RESOLUTION NO. R-2021-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING A MASTER SERVICES AGREEMENT WITH AQUA METRIC, ATTACHED AS EXHIBIT A, TO UPGRADE THE CURRENT REGIONAL NETWORK INTERFACE RELATED TO THE ADVANCED METERING INFRASTRUCTURE SYSTEM; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop entered into an agreement with Aqua Metrics in February of 2014 to provide Advanced Metering Infrastructure, which included hardware and software; and

WHEREAS, advancements have been made to improve the hardware and software related to the Advanced Metering Infrastructure; and

WHEREAS, the procurement of new hardware and software through this Master Service Agreement will provide the City of Bastrop with the most current technology available to properly analyze the data being provided by the Advanced Metering Infrastructure; and

WHEREAS, the City Council finds that the performance of this contract is in the common interest of the citizens of Bastrop.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

SECTION 1: The City Council hereby approves the Master Service Agreement with Aqua Metrics, which is attached as Exhibit A, and authorizes the City Manager to execute all necessary documents.

SECTION 2: Any prior resolution of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.

SECTION 3: Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 4: This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, Texas on the 9th day of March 2021.
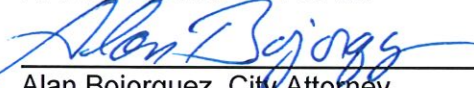
CITY OF BASTROP, TEXAS

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is made by and between Thirkettle Corporation dba Aqua-Metric Sales Company, a California corporation, having its principal location at 4050 Flat Rock Drive, Riverside, CA 92505 ("Aqua-Metric") and City of Bastrop, having its principal location at 1311 Chestnut Street, Bastrop, Texas 78602, (the "Client"). Aqua-Metric and Client are each referred to individually as "Party" or collectively as the "Parties". The Parties agree as follows:

RECITALS

A. Client seeks to procure the product and services necessary to upgrade its current Regional Network Interface ("RNI") equipment and software to a managed Software-as-a-Service hosted network.

B. Aqua-Metric is the exclusive reseller of certain services, hardware, and software related to the technology manufactured by Sensus USA, Inc. ("Sensus") and used to measure consumer consumption of utility resources.

C. Client has engaged Aqua-Metric to furnish the products and services described hereunder to facilitate a functional AMI System for the measurement and metering of Client's utility resources.

D. Aqua-Metric agrees to, in accordance with the terms of this Agreement, supply the goods and perform the services as described in the attached Exhibits and Appendices, which is attached hereto and made a part hereof for all purposes. This Agreement shall include the following:

    1. Exhibit A: Project Pricing
    2. Exhibit B: Scope of Work
    3. Exhibit C: Annual Services Agreement
    4. Exhibit D: Sensus Software-as-a-Service and Spectrum Lease Agreement

In consideration of the mutual agreements, covenants, representations and warranties contained herein, and in reliance thereon, intending to be legally bound, Aqua-Metric and Client agree as follows:

1. TERM. This Agreement shall commence on February 1, 2021, (the "Effective Date") and shall continue until all work and services are completed in accordance with the Exhibits and appendices herein unless terminated earlier in accordance with Section 15, below.

2. LICENSES. Pursuant to the Sensus Software-as-a-Service and Spectrum Lease Agreement, the Client shall be provided with leased spectrum and those systems necessary to operate the AMI System including use of the Sensus license and frequencies necessary, the Regional Network Interface (RNI) and Sensus Analytics for the ongoing function of the AMI System.

3. COMMUNICATIONS NETWORK. Client acknowledges and agrees that it is solely responsible for procuring a secure wide-area network connectivity to each Basestation and the connectivity between data centers and that Aqua-Metric exercises no control whatsoever over Client's communications network or performance related issues resulting thereof.

4. PRICING AND PAYMENT. Subject to the provisions of this Agreement, Client agrees to pay Aqua-Metric for delivery of materials and performance of services in the amount set forth in Exhibit A within thirty (30) days from the date of invoice. Notwithstanding, if Client fails to pay any invoices within thirty (30) days from the date of invoice, Aqua-Metric may, at its sole discretion, withhold or suspend the services until Client has paid any past due invoiced amounts or seek to termination pursuant to Section 15 of this Agreement. Aqua-Metric reserves the right to issue late fees to Client for past due amounts at a maximum rate of 1.5% of the invoice total for each additional day past due. All pricing and payments shall be in US currency.

5. AMENDMENTS AND CHANGE ORDERS. No amendment or change order to this Agreement or the services herein shall be binding upon either Party hereto unless such amendment or change order is set forth in writing

and duly executed by an Authorized Representative of each Party. The Parties each acknowledge additional products or services not described herein may be necessary to complete the services. Either Party may initiate an amendment or change order request to add, substitute, or remove product or services; however, no additional product or service will be permitted unless and until written amendment or change order to this Agreement has been duly executed by an Authorized Representative from both Parties. Unless otherwise agreed upon, all additional product or services will be priced at the then current market values at time of request.

