

## AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (“Agreement”) is made this \_\_\_ day of February, 2022, between Core & Main, LP, a Florida limited partnership (“Contractor”) and the Village of Westmont, an Illinois municipal corporation (“Village”)(Contractor and Village may be individually referred to as a “Party”, and may be collectively referred to as the “Parties”).

WHEREAS, the Village operates a public water distribution service for its residents and businesses, and the Village utilizes smart water meters to remotely read water usage data for billing and other purposes; and

WHEREAS, Contractor is a distributor of water products and a provider of innovative solutions for water infrastructure, including but not limited to automatic meter reading, advancing metering infrastructure, data management and analysis, billing services, and targeted software solutions, among other services; and

WHEREAS, the Village desires to contract with Contractor for the installation of a Sensus FlexNet AMI System, which includes Sensus antenna systems, coupled with a FlexNet communication network and Sensus software, which will allow the Village to remotely monitor and manage its public water distribution system, as set forth herein; and

WHEREAS, Contractor agrees to provide to the Village the requested services as set forth herein.

NOW, THEREFORE, for mutual consideration exchanged between the Parties, the receipt and sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Recitals. The Recitals stated above are hereby restated and incorporated into this Section 1 as though fully set forth herein.

2. Scope of Work. Contractor agrees to install the Sensus FlexNet AMI System (“System”) for the Village. This installation includes the installation of a Sensus antenna system at the Village Wilmette Water Tower, located at 328 S. Wilmette Avenue, and at the Village South Water Tower, located at 205 W. 63<sup>rd</sup> Street. The Sensus antenna systems will work with a FlexNet communication network to allow the Village to remotely monitor and manage its public water distribution system, utilizing Sensus software services (provided by a separate agreement between the Village and Sensus). Contractor shall invoice the Village for the Sensus software services, but shall have no control or responsibility for the Sensus software services. The Scope of Work and descriptions of services and functionality of the System are further described in the following documents:

- The Scope of Services for the Wilmette Water Tower, dated November 12, 2021, is attached hereto as Exhibit “A” and incorporated herein.
- The Scope of Services for the South Water Tower, dated November 12, 2021, is attached hereto as Exhibit “B” and incorporated herein.

- The Propagation Study for the FlexNet communication network, prepared by FlexNet Design and dated October 4, 2021, is attached hereto as Exhibit “C” and incorporated herein.
- A Meter Coverage Study, prepared by Sensus and dated October 4, 2021, is attached hereto as Exhibit “D” and incorporated herein.

Contractor’s services include maintenance to the System (excluding the Sensus software services) for a 2-year period following the Completion Date (defined below). Pursuant to a separate agreement, the Parties may agree to renew Contractor’s maintenance services to the System for an additional term and at an additional cost as agreed to by the Parties.

3. Costs of Services; Payment. The costs of Contractor’s services to the Village for the System, including all related equipment and supplies, are set forth in the Quotation dated June 10, 2021, which is attached hereto as Exhibit “E” and incorporated herein. These costs include the Sensus SaaS Integration and Hosting Fees, Contractor’s maintenance fees for a 2-year period, and RNI training. Except for items which are specifically excluded from this Quotation, or except for additional services which may be requested by the Village which are outside the scope of the Quotation, this Quotation contains all of Contractor’s costs for its services and equipment for the System.

Contractor shall issue one or more invoices to the Village covering the costs set forth in the Quotation. Upon receipt of such invoices, the Village shall pay the same in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1, *et seq.* (the “Act”). Interest shall accrue on any late payment by the Village at the rate set forth in the Act.

Upon payment in full of the Quotation costs by the Village, the Village shall own all components of the System to be installed by Contractor (excluding Sensus software).

4. Term. The term (“Term”) of this Agreement shall commence upon the Effective Date of this Agreement (defined below) and continue through the end of the 2-year maintenance period. Should the Village and Contractor agree to extend the 2-year maintenance period, the Term shall extend through the period of such additional maintenance.

