



June 20, 2019

Board of Directors  
 Ventura Regional Sanitation District  
 Ventura, California

**APPROVE, AND AUTHORIZE THE BOARD CHAIR TO SIGN, PROPOSED CONTRACT NO. 19-033 WITH AQUA-METRIC SALES COMPANY FOR SOFTWARE SUPPORT AND MAINTENANCE SERVICES**

**RECOMMENDATION**

Approve, and authorize the Board Chair to sign, proposed Contract No. 19-033 with Aqua-Metric Sales Company (Aqua-Metric) for software support and maintenance services in an amount not to exceed \$79,604 in FY2019-20.0

**FISCAL IMPACT**

The funding for this contract is included in the adopted FY2019-20 District budget under account code 90-490-52074-499921 and is a pass through charge to Triunfo Water and Sanitation District (Triunfo).

**BACKGROUND/ANALYSIS**

In September 2018, Triunfo entered into a contract with Aqua-Metric for the implementation of meter reading technology (Sensus Flex-Net system). The product acquisition and implementation was considered a capital project and therefore was contracted with Triunfo directly. In FY 2020 the project has transitioned to strictly a maintenance item and is therefore now within the scope of VRSD’s contract with Triunfo. The costs for this contract are fully reimbursed by Triunfo and will only be incurred by VRSD if Triunfo approves annual funding for this item.

The contract proposed consists of a five-year annual support and maintenance fee with the following annual costs:

<b>Year</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Description</b>	<b>FY 18-19</b>	<b>FY 19-20</b>	<b>FY 20-21</b>	<b>FY 21-22</b>	<b>FY 22-23</b>
Annual RNI Fee	\$15,000	\$15,463	\$15,941	\$16,434	\$16,942
SAE - Water	15,167	15,636	16,119	16,617	17,130
Customer Portal	42,200	43,505	44,851	46,238	47,668
Base station Maint.	0	5,000	5,155	5,314	5,478
<b>TOTAL</b>	<b>\$72,367</b>	<b>\$79,604</b>	<b>\$82,066</b>	<b>\$84,603</b>	<b>\$87,218</b>

**PROPOSAL**

The District desires to streamline contract processing in the future. To this end, staff has written the contract to minimize administrative burden and cost to achieve this goal. Going forward, staff would request additional funding annually by including the associated costs within each fiscal year's proposed budget. Additionally, the contract contains language indicating extension is contingent upon approval of future year funding. This leaves the fiscal control in the hands of the VRSD Board but at the same time minimizes the administrative burden and cost to VRSD to extend the contract.

If you should have any questions or need additional information, please contact me by phone at (805) 658-4646 or via email at [tinarivera@vrsd.com](mailto:tinarivera@vrsd.com).

ALVERTINA RIVERA, DIRECTOR OF FINANCE

APPROVED FOR BUDGET IMPACT:

  
\_\_\_\_\_  
Alvertina Rivera, Director of Finance

APPROVED FOR AGENDA:

  
\_\_\_\_\_  
Chris Theisen, General Manager

Attachments: VRSD Contract No. 19-033

**VENTURA REGIONAL SANITATION DISTRICT  
CONTRACT NO. 19-033**

**AGREEMENT FOR  
SOFTWARE SUPPORT AND MAINTENANCE SERVICES  
BETWEEN  
VENTURA REGIONAL SANITATION DISTRICT  
AND  
AQUA-METRIC SALES COMPANY**

THIS AGREEMENT is made and entered into this 20<sup>th</sup> day of June 2019, by and between the VENTURA REGIONAL SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq. (“DISTRICT”) and AQUA-METRIC SALES COMPANY, a California Corporation (“CONSULTANT”). Together, DISTRICT and CONSULTANT shall be referred to herein as Parties.

**RECITALS**

A. DISTRICT has a need for a consultant who has specialized knowledge and experience in providing consulting, maintenance, and annual support services for the Sensus Flex-Net customer billing system and portal services and automated meter interface (AMI) system to the DISTRICT.

B. CONSULTANT represents that it has the expertise and experience to provide such specialized consulting, maintenance, and support services to the DISTRICT.

C. DISTRICT has selected CONSULTANT, based upon the above representations and in conformance with the negotiated procurement provisions of Section 403 of the DISTRICT Purchasing Resolution No. 89-13, to provide specialized consulting, maintenance, and support services to the DISTRICT.