6. OWNERSHIP.

    6.1. Aqua-Metric Materials. Aqua-Metric or its suppliers shall retain all right, title and interest (including but not limited to copyright, trademark, patents, and other proprietary or intellectual property rights) in Aqua-Metric's Confidential Information and Proprietary Materials (excluding Client Data and Client Confidential Information).

    6.2. Client Materials. The Client shall retain all right, title and interest (including copyright and other proprietary or intellectual property rights) in Client's Confidential Information and Client Data. Aqua-Metric may access Client Data only to provide the services, respond to technical problems, or at the Client's request, and for the purposes of hosting such Client Data in connection with the provision of the services to the Client. Without limiting the generality of the foregoing, Aqua-Metric agrees that information and data on how the services are used by Client (such as, but not limited to, benchmarking data, usage patterns and roles) constitute Confidential Information and may only be used by Aqua-Metric to improve the delivery of the services to Client, and may not be used for other purposes, may not be distributed, transferred in detail or summary form to any third party without the express written consent of Client.

7. CONFIDENTIAL INFORMATION.

    7.1. Each party shall hold the other party's Confidential Information in confidence and shall not disclose such Confidential Information to third parties other than to consultants or contractors, subject to similar terms of confidentiality, when disclosure is necessary for the purposes set forth herein, nor use the other party's Confidential Information for any purpose other than the purposes set forth under this Agreement. The foregoing restrictions on disclosure shall not apply to information which is: (i) already known by the recipient, (ii) becomes, through no act or fault of the recipient, publicly known, (iii) received by recipient from a third party without a restriction on disclosure or use, (iv) independently developed by recipient without reference to the other party's Confidential Information, or (v) is a public record under applicable laws, which shall control, subject to the terms of this Section. Subject to the Act, the Client will maintain the confidentiality of all Aqua-Metric Confidential Information, and Aqua-Metric will maintain the confidentiality of all Client Confidential Information, with each party taking all reasonable precautions to protect the same, at a minimum taking those precautions used to protect its own Confidential Information from unauthorized use or disclosure. All Client Data shall be deemed Client Confidential Information for purposes of this Agreement and the protections and requirements set forth herein.

    7.2. The Client acknowledges that Aqua-Metric may use products, materials, or methodologies proprietary to Aqua-Metric. The Client agrees that Aqua-Metric's provision of services under this Agreement shall not be grounds for the Client to have or obtain any rights in such proprietary products, materials, or methodologies unless the parties have executed a separate written agreement with respect thereto. Aqua-Metric, for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by the Client as confidential and shall not disclose any such information to a third party without the prior written approval of the Client. Subcontractors and affiliates of Aqua-Metric who need to know the Confidential Information to perform the Services shall not be considered third party for purposes of this Section.

    7.3. Unauthorized Access. Aqua-Metric shall store and maintain Client Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt Client Information in any way. Aqua-Metric shall notify the Client immediately if the security or integrity of any Client information has been compromised or is believed to have been compromised, in which event, Aqua-Metric shall, in good faith, use all commercially reasonable efforts to cooperate with the Client in identifying what

information has been accessed by unauthorized means and shall fully cooperate with the Client to protect such information from further unauthorized disclosure.

8. COMPLIANCE WITH LAWS.

8.1. Aqua-Metric Compliance with Laws. Aqua-Metric will perform their respective obligations under this Agreement in a manner that complies with all Laws: (i) applicable to Aqua-Metric's respective business and activities, including Laws of any country or jurisdiction from which or through which Aqua-Metric provides the product or services; and (ii) applicable to Client and Client's affiliates. "Laws" shall include and refer to any and all federal (national), state, provincial, municipal or local laws, regulations, rules, judicial decrees, decisions and judgments, executive and government orders and ordinances, and any and all directives of regional legislative and regulatory bodies and implementing legislation, as well as rules and regulations of any self-regulatory organization by which any party may be bound.

8.2. Client Compliance with Laws. Client will perform its obligations under this Agreement in a manner that complies with all Laws applicable to Client's business, activities, and facilities. "Laws" shall include and refer to any and all federal (national), state, provincial, municipal or local laws, regulations, rules, judicial decrees, decisions and judgments, executive and government orders and ordinances, and any and all directives of regional legislative and regulatory bodies and implementing legislation, as well as rules and regulations of any self-regulatory organization by which any party may be bound.

9. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

9.1. Aqua-Metric represents, warrants and covenants as follows:

a. Aqua-Metric has the right to enter into this Agreement and perform in accordance with the terms of this Agreement, and such actions do not violate any third-party agreement or other obligation by which Aqua-Metric is bound.

b. Aqua-Metric is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement, except where the failure to be so qualified, in the aggregate, would not reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

c. Aqua-Metric has the full right, corporate power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;

d. The execution of this Agreement by Aqua-Metric's representative herein has been duly authorized by all necessary corporate action of Aqua-Metric.

10. WARRANTIES.

10.1. Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND SOFTWARE ARE PROVIDED BY AQUA-METRIC ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; provided; however any such warranties received by Aqua-Metric from its suppliers shall be passed on to Client.