5. Time Period for Performing Services. Upon approval of this Agreement and upon the submission of any purchase orders required of the Village by Contractor, and except for reasons of force majeure, Contractor shall commence its services to install the System no later than May 1, 2022. Contractor shall complete its services under this Agreement (except for on-going maintenance services) so that the System is operational by September 1, 2022 (“Completion Date”), except for reasons of force majeure or delays caused solely by the Village. Contractor shall pay a penalty to the Village of Five Hundred Dollars (\$500.00) per day for each inexcusable day after the Completion Date that Contractor takes to complete its services under this Agreement.

6. Contractor's Representations and Warranties. Contractor represents and warrants that the following statements are true and correct regarding its services under this Agreement and regarding the System:

- A. The System will not cause broadcast or other interference with existing cellular antennas or public emergency communications systems located on the Village's Wilmette Water Tower and South Water Tower. Upon the receipt of written notice from the Village of such interference, Contractor shall take all necessary action on an immediate basis to eliminate such interference. Upon Contractor's failure to eliminate such interference within thirty (30) days after its receipt of notice from the Village, the Village may eliminate the interference at Contractor's sole expense. If elimination of the interference is not possible, the Village may terminate this Agreement and receive a prorated refund of the fees paid to Contractor.
- B. The System will operate in compliance with all local, state and federal laws and regulations.
- C. Except for the Sensus software which is covered by a separate agreement between the Village and Sensus, the System, once installed and operational, shall be fully operational at least 99% of the time, on a 24/7 basis.
- D. Contractor's services shall be rendered in a professional and workmanlike manner in accordance with industry standards and good construction and engineering practices. Contractor's services shall be performed in compliance with all applicable local, state, and federal laws and regulations.
- E. For a period of 2 years after the Effective Date of this Agreement (and for any extensions of the 2-year maintenance period), Contractor shall repair or replace any and all defective equipment and/or cure operational issues with the System with commercially reasonable diligence and at no expense to the Village beyond the payment of maintenance fees set forth in the Quotation.
- F. The System (including antennas and related equipment) shall remain substantially functionally despite impacts from the elements, including but not limited to extreme heat, extreme cold, ice and snow accumulation, heavy rains, and high winds. The System's antennas and related equipment shall be securely attached to the Village water towers in such a manner so as to withstand sustained winds of one-hundred fifty miles per hour (150 mph).

7. Insurance. Contractor shall carry insurance during the Term of this Agreement insuring Contractor and its respective owners, officers, and employees in the following amounts:

- (a) Comprehensive or Commercial General Liability insurance, with limits for bodily injury or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than \$1,000,000.00 per occurrence/\$3,000,000.00 aggregate. The Comprehensive or Commercial General Liability policy shall name the

Village as an additional insured on a primary and non-contributory basis to any insurance carried by Village.

- (b) Insurance against "all risks" of physical loss for the full insurable replacement value of the initial condition of the Premises and all Alterations, and of all furniture, trade fixtures, equipment, merchandise and all other items of Tenant Property on the Premises, including any property of Landlord.
- (c) Worker's Compensation insurance in amounts required by the State of Illinois.
- (d) Automobile Liability insurance with limits for bodily injury or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than \$1,000,000.00 combined single limit, including Employer's Owned, Non-Owned and Hired Car coverage.

Contractor shall furnish or cause to be furnished to the Village certificates of insurance and blanket additional insurance endorsements evidencing all coverage required by this paragraph. The certificates and endorsements are to be received and approved by the Village before the commencement of any work under this Agreement.

8. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, keep and save harmless the Village and its agents, officers, and employees, against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct or omissions of Contractors, its owners, directors, officers, employees, contractors and agents regarding all of its obligations under this Agreement. Contractor shall at its own expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Village in any such action, Contractor shall, at its own expense, satisfy and discharge the same. This indemnification obligation shall not be construed as requiring Contractor to indemnify the Village from and against the negligence or willful acts of the Village.

9. Permits. Prior to commencing any work under this Agreement, Contractor shall secure all necessary permits from the Village, as well as all necessary permits from any state or federal agency having jurisdiction over any aspect the work performed under this Agreement. The Village shall either pay for or waive the permit fees for all required Village permits. The Contractor is responsible to pay for any required state or federal agency permits for the System.