D. Parties agree to enter into this Agreement based upon the valuable and mutual consideration set forth below and the recitals above and to abide by its terms and conditions as set forth herein.

**AGREEMENT**

**ARTICLE 1: WORK STATEMENT/SCOPE OF SERVICES**

A. CONSULTANT shall provide the consulting services to the DISTRICT as described in the STATEMENT OF WORK which is attached as Exhibit “A” to this Agreement and incorporated herein by reference.

B. CONSULTANT shall use its best professional efforts and best industry practices in providing consulting services to DISTRICT and shall cooperate fully with DISTRICT and provide DISTRICT with all available information and assistance in relation to Exhibit A.

C. The Parties acknowledge and agree that CONSULTANT owes the DISTRICT a fiduciary duty to conduct all affairs of the DISTRICT in accordance with all applicable federal and state laws and the highest standards of good faith, trust, confidence and candor, and to endeavor, to the best of CONSULTANT’S ability, to promote and protect the best interests of the DISTRICT.

D. CONSULTANT shall not, at any time during the term of this Agreement, directly or indirectly, act as a partner, officer, director, consultant or employee, or provide, reporting, consulting, and support services to any other business enterprise or governmental agency that conflicts with the DISTRICT's mission and business operations or CONSULTANT's duty of loyalty or fiduciary duty to the DISTRICT.

E. CONSULTANT shall begin work, as needed, immediately after the Agreement is signed by both parties. PARTIES agree that any and all work shall be done in a diligent and professional manner to DISTRICT's satisfaction.

## **ARTICLE 2: TERM OF CONTRACT**

A. Unless otherwise earlier terminated, this Agreement shall continue in force until the services specified herein have been fully performed. Upon execution of this Agreement by both Parties, CONSULTANT shall diligently pursue work to assure completion on a timely basis. Unless otherwise extended in writing by both Parties, this contract shall automatically terminate on June 30, 2024.

B. This Agreement may be extended by mutual agreement of the Parties. The DISTRICT General Manager, on behalf of the DISTRICT Board of Directors ("BOARD"), is authorized to extend this Agreement in a form approved by the DISTRICT Legal Counsel.

C. The Parties acknowledge and agree that this Agreement for specialized consulting, maintenance, and support services is dependent upon the availability of District funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the District Board of Directors, or is not allocated or allotted to this Agreement by the District Board of Directors for periodic payment in the current or any future fiscal period, then the obligations of the District to make payments after the effective date of such non-allocation or non-funding will cease and terminate.

D. If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the District Board of Directors for this Agreement, or is not allocated or allotted in full by the District Board of Directors for this Agreement for periodic payment in the current or any future fiscal period, then the Contractor shall either accept the delayed or reduced payment obligations of District or agree that District has the right to terminate the Agreement as provided in Article 6. If such funding is reduced, District in its sole discretion shall determine which aspects or tasks of the Agreement shall proceed and which work or tasks shall be performed, with corresponding Contractor's Charges for such Services and associated Deliverables. In these situations, District agrees to pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Exhibit A to the Agreement. Any obligation to pay by District will not extend beyond the end of District's then-current funding period, except as otherwise provided herein.

E. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, District in the event that the necessary funding to pay under the terms of this Contract is not available, not allocated, not allotted, delayed or reduced.

## **ARTICLE 3: INDEPENDENT CONTRACTOR RELATIONSHIP**

A. It is expressly understood between the Parties that no employee/employer relationship is intended, the relationship of CONSULTANT to DISTRICT being that of an independent contractor. DISTRICT shall not be required to make any payroll deductions or provide Workers' Compensation Insurance coverage or health benefits to CONSULTANT.

B. CONSULTANT is solely responsible for selecting the means, methods and procedures for performing its services hereunder as assigned by DISTRICT and for coordinating all portions of the work

so the result will be satisfactory to the DISTRICT. CONSULTANT will supply all tools and instrumentalities required to perform its services under this Agreement.

C. CONSULTANT, pursuant to this Agreement, is rendering professional services only and any payments made to it are compensation solely for such services as it may render and recommendations it may make in the performance of services.