10.2. Aqua-Metric warrants that the services provided by Aqua-Metric will be performed in a professional and workmanlike manner with a degree of care, skill and competence that is consistent with the then generally accepted industry standards reasonably expected of similar types of engagements and the deliverables herein this Agreement will substantially conform to the deliverables specified in the applicable Exhibits and Appendices hereto through the term of the Agreement.

10.3. Limitations. Unless otherwise expressly provided herein, neither Aqua-Metric nor any of its service providers, licensors, employees or agents warrant that the operation of the services will be uninterrupted or error free. Aqua-Metric will not be responsible for any damages that Client may suffer arising out of use, or inability to use, the Services.

10.4. Standard Manufacturer Warranty. Standard manufacturer product warranties provided shall apply to all product(s) furnished under this Agreement.

11. LIMITATIONS AND DISCLAIMERS OF LIABILITY. DISCLAIMER OF CERTAIN DAMAGES. IN NO EVENT SHALL ANY PARTY HAVE ANY LIABILITY TO THE ANOTHER PARTY HERETO FOR ANY LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOSS OF USE, COSTS OF COVER, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

12. INDEMNIFICATION.

12.1. Aqua-Metric's Obligation. Aqua-Metric shall defend, indemnify and hold each Client Indemnitee (as defined below) harmless from any and all losses, costs, fines, penalties, damages and other amounts (including reasonable attorney fees) incurred by, assessed against or imposed on a Client Indemnitee arising from or in connection with any and all third party suits, claims, actions or demands (a "Claim"): (i) alleging any product, software or any service infringes any valid and issued patent, copyright, or trademark or similar property right of a third party, (ii) for personal injuries, death or damage to tangible personal and real property caused by the gross negligence or willful misconduct of Aqua-Metric, its employees, contractors or agents; (iii) relating to or arising out of Aqua-Metric's failure to comply with applicable law; and (iv) relating to or arising out of Aqua-Metric's breach of its confidentiality obligations hereunder. "Client Indemnitee" shall mean Client, and its respective officers, directors, employees, agents, successors and assigns.

12.2. Client Obligation. To the extent allowed by the laws of the State of Texas, Client shall defend, indemnify and hold Aqua-Metric harmless from any and all losses, costs, fines, penalties, damages and other amounts (including reasonable attorney fees) incurred by, assessed against or imposed on Aqua-Metric arising from or in connection with any and all third party suits, claims, actions or demands (a "Claim"): (i) for personal injuries, death or damage to tangible personal and real property caused by the negligence or willful misconduct of Client, its employees, contractors or agents other than Aqua-Metric; (ii) relating to or arising out of Client's failure to comply with applicable law; and (iii) relating to or arising out of Client's breach of its confidentiality obligations hereunder.

13. FORCE MAJEURE. Neither party shall be held liable for delay in fulfilling or failure to fulfill its obligations under this Agreement, if such delay or failure is caused by events beyond the reasonable control of such party, including, without limitation, natural calamity, acts of God, terrorist events, pandemic, epidemic or delays in product shipment caused by any of the preceding events, provided payment obligations shall not be so excused. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this Agreement.

14. SUSPENSION OF WORK. Except in the event of force majeure pursuant to Section 13, and notwithstanding anything to the contrary contained herein, in the event of prolonged or indefinite delays or suspension not caused by the Aqua-Metric, Aqua-Metric may, at its discretion and upon written notice to Client, elect to remove Aqua-Metric assets including but not limited to personnel, equipment, storage and disposal facilities, product and materials from the Project worksite. Client agrees to pay for fees incurred by Aqua-Metric resulting from but not limited to loss of payroll/subcontractor compensation, contracted or broken lease fees, demobilization and remobilization fees. Should the Client elect to suspend or postpone indefinitely any portion of the services requested, Aqua-Metric may demobilize all staff, subcontractors, and/or facilities until such suspension has been lifted or Agreement termination.

15. TERMINATION.

15.1. Default. In the event a Party hereto breaches this Agreement and such breach is not cured during the Cure Period (defined below), if applicable, the non-breaching Party may terminate this Agreement by providing no less than sixty (60) business days' prior written notice of termination (the "Termination Period") to the other Party.

15.2. Breach. Subject to the terms herein, either party may terminate this Agreement for breach of duty, obligation or warranty upon exhaustion of all remedies set forth herein.

15.3. In the event of such termination, all Work shall be suspended as provided in the termination instruction. Client shall pay Aqua-Metric pursuant to the terms herein for all product and services rendered prior to and through the effective date set forth in the notice of termination.

15.4. Upon termination of this Agreement for any reason, Aqua-Metric shall provide the Client with copies of all completed or partially completed documents prepared under this Agreement contemporaneously with the Client making a final payment to Aqua-Metric in the amount (a) consistent with services rendered as of the date of termination, including such subscription services Aqua-Metric has contracted for in fulfillment of the terms of this Agreement, *plus* (b) amounts incurred by Aqua-Metric to demobilize and orderly conclude open matters/invoices. In the event Aqua-Metric has received access to Client information or data as a requirement to perform services hereunder, Aqua-Metric shall return all Client provided data to the Client in a machine-readable format or other format deemed acceptable to the Client, in the Client's reasonable discretion.

