

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 16-165

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, AUTHORIZING WAIVING OF BIDDING AND APPROVING A LICENSE AND WARRANTY AGREEMENT WITH ZENNER PERFORMANCE METERS, INC. D/B/A ZENNER USA, FOR CONVERSION OF EXISTING WATER METER READING INFRASTRUCTURE TO A FIXED NETWORK AUTOMATIC METER READING SYSTEM; PROVIDING FOR INITIAL ONE YEAR TERM AND AUTOMATIC ANNUAL RENEWALS; PROVIDING FOR RENEWALS WITHOUT FURTHER COMMISSION ACTION; PROVIDING FOR TERMINATION.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

SECTION 1: That the City Commission of the City of Margate, Florida, hereby authorizes waiving of bidding and approves an Agreement with Zenner Performance Meters, Inc., D/B/A Zenner USA, for conversion of existing water meter reading infrastructure to a fixed network automatic meter reading system.

SECTION 2: That the Administration is hereby authorized to renew this Agreement, under the same terms, without further Commission action.

SECTION 3: That the Mayor and City Manager are hereby authorized and directed to execute said Agreement on behalf of the City of Margate, a copy of which is attached and made a part of this Resolution.

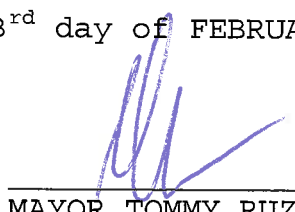
SECTION 4: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 3rd day of FEBRUARY, 2016.

ATTEST:



JOSEPH J. KAVANAGH
CITY CLERK



MAYOR TOMMY RUZZANO

RESOLUTION NO. 16-165

RECORD OF VOTE

Simone	<u>Yes</u>
Peerman	<u>Yes</u>
Talerico	<u>Yes</u>
Bryan	<u>Yes</u>
Ruzzano	<u>Yes</u>

LICENSE AND WARRANTY AGREEMENT

This License and Warranty Agreement ("Agreement,") is entered into by and between **Zenner Performance Meters, Inc.**, D/B/A Zenner USA, a California Corporation, with its principal place of business located at 15280 Addison Road, Suite 340, Addison, Texas 75001 ("Zenner,") and **City of Margate, FL**, a city, with its principal place of business located at 5790 Margate Blvd, Margate, FL 33063 ("Customer,") and effective as of the _____ day of _____, 2016 ("Effective Date,"). The Property, Zenner's Stealth Reader Advanced Metering Infrastructure Equipment ("Property,") subject to this Agreement is located within the Customer's utility service area.

ARTICLE 1: SERVICES PROVIDED BY ZENNER

1.1 Independent Contractor. Zenner is and shall perform its obligations under this Agreement solely as an independent contractor. Nothing in this Agreement shall be construed to designate Zenner, or any of its employees, subcontractors or other agents of Zenner, as employees, agents, joint venture, or partners of Customer and neither Zenner nor any employee, subcontractor or other agent of Zenner shall represent itself as, act as, or purport to act as, or deemed to be the employee, agent, joint venture, or partner of Customer for any purpose whatsoever and no such party shall have any right or authority to make any representations, or to assume or create any obligations of any kind, express or implied, on behalf of Customer or to bind Customer in any respect whatsoever.

1.2 Services: Zenner shall provide the following services ("Services,") to Customer in accordance with the terms of this Agreement:

1.2.1 Initial Warranty: Zenner shall provide to Customer the repair or replacement of the products listed in EXHIBIT A during the respective periods below:

1.2.1.1 Hardware, excluding Meter Interface Units, and Software for a period from the date such products are fully operational until a period of One Year (per 1.3.1) for Zenner purchased products, ("Initial Warranty Period,").