10. Access. Contractor shall have access to Village-owned properties as reasonably necessary to install and maintain the System. Contractor shall comply with any reasonable advance notice requirements and reasonable access requirements imposed by the Village on Contractor, but the Village shall not unreasonably limit or deny access to Contractor. Contractor's access rights to Village-owned properties and to the System shall terminate upon the termination of this Agreement.

11. Liens. Contractor and its subcontractors shall not place any liens on Village property related to the services provided under this Agreement. In the event that a subcontractor places a lien on Village property, Contractor shall take all necessary steps to have such lien removed within thirty (30) days after written notification from the Village. In the event that Contractor fails to cause such lien to be removed within said time period, the Village may take all necessary action to cause the removal of such lien, including but not limited to the making of direct payments to the subcontractor, and Contractor shall be responsible to reimburse the Village for all of its costs of lien removal.

12. Relocation of Antennas and Equipment. The Village reserves and retains the right to raze or replace the Water Towers at the same or a new location on the Property. The Village also reserves the right to have all antennas, equipment, and other facilities removed from the Water Towers for the purpose of maintenance of the Water Towers. In the event the Village chooses to raze, replace, or perform maintenance on the Water Towers, the Village may require Contractor to change the location of the System's antennas and related equipment to a substantially similar area on the same property (the "New Location"), provided that the New Location is oriented in the same direction, is at the same height as the original location, and meets all of the operating requirements for the System. Notwithstanding anything contained to the contrary herein, in no event shall Contractor be required to relocate the System's antennas and related equipment more than once in any five (5) year rolling time period.

The Village shall provide the Contractor with no less than twelve (12) months prior written notice of the Village's exercise of its relocation rights under this Section.

The Village shall cooperate with Contractor, in all reasonable respects, so as to facilitate Contractor's relocation to the New Location. The Village shall reimburse Contractor for all reasonable expenses incurred to relocate the System's antennas and related equipment, including but not limited to, the cost of obtaining and maintaining any necessary governmental approvals, permits or authorization from the Village or other state and federal agencies. If the relocation to the New Location is to a temporary facility, the Village shall reimburse Contractor for all reasonable expenses incurred to again relocate the System's antennas and related equipment to the original or new Water Tower, including but not limited to, the cost of obtaining and maintaining any necessary governmental approvals, permits or authorization from the Village or other state and federal agencies.

13. Removal of Antennas and Equipment. The Village shall have the sole responsibility and obligation to remove the System's antennas and related equipment whenever it determines that the System is no longer functional or in the public interest. Any such removal shall be at the Village's sole cost and expense.

14. Miscellaneous Provisions.

14.01. Cooperation. The Village and Contractor agree to take all steps reasonably, necessary, or appropriate to carry out the terms of this Agreement to aid and assist the other Party, including enacting such resolutions and ordinances and taking such other actions as may be reasonably

necessary or desirable to enable the Parties to comply with and give effect to the terms of this Agreement.

14.02. Binding Upon Successors. This Agreement shall inure to the benefit of and be binding upon the successors to Contractor and its respective successors, grantees, licensees and assigns, and upon successor corporate authorities of the Village and each of its respective successor municipalities or entities.

14.03. Assignment. Contractor may not assign, or otherwise transfer all or any part of its interest in the Agreement without the prior written consent of the Village; provided that Licensee may assign this Agreement to a parent, affiliate, subsidiary or purchaser of all or substantially all of Contractor's assets upon written notice to the Village. The Village may assign this Agreement upon written notice to Contractor, subject to the assignee assuming all of the Village's obligations herein.

14.04. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, or portions of this Agreement and, to that end, all provisions, covenants, agreements, and portions of this Agreement are declared to be severable.

14.05. Termination. In addition to any other provision of this Agreement regarding termination, the Village may terminate this Agreement immediately, without advanced notice to Contractor if the Village determines and documents that the Sensus antenna and related equipment presents an immediate and serious danger to the health, safety, or welfare of the public due to structural deficiencies or improper construction or due to the operation of the Sensus FlexNet AMI System in violation of FCC regulations or other laws and regulations of state or federal agencies.