15.5. Cure Period. As used in this Agreement, "Cure Period" means a period a of thirty (30) days after receipt by a breaching Party of written notice from the non-breaching Party that this Agreement has been breached; provided, however, no Cure Period shall be permitted if a Party to this Agreement is found to have already breached this Agreement three (3) times.

16. INFORMAL DISPUTE RESOLUTION. Except in the event of termination pursuant to Section 15, if either Aqua-Metric or Client has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the Parties shall first attempt to resolve the matter through this dispute resolution process. The disputing Party shall notify the other Party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice shall state the nature of the dispute and list the Party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both Parties shall commence the resolution process and make a good faith effort, either through email, mail, phone conference, in person meetings, or other reasonable means to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with this Agreement. If the Parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the Parties shall submit the matter to non-binding mediation in the county courts located within Bastrop County, Texas. The mediator shall be agreed to by the Parties. If the Parties cannot agree on a mediator, each Party shall select a mediator and the mediators selected by the Parties shall select a mediator to mediate the dispute. Each Party shall be liable for its own expenses, including attorney's fees; however, the Parties shall share equally in the costs of the mediation. If the Parties cannot resolve the dispute through mediation, then either Party shall have the right to exercise any and all remedies available under law regarding the dispute. Notwithstanding the fact that the Parties may be attempting to resolve a dispute in accordance with this informal dispute resolution process, the Parties agree to continue without delay all of their respective duties and obligations under this Agreement not affected by the dispute. Either Party may, before or during the exercise of the informal dispute resolution process set forth herein, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests.

17. NOTICES. All notices permitted or required to be given by either Party under this Agreement to the other shall be in writing through each Party's authorized representative(s) as follows:

If to Aqua-Metric:

Thirkettle Corporation
DBA Aqua-Metric Sales Company
Attn: Christopher Newville
16914 Alamo Parkway, Building 2
Selma, TX 78154
Email: chris.newville@aqua-metric.com

If to Client:

City of Bastrop
Attn: Tracey Waldron
1311 Chestnut Street
Bastrop, Texas 78602

Any such notice shall be deemed to have been properly served if delivered in person or by mail, fax or email to the address of the representative designated above. The date of such notice shall be the date on which it is actually received by the Party to whom it is addressed.

18. AGREEMENT AUTHORIZED. Each party represents to the other party that: (i) it has the power and authority to execute and deliver this Agreement and perform its obligations hereunder; (ii) the execution, delivery, and performance of this Agreement has been duly approved and authorized by it; and (iii) the execution and delivery of, and performance by, such party of this Agreement does not and will not, directly or indirectly, (iv) require the consent, approval, or action of, or any filing or notice to (collectively, "Consents"), any corporation, firm, person or other entity or any public, governmental or judicial authority, which Consents have not already been obtained, (v) violate the terms of any instrument, document or agreement to which it is a party, or by which it is bound, or be in conflict with, result in a breach of or constitute (upon the giving of notice or lapse of time or both) a default under any such instrument, document or agreement, or (vi) violate any order, writ, injunction, decree, judgment, ruling, law rule or regulation of any federal, state, county, municipal, or foreign court or governmental authority applicable to it.

19. INDEPENDENT CONTRACTOR. The relationship of the Aqua-Metric to Client is that of an independent contractor, and this Agreement shall not create any joint venture, partnership, or similar relationship. Neither party shall represent itself as an agent or employee of the other party. Further, Aqua-Metric expressly warrants and represents that they alone are exclusively responsible for all terms and conditions of employment, including the compensation, of any and all personnel whom Aqua-Metric assigns to perform any of the services contemplated by this Agreement. Aqua-Metric further expressly represents and warrants that it maintains all applicable and required insurance (including workers compensation insurance) with respect to such personnel and that in no event shall Client be liable to any Aqua-Metric employee for any of the terms and conditions of their employment.

20. NON-SOLICITATION OF EMPLOYEES. Neither the Client nor Aqua-Metric shall, during the term of this Agreement and additionally for a period of one year after its termination, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other during the term of this Agreement, without the prior written consent of the person's employer. This provision shall not apply to an employee who responds to a general solicitation or advertisement of employment by either party.

21. CONFLICTS OF INTEREST. Aqua-Metric hereby warrants to the Client that Aqua-Metric has made full disclosure in writing of any existing or potential conflicts of interest related to Aqua-Metric's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Aqua-Metric hereby agrees immediately to make full disclosure to the Client in writing.

22. ANTI-ISRAEL BOYCOTT PROVISION. Aqua-Metric certifies that it is not currently engaged in and agrees for the duration of the Agreement not to engage in a boycott of Israel.

