstanding any other provision contained or referenced herein or in any Exhibit to this Agreement or Attachment(s) thereto, the City shall not be obligated to pay any fee or cost associated with returned Products, including but not limited to any inspection, testing, handling, or other fees or costs imposed by the Provider or Provider's subcontractors, the Manufacturer, or any other manufacturer providing Services or Products hereunder through the Provider.

13.6 Core & Main agrees to ensure the integration of all systems provided by Sensus, Core & Main and VEPO with Naperville systems outlined in the Statement of Work ("Integration") so that City water meters will be read wirelessly and with a Read Success Rate of 99.5 which Integration will be performed by Sensus, remains fully operational as intended for a period of one year from the date of Substantial Completion as defined in the Statement of Work. The foregoing obligation shall be contingent upon the following components owned and maintained by the City operating in good working order, as intended: Enterprise Service Bus (ESB), Meter Data Management System (MDMS) and Customer Information System (CIS).

13.7 The provisions of this Section 13, and each subsection hereof, shall survive the completion, expiration or termination of this Agreement. Where required herein to include provisions in agreements with Provider's subcontractors, such agreements shall provide that those provisions will also survive the completion, expiration, or termination of those agreements.

SECTION 14 - Damages

14.1 Except to the extent specifically provided for in 14.1.1 below, in the event of a breach of the terms of this Agreement, the parties hereto shall have available to them all remedies provided under this Agreement or which are otherwise available at law or in equity.

14.1.1 Failure to Meet the Project Schedule: The parties acknowledge and agree that time is of the essence in this Agreement and that the City will be damaged by failure to meet the Project Schedule included in the Statement of Work attached as Exhibit A, though the damages for such failure, are difficult to quantify. Therefore, except as otherwise provided in Section 11, the parties hereto agree that if the Provider fails to achieve Substantial Completion, defined in the Statement of Work, by the date set forth in the

Statement of Work (unless such date is revised by agreement of the parties) Provider shall pay the City one thousand dollars (\$1,000) per day liquidated damages, not to exceed sixty (60) days. This remedy is in addition to any other remedies the City may have under this Agreement or the law.

SECTION 15 - Captions and Paragraph Headings

15.1 Captions and paragraphs headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

SECTION 16 - Non-Waiver of Rights

16.1 No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

SECTION 17 - Entire Agreement

17.1 This Agreement, including the Exhibits hereto, set forth all the covenants, conditions and promises between the parties with regard to the subject matter herein.

SECTION 18 - Governing Law

18.1 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance. Venue for any action arising out of or due to this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

SECTION 19 - Notice

19.1 Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, or by personal service, or by FedEx to the persons and addresses indicated below, or to such other addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

If to the City:
AMI Project Manager
City of Naperville Water Utilities
1200 W. Ogden Avenue
Naperville, Illinois 60540

If to the Provider:
Core & Main LP
220 S. Westgate Dr.
Carol Stream, IL 60188

With a copy to:
Legal Department
Core & Main LP
1830 Craig Park Court
St. Louis, MO 63146
Ph: (314) 432-4700
Fax: (314) 432-2550

19.2 Mailing of such notice as and when provided above shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

SECTION 20 – Severability

20.1 Except as otherwise provided herein, the invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other provisions, and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein.

SECTION 21 - Execution of Agreement

21.1 This Agreement shall be signed last by the City of Naperville’s City Manager and the City Clerk. The City Clerk shall affix the date on which they sign this Agreement on Page 1 hereof which date shall be the effective date of this Agreement.

SECTION 22 – Counterparts

22.1 For convenience, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

SECTION 23 – Authorizations

23.1 The Provider’s authorized representative(s) who have executed this Agreement warrant that they have been lawfully authorized by the Provider's board of directors or its bylaws to execute this Agreement on its behalf, and that such signature is sufficient to legally bind the Provider. The City Manager and City Clerk warrant that they have been lawfully authorized to execute this Agreement. The Provider and the City shall deliver upon request to each other copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents which evidence their legal authority to execute this Agreement on behalf of their respective parties.

SECTION 24 – Illinois Freedom of Information Act

24.1 The Illinois Freedom of Information Act (“FOIA” - 5 ILCS 140/1 *et seq.*) provides that records in the possession of others whom the City has contracted with to perform a governmental function are covered by the Act and subject to disclosure within limited statutory timeframes (5 working days with a possible 5 working day extension, or such time frame as might

otherwise be agreed upon in writing by the requester). Upon notification from the City that it has received a FOIA request that calls for records within the Provider's control, the Provider shall promptly provide all requested records to the City so that the City may comply with the request within the required timeframe. The City and the Provider shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, are applicable. The City shall follow its established protocol and procedures for this Project to properly process inquiries and FOIA requests.

24.2 Provider may seek to furnish trade secrets and commercial or financial information to the City under a claim such information is proprietary, privileged or confidential, along with a statement that disclosure of such information would cause the Provider competitive harm. Trade secrets and commercial or financial information that are furnished under this caveat may be able to be exempted from disclosure under FOIA in the event that the City receives a FOIA request for information provided by the Provider. (See 5 ILCS 140/7(1)(g)).

SECTION 25 - Savings Clause

25.1 If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, the remaining parts or portions of this Agreement shall remain in full force and effect.

/Signatures on Following Page/