#### **ARTICLE 4: CONFIDENTIAL RELATIONSHIP and OWNERSHIP OF DOCUMENTS**

A. CONSULTANT agrees that all dealings of the Parties under this Agreement shall be confidential and no report, data, information or communication developed, prepared or assembled by CONSULTANT under this Agreement, or any information made available to CONSULTANT by DISTRICT, shall be revealed, disseminated or made available by CONSULTANT to any person or entity other than DISTRICT without the prior written consent of DISTRICT. All data, calculations, and other documents developed, prepared, completed, or acquired by CONSULTANT during the performance of its services hereunder shall be given or turned over to DISTRICT upon termination of this Agreement.

B. CONSULTANT shall provide copies of original source electronic files (i.e., Microsoft Word or Excel files, digital photos, etc.) of all work completed as part of this Contract. Such files shall not be protected, encrypted or otherwise have their access restricted.

C. Any and all documents, reports, data compilation, interview results or records produced pursuant to this Agreement by the CONSULTANT shall be the property of the DISTRICT and under the ownership of the DISTRICT.

#### **ARTICLE 5: PAYMENT TO CONSULTANT**

A. In consideration of CONSULTANT's performance of services as described herein, DISTRICT shall pay CONSULTANT fees for its services according to the schedule of rates set forth in Exhibit "A" attached and incorporated by reference herein. On or prior to the eighteenth (18<sup>th</sup>) of each June, CONSULTANT shall submit an invoice in sufficient detail to show the total amount of work to be performed for the upcoming year. DISTRICT shall review and approve CONSULTANT's invoice for accuracy and agree with CONSULTANT on any adjustments that may be appropriate. Such approvals shall not be unreasonably withheld. DISTRICT shall pay CONSULTANT for all approved work and materials within thirty (30) days of agreement on the amount of the invoice. In the event of disagreement with CONSULTANT on adjustments or disallowances, said amounts and disputes shall be withheld until resolved. Upon resolution of the disagreements, payment of the approved amount shall be made within thirty (30) days after deducting therefrom all previous payments and all sums to be retained under the terms of the agreement.

B. Total fees or compensation to be paid by DISTRICT to CONSULTANT for CONSULTANT's services described herein shall not exceed \$79,604 without a mutually acceptable, written amendment hereto.

#### **ARTICLE 6: TERMINATION OF CONTRACT**

CONSULTANT specifically acknowledges and agrees that DISTRICT may terminate CONSULTANT's services at any time with or without cause, regardless of whether CONSULTANT's services are completed. Any termination or any special instructions hereunder from DISTRICT shall be made in writing. In the event of such termination, CONSULTANT shall have the right to expend additional time (not to exceed 10% of the total fees payable under this Agreement) to assemble the work in progress for the purpose of proper filing and closing the job. Such additional time shall not increase CONSULTANT's total compensation beyond the maximum stated in Article 5.

**ARTICLE 7: INDEMNIFICATION AND HOLD HARMLESS**

CONSULTANT agrees to defend, indemnify and hold harmless DISTRICT and its officers, agents and employees, from and against any and all liability, damages, costs, losses, claims and expenses, however caused, resulting directly or indirectly from or connected with CONSULTANT's negligent performance of this Agreement (including, but not limited to such liability, cost, damage, loss, claim or expense arising from the death of or injury to, or damage to property of CONSULTANT, DISTRICT, or their respective employees or agents), except to the extent that such liability, damages, costs, losses, claims or expenses are caused by the negligent or wrongful acts or omissions of DISTRICT or any of its agents or employees.

**ARTICLE 8: INSURANCE**

CONSULTANT shall provide and keep in effect during the term of this Agreement insurance as follows:

- A. Workers' Compensation and Employer's Liability policies in accordance with and as required by applicable laws.
- B. Commercial General Liability policies with combined single limit coverage of at least \$1,000,000 for any personal injury, death, or property damage.
- C. Comprehensive Automobile Liability policies with combined single limit coverage of at least \$1,000,000 for personal injury, death, or property damage.

CONSULTANT shall provide certificates of such insurance to DISTRICT prior to the start of work. Said certificates shall specifically provide that: (1) DISTRICT is an additional insured for the coverage in Items B and C above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONSULTANT's insurance shall be primary for the coverage in Items B and C above; and (3) such insurance shall not be terminated or canceled without thirty (30) days' prior written notice having been given DISTRICT at its address set forth in this Agreement.