23. REMEDIES. Except for remedies specifically designated as exclusive, no remedy conferred by the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

24. SEVERABILITY. If any term, provision or part of the Agreement is to any extent held invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be impaired or affected thereby, and each term, provision, and part shall continue in full force and effect, and shall be valid and enforceable to the fullest extent permitted by law.

25. SUCCESSORS. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns (if such assignment was properly made pursuant to this Agreement).

26. ASSIGNMENT. Aqua-Metric may not assign any of their respective rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party, including any assignment or transfer in connection with a merger, reorganization, or sale of all or substantially all of the assets or equity of such party. Any attempted assignment in breach of this Section shall be void and Client shall have the right to terminate this Agreement as set forth herein. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

27. NONWAIVER. Any failure or delay by any party to exercise or partially exercise any right, power or privilege hereunder shall not be deemed a waiver of any of the rights, powers or privileges under this Agreement. The waiver by either party of a breach of any term, condition or provision of this Agreement shall not operate as, or be construed as, a waiver of any subsequent breach thereof.

28. ENTIRETY OF AGREEMENT. This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Client and Aqua-Metric, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

29. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

30. FORUM SELECTION. The Parties agree that any action to interpret or enforce this Agreement shall be brought and maintained only in the county courts located within Bastrop County, Texas. The Parties consent to the exclusive jurisdiction of such courts and waives any objection either Party might otherwise have to jurisdiction and venue in such courts and Parties consent to service of process out of said State of Texas by regular U.S. mail to each Party or any other method of service permitted by such courts.

31. HEADINGS. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

32. DEFINITIONS.

   32.1. "Thirkettle Corporation", "Aqua-Metric Sales Company" or "Aqua-Metric" shall include Thirkettle Corporation and its representatives, with respect to any person, any such person's directors, officers, employees, agents, consultants, advisors, accountants, attorneys or other representatives authorized to conduct business on behalf of Thirkettle Corporation.

   32.2. "City of Bastrop" or "Client" shall include City of Bastrop and its representatives, with respect to any person, any such person's directors, officers, employees, agents, consultants, advisors, accountants, attorneys or other representatives authorized to conduct business on behalf of City of Bastrop.

   32.3. Aqua-Metric's "Authorized Representative" means any and all directors and officers of the corporation, including any person(s) designated as an authorized representative by the board of directors of the corporation who has been duly authorized to bind Aqua-Metric into this Agreement with Client.

   32.4. Client's "Authorized Representative" means any and all elected officials, board members, council members, directors, officers, agents, employees, or designees thereof who have been duly authorized to bind Client into this Agreement with Aqua-Metric.

   32.5. "Advanced Metering Infrastructure ("AMI") System" is an integrated system of smart meters, communications networks, and data management systems that enables two-way communication between utilities and customers.

   32.6. "Sensus Software-as-a-Service and Spectrum Lease Agreement" is an agreement between the Client and Sensus USA, Inc. ("Sensus" including but not limited to the use of the Sensus AMI System, Sensus Analytics Software-as-a-Service ("SaaS"), Spectrum License Lease, and Support Standards.

   32.7. Sensus "Software-as-a-Service ("SaaS")" means a software distribution model in which Sensus USA, Inc. hosts the Sensus Analytics software in a secure cloud environment and makes available to customers over the Internet.

32.8. "Software" means the computer software described as such in the Sensus Agreement, in machine-readable form only, as well as any updates which may be provided pursuant to the terms of this Agreement.

32.9. "Confidential Information" means documents, data, work product and any other sources of information designated as confidential in writing by Client or Aqua-Metric, as applicable, and any other information that a party should reasonably know is confidential in light of the circumstances surrounding its disclosure.

32.10. "Aqua-Metric Proprietary Materials" means (i) software and all computer programs, documentation, products, forms, tools, methodologies, processes and procedures which were developed and owned by Aqua-Metric or its subcontractors prior to the Effective Date or which are developed during the term of the Agreement by Aqua-Metric staff (including employees and subcontractors), expressly excluding any Client Work Product; and (ii) any modifications thereof and derivative works based thereon.

32.11. "Client Data" means any or all of the following, and all copies thereof, regardless of the form or media in which such items are held: (i) Confidential Information of Client, including, but not limited to, personally identifiable information; (ii) data and/or information provided or submitted by or on behalf of Client or any Client affiliate to Aqua-Metric regardless of whether considered Confidential Information; and (iii) data and/or information stored, recorded, processed, created, derived or generated by Aqua-Metric as a result of and/or as part of the Services, regardless of whether considered Confidential Information.

[Signature page on following page.]

33. **COUNTERPARTS AND ELECTRONIC SIGNATURE.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.
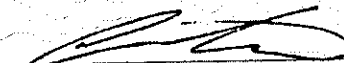
Client signatory represents and warrants that the signatory has all necessary authorization to purchase and pay for the Services indicated herein.

THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL NOT BE BINDING UNTIL FULLY EXECUTED BY AN AUTHORIZED SIGNATORY FOR BOTH CLIENT AND AQUA-METRIC (OR ITS APPLICABLE AFFILIATE).