1.2.2 Extended Warranty: Zenner shall provide to Customer the repair or replacement of the products listed in EXHIBIT A.

1.2.3 Hosting Services: Zenner shall provide Customer with the Hosting Services for Customer's meter data. Zenner shall use commercially reasonable efforts to make the Hosting Services available 24 hours a day, 7 days a week, except for planned downtime, of which Zenner shall give at least eight (8) hours' notice via the Hosting Services and shall be scheduled to the extent practical during the weekend. Customer agrees that its use of the Hosting Services is dependent on using a minimum specification of hardware, operating system and internet browser. The minimum hardware, operating system and internet browser configuration is available upon request. Customer retains ownership of the metering data and Zenner will provide the ability for the Customer to download data at periodic intervals and at the termination of this agreement.

1.2.3.1 Customer Responsibilities: Customer acknowledges and agrees that it shall be responsible for its employee's use of the Hosting Services and compliance with this Agreement. Customer is responsible for the accuracy, integrity and legality of the Metering Information transmitted once received from the Host Site. Customer will use commercially reasonable efforts to prevent unauthorized access to or use of the Hosting Services and Customer agrees to notify Zenner promptly of any such unauthorized access or use.

1.2.3.2 Third-Party Users: In the event Customer enables parties other than Customer ("Third-Party Users,") to access or use the Hosting Services, Customer acknowledges and agrees that Zenner is not responsible for any transmission, disclosure, modification or deletion of metering information, including any Confidential Information, resulting from such access or use by Third Party Users.

1.2.4 Exclusions: Notwithstanding any other provision of this Agreement, the Services do not cover failures or damages caused by Customer, acts of God (lightning, flooding, etc.), acts of terrorism, war, vandalism, third parties, obsolete equipment, or Meter Interface Units

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("MIU"). Any requested repairs of these exclusions must be mutually agreed by both parties under a separate work order or agreement.

- 1.3 **Fee(s) for Services:** Customer shall pay Zenner the following for the Services provided under this Agreement:
- 1.3.1 **Initial Warranty:** One year from the delivery date on Zenner branded products. Zenner does not warranty third party products (meters, MIUs, repeaters or data collection equipment) that are used within the stealth reader system. Those component manufacturers warranties may apply and be passed on to the utility for direct processing with the component manufacturer.
 - 1.3.2 **Hosting:** The total sum of the following:
 - 1.3.2.1 **Base Charge:** \$1,200.00 per year.
 - 1.3.2.2 **Service Point Charge:** \$.85 per meter per account year.
 - 1.3.3 **Payment:** Customer shall be invoiced for Services beginning on the mutually agreed upon start date and at the beginning of each renewal year with such payments being due and payable to Zenner within thirty (30) days of the invoice date.

ARTICLE 2: PROPERTY ACCESS

- 2.1 **Notice of Entry:** It is the Customer's responsibility to provide Zenner with access to the equipment needing repair.

ARTICLE 3: TERM AND TERMINATION

3.1 **Term:** The term of the Services shall be for a period of one (1) year from the effective date and shall renew annually on the said anniversary date hereof, unless written notice to discontinue is provided by Customer no less than 60 days prior to the anniversary date. Fees are subject to change and shall be adjusted in accordance with the Consumer Price Index (CPI), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor agency for all urban consumers in the Miami-Fort Lauderdale area, during the most recent twelve consecutive month period from June of the previous year.

3.2 **Termination:** Either party may terminate this Agreement with cause by providing sixty (60) days advance written notice to other party. Upon termination of this Agreement, any Fees due for Services provided by Zenner up to the date of termination shall be prorated and payable by Customer within thirty (30) days of date of termination.

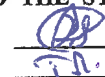
ARTICLE 4: NONEXCLUSIVE SOFTWARE LICENSE

4.1 **License:** Zenner hereby grants to Customer a personal, non-exclusive, non-transferrable license ("License,") to use the Zenner software („Licensed Software,") in object code form and authorizes Customer to use the Licensed Software solely and exclusively at the Property listed in this Agreement and such use does not extend to any other real property. Any attempt to sublicense, assign, rent, sell or otherwise transfer the License or the rights or obligations of this Agreement to any other property or third party without the prior written consent of Zenner shall be void and of no effect.

