

City of Naperville: Water AMI Project

Exhibit F

Three-Party Agreement: Core & Main/Sensus

**AGREEMENT RE: CITY OF NAPERVILLE
RFP 19-214/WATERAMI PROJECT**

This Agreement is entered into by Sensus USA, Inc. (“**Sensus**”), Core & Main LP (“**Core & Main**”), an authorized Sensus distributor, and the City of Naperville (“**City**”), a local unit of local government having home rule authority in the State of Illinois reference City of Naperville RFP 19-214 for a Water AMI project (“**Project**”) which will use Sensus products and services. A Provider’s Services Agreement (“**PSA**”) will be entered into by and between Core & Main and the City for said Project.

Sensus acknowledges that the Sensus AMI System Performance Warranty, the Sensus General Limited Warranty, and the Sensus Limited Warranty/G-500 will all apply to the Sensus products purchased by the City of Naperville.

City of Naperville and Core & Main each acknowledge that the Sensus Terms of Sale apply to Core & Main’s purchase of goods and services from Sensus intended for resale to the City of Naperville. The City of Naperville and Core & Main each further acknowledge that to the extent that provisions of the Terms of Sale conflict with provisions in the PSA, all conflicts shall be a matter exclusively between Core & Main and the City of Naperville.

Notwithstanding the provisions of the Sensus AMI System Performance Warranty, the Sensus General Limited Warranty, the Sensus Limited Warranty/G-500, the Base Station Protection Plan, or any other Sensus warranty or plan (all of which are applicable to the City of Naperville), Sensus agrees that the Sensus Terms of Sale will not be applicable to the City of Naperville.

Sensus acknowledges that the limit of its liability with respect to Sensus products and services sold to Core & Main for the intended resale to the City shall be the value of those Sensus products and services sold to Core & Main pursuant to the Terms of Sale.

INSURANCE:

Sensus agrees to provide Cyber Liability and Professional Liability for the Water AMI Project subject to the following:

Sensus will have no obligation to provide any other insurance coverage other than Cyber Liability and Professional Liability to the extent specified below:

Sensus must furnish Certificates of Insurance to the City before staff recommends award of the Agreement to City Council. If requested, Sensus will give the City a certificate of insurance. The certificate of insurance must be delivered to the City within two weeks of the request. 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 30 days written notice to the City.

Any deductibles or self-insured retentions must be declared to the City. At the option of the City, the Provider shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law.

A. Errors & Omissions Liability/Professional Liability:

Errors & Omissions Liability insurance appropriate to the Consultant’s profession.

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.

B. Cyber Liability:

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. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to the City and for claims involving any professional services for which the Proposer is engaged with the City for such length of time as necessary to cover any and all claims.

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

C. Other Insurance Provisions

The insurance policies set forth in Items A and B above shall continue to be maintained for a period of three (3) years following the termination or expiration of the Provider Services

Agreement.

The insurance policies set forth in Items A 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 additional insureds.
2. Sensus' 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 Sensus' insurance and shall not contribute with it.

Sensus affirms that, with respect to the Professional Liability and Cyber Liability policies of Sensus USA, Inc. identified in its Certificate of Insurance, such policies comply with the foregoing insurance provisions to the extent the foregoing provisions directly relate to the requirement to provide Professional Liability and Cyber Liability coverage, and there are no exclusions or other provisions of such policies that would conflict with the foregoing requirements related to Professional Liability and Cyber Liability insurance coverage.

Core & Main affirms that, with respect to insurance coverage specified in Section 7 of the Provider Services Agreement, excluding Professional Liability and Cyber Liability (which will be provided by Sensus), the provisions of the policies of Core & Main are consistent with the insurance provisions of Section 7 of the Provider Services Agreement and there are no exclusions in the policies of Core & Main that would conflict with such provisions or diminish the City's rights under the policies.

AMI SYSTEM PERFORMANCE EXPANDED WARRANTY

The Sensus AMI System Performance Expanded Warranty (the "**Extended Performance Warranty**") is attached hereto as **Exhibit A** and incorporated by reference as though fully set forth herein. Sensus acknowledges that the terms of the Extended Performance Warranty will supplement the Sensus AMI System Performance Warranty for the City of Naperville's AMI Water Project. Where there is any conflict between the Extended Performance Warranty and the Sensus AMI System Performance Warranty, the Extended Performance Warranty shall control.

SENSUS USA INC.

CORE & MAIN LP

By: _____

By: _____

Its: _____

Its: _____

(Signatures continued on next page)

CITY OF NAPERVILLE

Douglas A. Krieger
City Manager

Attest

By: _____
Pam Gallahue, Ph.D., City Clerk

Date: _____

EXHIBIT A
SENSUS AMI System Performance Expanded Warranty

Assumptions

1. As used in this AMI System Performance Expanded Warranty document (“**Expanded Warranty**”), “**Customer**” means the City of Naperville and “**Sensus**” means Sensus USA Inc. Provider’s Services Agreement (“**PSA**”) means the agreement entered into between the Customer and Sensus’ authorized distributor, Core & Main LP. All other defined terms not defined herein shall have the meaning given to them in the Software License Agreement between Customer and Sensus dated [INSERT DATE] (“**Agreement**”).
2. This Expanded Warranty becomes effective following successful completion of the applicable Performance Test Standards for Customer’s AMI System as set forth in the Sensus AMI System Performance Warranty.
3. Sensus’ obligations in this Expanded Warranty are contingent upon Sensus having access to the necessary facilities, equipment, and personnel in a timely manner to perform its duties and obligations under this Expanded Warranty, including but not limited to:
 - a. Customer will provide a suitable VPN type connection to the RNI to facilitate Sensus’ ability to perform its obligations and to provide support to the Customer.
 - b. Customer will make personnel available for escort to any required field visits to Available Meter locations.