IN WITNESS WHEREOF, this Agreement is hereby executed on behalf of each of the parties hereto as of the date signed by both parties below.

THIRKETTLE CORPORATION
DBA AQUA-METRIC SALES COMPANY
4050 Flat Rock Drive
Riverside, CA 92505

City of Bastrop
1311 Chestnut Street
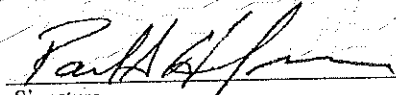Bastrop, Texas 78602

_____
Signature

_____
Signature

Christopher Newville
Name (Printed or Typed)

Paul A. Hofmann
Name (Printed or Typed)

Manager
Title

City Manager
Title

3/16/2021
Date

3/10/2021
Date

EXHIBIT A

PROJECT PRICING

Aqua Metric

Kristy Segarra - Manager, Bids & Proposals
16914 Alamo Parkway, Building 2 • Selma, TX 78154
Phone: (210) 967-6300 • Fax: (210) 967-6305
Email: kristy.segarra@aqua-metric.com
www.aqua-metric.com

SENSUS
FlexNet

October 19, 2020

Quote for	City of Bastrop, Texas
Attention	Tracey Waldron
Address	1311 Chestnut Street
City, State, ZIP	Bastrop, Texas 78602
Phone:	(512) 332-8820
Email	twaldron@cityofbastrop.org

Quantity	Description	Unit Price	Extended
	Year One System and Setup Costs		
1	RNI Setup Fee	$7,956.25	$7,956.25
1	RNI Core Education	$5,500.00	$5,500.00
1	Sensus Analytics Setup Fee		Included
1	Sensus Analytics Basic Integration to CIS[8]	$4,000.00	$4,000.00
1	Sensus Analytics Training	$4,000.00	$4,000.00
1	CMEP Integration for Smart Energy Portal[8]	$2,500.00	$2,500.00
1	Project Management	$12,500.00	$12,500.00
1	Annual RNI Software-as-a-Service (SaaS) Fee, Water and Electric	$7,770.04	$7,770.04
1	Annual Sensus Analytics Enhanced SaaS Fee, Water Only	$3,885.01	$3,885.01
1	Annual Sensus Analytics Enhanced SaaS Fee, Electric Only	$3,885.01	$3,885.01
1	Annual CMEP Fee	$500.00	$500.00
1	Annual S50 Basestation Extended Warranty	$3,219.00	$3,219.00
1	Annual Aqua-Metric Maintenance and Support	$7,500.00	$7,500.00
		Total:	**$63,215.31**
		One-Time Fees:	**$36,456.25**
		Annual Fees[5,6]:	**$26,759.06**

This quotation on the product and services named, may be subject to the conditions noted below:

1. Net 30 Days to Pay
2. Freight Allow on orders over $7,500.00
3. Quote is valid until November 10, 2021.
4. Return product may be subject to 25% restocking fee
5. 3% Increase on all Annual Services; Minimum 5 Year Term
6. Pricing based on 2,960 Water Services and 2,777 Electric Services
7. Pricing does not include bonding
8. City's billing system may require system integration fees on their end. Aqua Metric is unable to determine those costs at this time

EXHIBIT B

SCOPE OF WORK

1. OBJECTIVE.

City of Bastrop ("Client") has engaged Aqua-Metric Sales Company ("Aqua-Metric") to furnish the services described hereunder to move Client's local Regional Network Interface ("RNI") to the Sensus remote data center. This Scope of Work ("SOW") describes the Services that will be rendered by Aqua-Metric, Sensus USA, Inc. ("Sensus"), and Client during the upgrade and migration of Client's Regional Network Interface ("RNI").

1.1. Project Management
   A. Contractor Responsibilities
      I.   Designate a primary point of contact to oversee project deployment.
      II.   Coordinate Planning & Discovery Workshop with Client to review Project Plan, Deliverables, and Timeline.
      III. Oversee the installation, upgrade, and configuration of existing AMI System Components
         1. Sensus Basestation(s)
         2. Regional Network Interface (RNI)
         3. Sensus Analytics
      IV.   Advise Client on issues related to challenges with project activities or risk mitigation strategies.
      V.   Manage open Sensus trouble tickets.
      VI.   Conduct System Integration Testing with Sensus RNI, Analytics, and the Client Billing vendor.
      VII. Support the development and implementation of the System Acceptance Test (SAT) per Section 3.4 below.
   B. Client Responsibilities
      I.   Appoint a primary point of contact to coordinate with Contractor on the overall delivery of the solution described herein.
         1. Coordinate project activities with Contractor and technical resources.
         2. Schedule with necessary Client personnel for meetings with Contractor.
         3. Assist Contractor and Sensus, with tasks which require Client involvement.
         4. Provide a list of Client personnel for communications and distribution of information.
         5. Establish a communication and activity plan with reporting requirements during the project implementation and which Client personnel will be available to participate in the project.
         6. Develop and implement the SAT to plan for formal acceptance of the RNI and Sensus Analytics Software implementation per Section 3.4 below.
         7. This primary point of contact will not have authority to bind Client to any amendment to the Agreement or Statement of Work as those must be signed by the City Manager.