4.2 **Ownership:** Customer agrees that Zenner retains ownership rights to the Licensed Software, and that Customer acquires no title to the Licensed Software, nor any other interest in the Licensed Software, other than the right to use and possess the Licensed Software in accordance with the terms and conditions of this Agreement. All rights not explicitly granted to Customer are retained by Zenner. Customer also agrees not to make any copies or reproductions of the Licensed Software other than one (1) copy to be used by Customer as a back-up for emergency situations that shall be immediately returned to Zenner upon termination of this Agreement.

ARTICLE 5: ADDITIONAL TERMS

- 5.1 **LEGAL WARRANTY EXCLUSIONS AND LIMITATIONS OF LIABILITY.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, MADE BY ZENNER WITH RESPECT TO THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION USE OF LICENSED SOFTWARE. ZENNER SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, REGARDLESS OF FAULT, AND REGARDLESS OF THE FORESEEABILITY OF SUCH DAMAGES, EVEN IF ZENNER HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGE OCCURRING. THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY AND ALL WARRANTIES AND THE SOLE REMEDIES FOR ZENNER'S LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) WITH RESPECT TO THE SYSTEM,

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HARDWARE, SOFTWARE OR SERVICES COVERED BY THIS AGREEMENT OR ANY PERFORMANCE BY ZENNER UNDER OR PURSUANT TO THIS AGREEMENT, WILL BE LIMITED TO THE REMEDIES SET FORTH IN THIS ARTICLE AND IN NO EVENT SHALL EXCEED THE AGGREGATE CONSIDERATION PAID BY CUSTOMER FOR THE HARDWARE, SOFTWARE AND SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES TO MAKE NO CLAIM FOR DAMAGES FOR DELAY, INTERFERENCE, DISRUPTION, INEFFICIENCY OR ACCELERATION DURING THE PERFORMANCE OF THIS AGREEMENT CAUSED BY OR CLAIMED TO BE CAUSED BY LICENSED SOFTWARE OR FOR ANY OTHER REASON EITHER WITHIN OR OUTSIDE THE CONTROL OF ZENNER.

- 5.2 **Protection of Confidential Information:** The parties hereto agree that all Confidential Information that is subject to the Hosting Services shall be held in trust and confidence by Zenner. Zenner agrees to take reasonable steps to ensure the secrecy of the Confidential Information of Customer. Such reasonable steps shall include, but are not limited to, the adoption of reasonable security procedures, and notification in writing to persons having access to the Confidential Information that the Confidential Information embodies Customer's Confidential Information. As used herein, "Confidential Information," shall mean and include certain metering information transmitted to, stored on and transmitted from the Zenner's Hosting Site that is the property of the Customer.
- 5.3 **Assignment:** This Agreement may be assigned by Customer with written consent of Zenner. Zenner may assign this Agreement with written consent from customer. If assigned, this Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of Customer and Zenner.
- 5.4 **Indemnification:** Each Party shall indemnify and hold harmless the other Party and its affiliates, directors, officers, employees, partners, contractors or agents, from and against any and all claims, actions, causes of action, demands, or liabilities of whatsoever kind and nature, including judgments, interest, reasonable attorneys' fees, and all other costs, fees, expenses, and charges (collectively, "Claims") to the extent that such Claims arise out of or were caused by the negligence, gross negligence, or willful misconduct of the indemnifying Party or from any breach of the Agreement by the indemnifying Party. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement.
- 5.5 **Arbitration:** The parties agree that any claims or disputes between them arising hereunder, be submitted for binding arbitration in Ft. Lauderdale, Florida, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in force, and the successful party shall be entitled to reimbursement from the other party for all costs involved in such arbitration, including reasonable attorney's fees.
- 5.6 **Choice of Law:** The laws of the state of Florida shall govern this Agreement.
- 5.7 **Compliance with Law:** Services shall be provided in accordance with applicable laws and government regulations.
- 5.8 **Waiver:** The waiver by a party of any term, covenant, or condition herein shall not be deemed to be a waiver on any subsequent breach of the same or any term of condition contained herein.
- 5.9 **Severability:** Any provision of this Agreement which is determined to be invalid, void, or illegal shall in no way affect, impair, invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- 5.10 **Force Majeure:** Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, acts of God, Government restrictions, failure of suppliers, subcontractors, internet service provider, and carriers, provided that, as a condition to the claim of non-liability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon.
- 5.11 **Notices:** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed to the parties principal place of business.
- 5.12 **Prior Agreements:** This Agreement, any Attachments, Exhibits and Addenda hereto, comprise the entire Agreement of the parties with respect to any matter covered by the Agreement. Any prior agreements or understandings, whether written or verbal, pertaining to any such matters shall be void and of no effect. This Agreement may be modified only in writing, signed by both parties or their respective representatives or successors. *[Signatures on Next Page]*