Monthly Reporting

4. Customer shall prepare and provide monthly reports on AMI System performance to Sensus for each Billing Cycle during the Warranty Period. Each monthly report shall contain data sufficient for Sensus to determine whether the AMI System meets the Service Levels.
5. When installed, operated, and maintained properly, the AMI System should enable 99.5% of Available Meters to be read within their respective Billing Window each month (the “SLA”). In the event the AMI System fails to meet the monthly SLA and both of the following criteria are met:
 - a. Customer has carried out its obligations relevant to achieving the SLA(s); and
 - b. such failure is the result of the RF Network, the RNI software, integration performed by Sensus, or Final Network Design and Propagation Study (as determined by Sensus, acting reasonably),

then Sensus will perform an analysis of the Customer’s AMI System’s actual performance.

Definitions

6. “**Billing Window**” for an Available Meter means the three day period commencing one day prior to the relevant billing day for such meter and ending two days after such billing day. The Billing Window for testing purposes shall be agreed by Customer and Sensus.

7. “**Available**” or “**Available Meter**” means an installed Sensus FlexNet meter or a Sensus SmartPoint Module which has been installed on a third party meter, and which satisfies all of the following criteria:
- i. it has been installed and activated; it is powered; and it is not a damaged or tampered meter or subject to other human induced failures such as theft;
 - ii. it has heard and responded to a ping command;
 - iii. it is serviced by a collector that has not been subjected to a power failure greater than eight (8) total hours;
 - iv. neither it nor the collector or any other network equipment that serves that meter has been affected by: (i) radio frequency interference; or (ii) a Force Majeure event that precludes the meter from transmitting its message to the network ;
 - v. it is installed in the Service Territory in compliance with the AMI Equipment Installation Specifications;
 - vi. its failure to operate in accordance with this Agreement is not the result of Company’s failure to perform its obligations or tasks for which it is responsible under this Agreement;
 - vii. its performance has not been adversely affected by a failure or insufficiency of the back haul telecommunications and any related collector has been installed and programmed using Sensus standard procedures and such equipment has not otherwise been reprogrammed or modified, except as a result of Sensus’ acts or omissions; and
 - viii. It has not been reported to Sensus under Sensus’ preventative maintenance program.
8. “**Warranty Period**” means three years from the date of successful completion of the applicable Performance Test Standards for Customer’s AMI System.

Troubleshooting, Remediation and Replacement

9. If the SLA is not met due to software issues, Sensus shall correct the software.
10. If (i) any installed SmartPoints do not meet the SLA, or (ii) the SmartPoint fails initial activation attempts by Customer as provided below, the parties shall troubleshoot as described in this section:
- i. On initial installation, Customer or installer must attempt activation of the SmartPoint a minimum of two (2) separate times. After the second failed attempt, Customer or installer will replace the SmartPoint. If activation or replacement does not correct the situation then Customer shall promptly notify Sensus.
 - ii. Following failed activation as provided above, or in the event Available SmartPoints lose connectivity during the Warranty Period, Core and Main and Customer shall perform a joint investigation and mutually agree upon the remediation approach as defined below:
 - a. *SmartPoint Product Quality Defect:*

- (1) Customer shall follow the RMA warranty process outlined in the published product warranties, and Sensus (Core and Main) shall provide a replacement SmartPoint at Sensus' expense;
 - (2) Customer shall perform the installation of the replacement SmartPoint at its expense.
 - b. *Access Issue or Obstructed SmartPoint; Installation Error; or any other cause not attributable to Sensus:*
 - (1) Customer shall remediate the access issue or obstruction, correct installation errors, or install a replacement SmartPoint at Customer's cost.
 - c. *RF Enhancement:*
 - (1) Sensus shall remediate the RF issue; and
 - (2) Sensus shall provide any additional Network Equipment at its expense, subject to the limitations noted below.
 - i. Sensus has no obligation to provide additional network equipment if the existing network equipment is not installed properly or at the locations identified in the underlying propagation study (including heights noted on the propagation study).
 - ii. Customer is responsible for installing any additional network equipment. Customer is responsible for providing an adequate site for the additional network equipment, power to the site, all coax and cabling, backhaul, all fittings, and anything else required in order for the network equipment to operate effectively.
 11. If remediation in accordance with Section 10 above (as applicable) does not enable the AMI System to meet the SLA, then Sensus and Customer will reassess and determine a new corrective action.
 12. SmartPoints pending remediation in accordance with this section shall be deemed corrected when the SmartPoint meets the criteria set forth in this Expanded Warranty.
 13. If any SmartPoints stop communicating during the Warranty Period due to a Sensus tuning issue or any other Sensus responsibility, then Sensus shall be responsible for fixing the SmartPoint communication problem and retesting to validate that the Available SmartPoint is communicating by performing a ping test to the SmartPoint within ninety (90) days; however, communication issues caused by RF interference will be addressed within a mutually agreed time period subject to each party's obligations under the Spectrum Lease described in the Agreement.
 14. Where there is any conflict between this Extended Performance Warranty and the Sensus AMI System Performance Warranty, this Extended Performance Warranty shall control.
 15. This Expanded Warranty states Sensus' sole and exclusive obligation, and Customer's sole and exclusive remedy, regarding the ongoing performance of the AMI System.
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