2. SYSTEM DEPLOYMENT
   2.1. Regional Network Interface
      A. Set-Up and Integration
         I.   Contractor/Sensus Responsibilities
            1. Provide technical resources and identify the detailed steps of the standard integrations to support the implementation, configuration, and integration of the RNI, Sensus Analytics, and Client Billing System.
            2. Sensus shall setup and configure the hosted RNI environment within Sensus' Data Centers. Contractor/Sensus shall be responsible for proper configuration of the various Sensus systems and providing guidance to Client on various application configurations when different options are available.
            3. Contractor/Sensus shall facilitate integration services on the Sensus side between the RNI, Sensus Analytics, and the Client's Billing System. Contractor/Sensus shall provide the data integration specifications for the Client billing system provider to Client and Client's billing system provider.
            4. Contractor/Sensus will work with Client's IT organization to connect the old Sensus RNI with new SaaS RNI.

5. Contractor/Sensus will work with Client's IT organization to connect the existing basestation(s) to the new SaaS RNI to facilitate cutover to new RNI.
6. Contractor/Sensus will do standard data migration, which is normally a maximum of 60 days of data from the client's current Sensus RNI. Sensus will attempt, but may not be able to migrate any data, depending on the state of the client's current Sensus RNI. If more than 60 days is required, a change order and associated fees would be required if client's current RNI's data is migratable.

II. Client Responsibilities
1. Contract with Client's Billing System provider to create a sync file that will be sent to Sensus Analytics nightly as well as interface to receive readings from Sensus Analytics. There will also be a meter swap process to get the meter change out data into the billing system.
2. Client agrees to conduct and System Acceptance Testing (SAT) of the RNI, Analytics, and the Client Billing system as specified in Section 3.4 in a timely manner. Client agrees to provide formal acceptance of the RNI environment and Sensus Analytics in writing after completion of SAT.
3. Client is to provide the connectivity and network support to connect the existing RNI to New SaaS RNI. This is required for the duration of the parallel test of the old and new environments, and provides client with parallel environment for testing.
4. Client is to provide network connectivity/backhaul and support to connect the existing basestation(s) to the new SaaS RNI to facilitate cutover to new RNI.
5. Client is to provide the deployed meter size and type for each location in order to check the meter multiplier and to confirm correct programming.

2.2. Sensus Analytics
A. Setup and Integration with RNI
I. Contractor/Sensus Responsibilities
1. Sensus shall setup, install, and configure Sensus Analytics instance for Client.
2. Integrate the SaaS RNI environment with Sensus Analytics and ensure that data is successfully delivered from the RNI to Sensus Analytics.

II. Client Responsibilities
1. Coordinate with Contractor, internal departments and/or vendors to facilitate the setup and integration of the RNI, Sensus Analytics.

B. Configuration of Sensus Analytics with Client Billing System Vendor
I. Contractor/Sensus Responsibilities
1. Work to configure the RNI and/or Sensus Analytics, as appropriate, with Client's Billing System according to Client's system requirements.
2. Configure Sensus Analytics so that it can receive data from the Client's billing system. This is to ensure that updates to meter information are received daily from Client's billing system into Sensus Analytics.
3. Configure the Sensus Analytics, as appropriate, to accept incoming data files from billing system.
4. Configure the Sensus Analytics, as appropriate, to accept the read request file from billing, and export reads to the billing system.

II. Client Responsibilities
1. Engage with Contractor and coordinate with internal departments and/or vendors to facilitate the setup and integration of the RNI and Sensus Analytics.
2. Collaboration may include, but is not limited to, the creation and delivery of data synchronization files from the billing system.
3. Provide the communication path between Sensus Analytics and Client's billing system for the purpose of the data exchange. Any fees/costs for modification and testing of the billing interface for Client's billing system charged by the Billing System Vendor will be responsibility of Client.
4. Sensus Analytics will provide file exports for billing, based on the daily synchronization file from the Billing/CIS system. The Billing/CIS synchronization delivery, would need to be configured by Client or their Billing System Vendor with the following.
   a) Delivery Frequency: Daily

b) Delivery Method: files will be posted to Sensus Secure File Transfer Protocol ("FTP") site by Client

c) Delivery Format is delimited or fixed width

d) Additional synchronization fields as needed and may be requested by Client for reporting, search, and other functionality of Sensus Analytics during the initial setup. Changes after setup will require a separate Statement of Work.

2.3. Validation and Testing Services

A. AMI Read Validation Testing

I. Contractor/Sensus Responsibilities

1. Contractor shall work with Client to define the configuration for each meter type; meter configuration, and FlexNet Radio activation configuration.

2. Contractor to resolve any issues identified during first validation testing.

II. Client Responsibilities

1. Client shall inspect and test meters, packaging and documentation provided to verify that they meet configuration and functionality requirements.