**ARTICLE 9: SUBCONSULTANTS**

This Agreement is a personal service contract and the consulting work hereunder shall not be delegated or assigned by CONSULTANT to any person or entity without the prior written consent of DISTRICT. Breach of this provision shall be grounds for immediate termination of this Agreement.

**ARTICLE 10: AUTHORITY TO EXECUTE AGREEMENT**

Both DISTRICT and CONSULTANT do covenant that each individual executing this Agreement on behalf of each Party is a person duly authorized and empowered to execute Agreements for such Party.

**ARTICLE 11: NO WAIVER**

No failure or delay by DISTRICT in asserting any of DISTRICT's rights and remedies as to any default of CONSULTANT shall operate as a waiver of the default, of any subsequent or other default by CONSULTANT, or of any of DISTRICT's rights or remedies. No such delay shall deprive DISTRICT of its right to institute and maintain any action or proceeding which may be necessary to protect, assert or enforce any rights or remedies arising out of this Agreement or the performance of this Agreement.

**ARTICLE 12: PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full

force and effect, and shall in no way be affected, impaired, or invalidated thereby.

**ARTICLE 13: TERMS**

No alteration or amendment of the terms of this Agreement shall be valid unless made in writing and signed by the Parties. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties.

**ARTICLE 14: CALIFORNIA LAW**

This Agreement shall be interpreted and construed pursuant to the laws of the State of California. This Agreement shall be governed by the Uniform Commercial Code of the State of California, as amended. The Parties agree that should litigation arising from this Agreement be commenced within California, such litigation shall occur within a court of competent jurisdiction within the County of Ventura.

**ARTICLE 15: COMPLIANCE WITH LAWS**

CONSULTANT shall be solely responsible for giving all notices and complying with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority relating to CONSULTANT's work, the safety of the persons or property involved, and their protection from damage or injury. CONSULTANT shall defend, indemnify and hold DISTRICT harmless from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees and costs, brought or recovered against DISTRICT, for or on account of any liability under said laws, ordinances, rules, regulations and orders which may be incurred by reason of any work to be performed by CONSULTANT with this Agreement.

**ARTICLE 16: FORCE MAJEURE**

Neither CONSULTANT nor DISTRICT shall be liable or deemed to be in default for any delay or failure in performance under this Agreement due to interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of CONSULTANT or DISTRICT.

**ARTICLE 17: DISPUTE RESOLUTION**

In the event that CONSULTANT and DISTRICT have a dispute concerning the payment of sums pursuant to their Contract, the Parties agree to be governed by Public Contracts Code Section 20104, et seq. In the event of such dispute, CONSULTANT shall file a written claim with DISTRICT. DISTRICT shall respond in writing within forty-five (45) days or, within thirty (30) days request additional documentation and respond within fifteen (15) days after said request.

**ARTICLE 18: MODIFICATION or AMENDMENT**

This Agreement, in whole or in part, may not be amended, modified, or altered in any way unless it is first put in writing and then mutually agreed to by authorized representatives of the Parties.

**ARTICLE 19: NOTICES**

All notices or other official correspondence relating to contractual matters between the Parties shall be made by depositing the same as first-class, postage-paid mail addressed as follows:

To CONSULTANT: Aqua-Metric Sales Company  
4050 Flat Rock Drive  
Riverside, CA 92505  
Attention: Tommy Thirkettle

To DISTRICT: Finance & Administration  
VENTURA REGIONAL SANITATION DISTRICT  
1001 Partridge Drive, Suite 150  
Ventura, CA 93003-0704

or to such other address as either Party may designate hereinafter in writing delivered to the other Party. All notices shall be deemed to have been received three (3) days after mailing.

**ARTICLE 20: EXECUTION IN COUNTERPARTS**

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement, as may be amended from time to time. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, PDF or other electronic means shall have the same impact and effect as original counterparts and shall be valid, enforceable and binding.

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**IN WITNESS WHEREOF**, the Parties hereto have executed this agreement the day and year first above written.