14.06. Survival. Sections 2, 3, 5, 7, 9, 11 and 12 shall survive termination of this Agreement and no event shall reduce or mitigate the obligations of or benefits to any party under these provisions of this Agreement.

14.07. Default. Upon the occurrence of any default under this Agreement, the non-defaulting Party shall provide written notice of the default to the defaulting Party, and the defaulting Party shall thereafter have thirty (30) days to cure any such default, provided that the defaulting Party shall have such extended period as may be required beyond the thirty (30) days, if the nature of the cure is such that it reasonably requires more than thirty (30) days and the defaulting Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.. In the event the default is not cured or has not commenced to be cured within said thirty (30) day period or extended period as may be required, the non-defaulting Party may pursue an appropriate remedy under this Agreement or permitted by law.

14.08. Enforcement; Venue. This Agreement shall be construed under Illinois law. The prevailing Party in any litigation to enforce this Agreement shall be entitled to recover its reasonable attorneys' fees, court costs, and reasonable costs of litigation, including but not

limited to experts' or consultants' fees. Any dispute between the Parties arising under or related to this Agreement shall be determined by the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois; *provided* however that if federal jurisdiction over the issue is exclusive, then such dispute shall be determined in the United States District Court for the Northern District of Illinois, Eastern Division. No party shall elect to remove this action from state to federal court or try to transfer this action from any of the courts mentioned herein.

14.09. Complete Agreement; Amendments. This Agreement contains all agreements, promises and understandings between the Village and Contractor. Any amendment to the terms of this Agreement must be in writing and signed by the Parties.

14.10. Notices. All payments, notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender to the following addresses:

If to Village:           Village Manager  
                                  Village of Westmont  
                                  31 W. Quincy  
                                  Westmont, IL 60559

If to Contractor:       Core & Main, LP  
                                  Attn: \_\_\_\_\_  
                                  1830 Craig Park Court  
                                  St. Louis, MO 63146

Notices delivered to these persons and addresses shall be deemed effective on the date of personal delivery, as properly certified, if delivered personally or on the date of delivery reflected in the return receipt if delivered by certified United States Mail, FedEx, or other reputable carrier. If there is any change in designation or address, the Party experiencing the change shall notify the other Party of the change. Notice shall be appropriately delivered to the above addresses until such time as any Party provides such notice of a change.

14.11. Paragraph Headings. Titles of the several parts, paragraphs, or sections of this agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any provision.

14.12. Force Majeure. For purposes of this Agreement, force majeure means any strikes, lockouts or labor disputes, acts of God (including without limitation floods, earthquakes and hurricanes), inability to obtain labor or materials or reasonable substitutes therefor that could not reasonably have been anticipated, governmental restrictions, regulations, or controls, delay in issuance of permits beyond time periods typical for the area, pandemics, epidemics, utility company delays beyond typical time periods for such utility company, enemy or hostile governmental action, civil commotion, war, fuel shortages, accidents, fire or other casualty.

Anything herein to the contrary notwithstanding, neither Party shall be considered in breach of or in default of its obligations under this Agreement in the event of force majeure event which in fact interferes with the ability of such Party to discharge its obligations hereunder. The Party relying on this Section with respect to any such delay shall give written notice thereof to the other Party of such cause and the delay. The performance of the Party relying on this subsection shall be extended to a reasonable period due to the force majeure event to allow for performance.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates noted in each signature block below, the latest of which shall be deemed the Effective Date, and said Effective Date shall be inserted in the first line of this Agreement.

**CORE & MAIN, LP**

**VILLAGE OF WESTMONT**

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

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

Ronald J. Gunther, Mayor

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

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

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

**EXHIBIT "A"**

**SCOPE OF SERVICES – WILMETTE WATER TOWER**

**EXHIBIT "B"**

**SCOPE OF SERVICES – SOUTH WATER TOWER**

**EXHIBIT "C"**

**PROPOGATION STUDY**

**EXHIBIT "D"**

**METER COVERAGE STUDY**

**EXHIBIT “E”**

**QUOTATION**