2. Client shall complete testing within five (5) days of receipt of the meters.

III. Acceptance Criteria

1. Client shall verify that the configuration and functionality of each meter type is as was specified in configuration documentation and product documentation from Sensus.

2. Client shall verify that the meter can be read, understood and provided to the Client billing system.

B. System Integration Testing (SIT)

I. Contractor/Sensus Responsibilities

1. Contractor/Sensus will validate and test all functionality of the system prior to the cut-over production of the RNI environment. Validation and testing include the connectivity to/from the Basestations, integration between Sensus Analytics and Client billing system. Contractor will submit their SIT plan for review and approval by the Client and implement the plan as approved.

2. Contractor will swap the transceiver in the existing Sensus Basestation at the Watermelon water tower. There will be a final check to make sure all Basestations are at the appropriate hardware and firmware build for RNI, the radio frequency cards are at the required revision and Global Positioning System ("GPS") is configured and functional.

3. Update the firmware and/or hardware required for any Sensus Basestation required to function in order to facilitate the RNI implementation.

4. Test Sensus Basestation configuration and communication to the RNI.

a) Coordinate with Client to test backhaul and ensure that network traffic is being routed properly to the RNI environment.

b) Contractor shall validate and test meter data information and verify traffic is transferred from Sensus Basestation to RNI.

c) Issue certain two-way commands to Client specified test meters to ensure two-way communication is working and functional.

II. Client Responsibilities

1. Support the SIT performed by the vendors to the extent necessary.

III. Acceptance Criteria

1. Contractor shall verify that all integrations specified in this FlexNet SOW and necessary for functionality between the Sensus RNI, Sensus Analytics, and the Client billing system are working as specified in approved design documents.

C. System Acceptance Testing (SAT)

I. Contractor Responsibilities

1. Work with Client to choose existing meters for validation testing:

a) Select test 10 meters of each commodity type in various sizes.

2. Support and resolve issues identified during Client SAT

3. Support the SAT conducted by the Client.

II. Client Responsibilities

        1. Perform SAT to verify that all integrations between the RNI, Sensus Analytics, and the Client Billing System have been satisfactorily completed to support go-live.

           a) Functional testing – On Demand Read (ODR), Events and alarms, meter reading, and billing end to end.

        2. Provide written notice of the completion of SAT to the Contractor once successfully completed. Testing to be completed within thirty (30) days of completion of the installation of test meters.

   III. Acceptance Criteria

        1. Client to verify that SAT performed assured that all integrations specified in this FlexNet SOW and necessary functionality between the Sensus RNI, Sensus Analytics, and the Client billing system are working as specified in approved design documents.

  D. Production Go-Live

   I. Contractor Responsibilities

        1. Assure that all SaaS systems for the RNI, Sensus Analytics are working correctly.

        2. Work with Client to determine production go-live date and timeline. After proper validation and testing has been performed on the RNI system, Sensus Analytics, and the Client Billing System as described above, go-live activities will take place and Contractor will work with Client to begin using the RNI system, Sensus Analytics, and the Client Billing system for meter billing.

        3. After Client has provided written acceptance of the RNI solution, Sensus Analytics, and integration between these systems, any go-live/cutover activities identified will be performed.

   II. Client Responsibilities

        1. Coordinate with Contractor to facilitate and complete all go-live/cutover activities.

3. TRAINING

3.1. Contractor will provide remote and on-site training for Client as detailed below. Product documentation will also be provided. Additional services and training can be provided to the Client as requested. Depending on project complexity and training requirements, Contractor will provide additional and/or refresher training as necessary.

  A. Field Refresher Training

   I. Handheld Operation

   II. Safety & Security

   III. Residential Meter and Commercial Meter Installation

   IV. SmartPoint Activation

   V. Verification of SmartPoint Activation

   VI. Troubleshooting SmartPoint Issues

  B. Sensus AMI Overview

   I. Sensus FlexNet Architecture and Components

   II. FlexNet Roles and Responsibilities

   III. Device Manager Overview

   IV. Analytics Overview

   V. Billing Setup and Integration

   VI. Device Manager

   VII. Sensus Analytics Meter Insight

   VIII. Sensus Analytics Billing Overview

   IX. FlexNet and Analytics Alarms

   X. Sensus Analytics Report Access

  C. Expanded System Capabilities – Overview of the AMI system's capabilities, including administration functions.

4. ASSUMPTIONS

4.1. This FlexNet Network Implementation Scope of Work is limited to the planned Sensus FlexNet infrastructure proposed as of contract execution. The project is detailed within Exhibit A – Contract Pricing. Any additional request for further systems integration or ongoing management/maintenance of the system, will require a Change Request and pricing will reflect this change.

4.2. Any costs or fees associated with the Billing System and the Billing System Vendor for software and/or services are the responsibility of Client.

4.3. Any costs or fees to integrate other systems are not included in the current scope.

4.4. Client shall keep existing and be responsible for supplying all electrical and network connections to each Basestation site. Should Client prefer Contractor to provide electrical services, pricing may be provided upon request and concluding a site visit at each Basestation site.