VENTURA REGIONAL  
SANITATION DISTRICT

AQUA-METRIC SALES COMPANY

By \_\_\_\_\_  
KEVIN KILDEE  
Chairman of the Board

By \_\_\_\_\_  
TOMMY THIRKETTLE  
President

APPROVED AS TO FORM:

ARNOLD, LAROCHELLE,  
MATHEWS, VANCONAS & ZIRBEL, LLP

By \_\_\_\_\_  
ROBERT N. KWONG  
Legal Counsel for District

ATTEST:

By \_\_\_\_\_  
JULIET RODRIGUEZ  
Clerk of the Board

## EXHIBIT A

### STATEMENT OF WORK

The following specifies the work statement/scope of work to be performed by CONSULTANT in connection with CONSULTANT'S multi-year agreement on consulting, maintenance, and annual support services for the Sensus Flex-Net customer billing system to DISTRICT.

#### **Lifecycle Support: Automated Meter Interface (AMI) Customer & Technical Support**

CONSULTANT will provide lifecycle on-site and remote support to DISTRICT.

- a. Local technical support services in addition to the support provided by Sensus Metering Systems.
- b. Assistance with Billing integration
- c. Sensus Server Backup consulting for AMI systems
- d. Access to Subject Matter experts on Sensus products and tools
- e. Hardware and Software troubleshooting assistance
- f. Technical support for Field Troubleshooting
- g. Training updates as tools, techniques and software changes
- h. Assistance with software updates, and recommendations on the updates needed for your system and devices
- i. Basic Monitoring (Periodic health check) and Annual Sensus Base Station check-up
- j. Coordinate with Sensus to facilitate support as required

#### **Support Standards**

CONSULTANT will provide the following additional Support Services to DISTRICT:

- a. Telephone Hotline/Help Desk. CONSULTANT shall continuously provide a telephone number for DISTRICT personnel to call for all purposes regarding Support Services.
- b. Support and Maintenance History and Tracking System. CONSULTANT shall maintain a current record of DISTRICT's Support Services history.
- c. Enhancements and New Features. CONSULTANT shall provide or ensure Manufacturer provides all enhancements to the Subscription Services.
- d. Sensus' Technical Service department is staffed to provide 24/7 technical support for the system through the warranty period and on an annual maintenance contract basis. CONSULTANT and/or Sensus' Customer Services staff provide standard service support from 8:00AM Eastern Time to 7:00PM Eastern Time.

**DISTRICT's Responsibilities:** DISTRICT shall cooperate with CONSULTANT in the performance of CONSULTANT's obligations by performing the tasks set forth below. Provided however, that in no event shall any failure by DISTRICT to act as described below shall not be interpreted as or result in a breach of this Agreement:

- a. Assist CONSULTANT in the development of support procedures.
- b. Ensure end users follow established support procedures.
- c. End users will employ reasonable efforts to solve problems/address requests before calling the help desk.
- d. Maintain local network and devices.

**EXHIBIT A (continued)**

**STATEMENT OF WORK**

**Warranties and Guarantees**

Network coverage guarantee

- a. CONSULTANT guarantees 98.5% reading interval success (RIS) off all meters covered within the propagation study.
- b. SmartPoints within the network coverage are to be mounted through the lid, to comply with this guarantee.

**ANNUAL SOFTWARE AND SUPPORT FEES**

CONSULTANT will invoice DISTRICT on an annual basis, based on pricing table below:

	<b>Year</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Product #</b>	<b>Description</b>	<b>FY18-19</b>	<b>FY19-20</b>	<b>FY20-21</b>	<b>FY 21-22</b>	<b>FY 22-23</b>
Annual RNI SAAS	Annual RNI Fee	\$15,000	\$15,463	\$15,941	\$16,434	\$16,942
SA Water	Sensus Analytics Enhanced- Water	15,167	15,636	16,119	16,617	17,130
SA WTR CP 1.5	Customer Portal Core – Annual User Fee	42,200	43,505	44,851	46,238	47,668
M400 BS M	M400 BaseStation Annual Maintenance \$2,500 each x 2	0	5,000	5,155	5,314	5,478
<b>TOTAL</b>	<b>TOTAL</b>	<b>\$72,367</b>	<b>\$79,604</b>	<b>\$82,066</b>	<b>\$84,603</b>	<b>\$87,218</b>

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