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- 5.13 Retention of Records & Right To Access Clause:** In accordance with Florida Statute, 119.0701 - Contracts; public records, the vendor shall keep, maintain and make available all records, regardless of format, including but not limited to finance records, statistical records, correspondence, and supporting documents pertinent to this contract for a period determined by the nature of the document, pursuant to state and federal records retention and disposition requirements, and after termination of this contract; provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law ; meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If a contractor does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

Customer:

By: SEE ATTACHED SIGNATURE PAGE Date: _____
 Print Name: _____ Title: _____
 Address: _____ Phone: _____

Zenner:

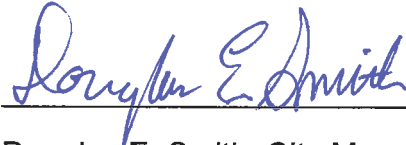
By:  Date: 1-26-16
 Print Name: Richard Sanosa Title: President

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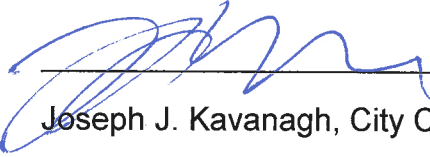


Tommy Ruzzano, Mayor
3rd day of February, 2016



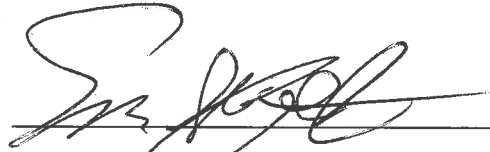
Douglas E. Smith, City Manager
3rd day of February, 2016

ATTEST:



Joseph J. Kavanagh, City Clerk
3rd day of February, 2016

APPROVED AS TO FORM:



Eugene M. Steinfeld, City Attorney
3rd day of February, 2016

Zenner Performance

Equipment Cost Schedule (For 2015)

Stealth Reader MIU-(Datamatic Replacements):	\$55.00 each (up to 4092 total)
	\$75.00 each additional
Stealth MIU Lid-Lock	\$4.50 each
Stealth MIU Non-Pit Mounting Box	\$7.50 each
Stealth MIU Splice Kit	\$2.03 each
Stealth AC Repeater	\$950.00 each (\$100/yr maintenance each)
Stealth Battery Enhanced Repeater	\$778.50 each (\$100/yr maintenance each)
Stealth Data Collection Unit (DCU)	\$3,072.00 each (\$300/yr maintenance each)
Stealth Handheld Unit with Cradle	\$2,103.75 each (\$336/yr maintenance each)

Additional Service Schedule

On-Site Training \$1,200 per Day (3-Day Minimum)

Phone Training \$150 per Hour (2-Hour Minimum)

Project Management \$1,200 per Day (3-Day Minimum)

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EXHIBIT A

The following are the products referenced under Sections 1.2.1 and 1.2.2:

Product Name	Product Description	Product Pricing
Hosting services	Hosting services per MIU (not used solely as a repeater)	\$.85 per year Each
	Utility Hosting Hosting fee	\$1,200 per year
EquipmentMaintenance.	Gateways (Zenner or Datamatic) Maintenance	\$300 per year each
	Enhances Repeaters (Zenner or Datamatic) Maintenance	\$100 per year each
	Handheld Units (Zenner Only) Maintenance	\$336 per year each


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