



**TOWN OF CASTLE ROCK  
EQUIPMENT AND SERVICES ACQUISITION AGREEMENT  
(Flexnet Infrastructure and RNI Software)**

---

**DATE:** \_\_\_\_\_

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

**DANA KEPNER COMPANY, LLC**, a Colorado limited liability company, 700 Alcott St., Denver, Colorado 80204 (“Supplier”).

**RECITALS:**

- A. The Town wishes to engage Supplier to provide the services more fully described in the following Agreement and Exhibits.

**TERMS:**

**Section 1. Scope of Services.** Supplier shall perform all of the services and provide all materials as set forth on *Exhibit 1* (“Work”). Supplier shall complete the Work consistent with standards and practices of the profession.

**Section 2. Additional Terms and Conditions.** Supplier’s terms and conditions, which shall also govern this Agreement, are attached hereto as *Exhibit 2*, and made part of this Agreement by reference

**Section 3. Total Obligation.** The Town’s total obligation to Supplier under this Agreement for the Work shall not exceed \$268,986.31, unless authorized in writing by the Town.

**Section 4. Completion.** Supplier understands time is of the essence in this Agreement. Supplier shall commence the Work upon execution of this Agreement and complete the Work not later than five years from the date of execution of this Agreement. Supplier shall devote adequate resources to assure timely completion of the Work in accordance with the standards specified in this Agreement. Supplier shall perform the Work under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 10 days written notice to Supplier. The Town’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination, including any manufacturer fees incurred up to an including the effective date of termination.

**Section 5. Subcontractor.** Supplier may utilize subcontractors to assist with specialized works as necessary to complete the Work. Supplier will submit any proposed subcontractor and the description of subcontractor services to the Town for its prior approval.

**Section 6. Annual Appropriation.** The continuance of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Town. If the Town fails to appropriate sufficient monies to provide for the continuance of the Agreement, the Agreement shall terminate on the final day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

**Section 7. Assignment.** This Agreement shall not be assigned by Supplier without the written consent of the Town.

**Section 8. Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

**Section 9. Insurance.** Supplier agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Supplier shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Supplier shall procure and maintain, and shall cause each subSupplier of the Supplier to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent Suppliers, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Supplier's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable, shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Supplier's insurance agent and submitted at the time of execution of this Agreement as **Exhibit 3** as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Supplier to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Supplier to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Supplier from the Town.

**Section 10. Colorado Governmental Immunity Act.** The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$424,000 per person, \$1,195,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

**Section 11. Indemnification.** Supplier expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Supplier or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Supplier.

**Section 12. Delays.** Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

**Section 13. Additional Documents.** The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

**Section 14. Entire Agreement.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

**Section 15. Time of the Essence.** Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

**Section 16. Default and Remedies.** In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

**Section 17. Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**Section 18. No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Supplier, and nothing contained in



this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Supplier receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**Section 19. Independent Contractor.** Supplier and the Town hereby represent that Supplier is an independent contractor for all purposes hereunder. Supplier represents and warrants that they are free from the Town’s direction and control in the performance of their work or services and that they have an independent business doing the specific type of work or services which are the subject of this Agreement. More specifically, Supplier represents and warrants that the Town does not control what work or services they will perform or the manner in which such work or services will be performed. As such, Supplier is not covered by any worker’s compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Supplier shall not create any indebtedness on behalf of the Town.

**Section 20. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by electronic mail.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Mark Marlowe, Director Castle Rock Water

**SUPPLIER:**

**DANA KEPNER COMPANY, LLC**

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

Its: \_\_\_\_\_

## EXHIBIT 1

### SCOPE OF WORK AND FEE SCHEDULE

Consultant shall provide the Town with FlexNet Equipment (Base Stations) for AMI and RNI software to read and store data from the base stations as follows:

<b>SENSUS AMI INFRASTRUCTURE</b>	SENSUS AMI INFRASTRUCTURE HARDWARE	\$154,638.31
	RNI YEAR 2	\$20,515.00
	RNI YEAR 3	\$26,007.00
	RNI YEAR 4	\$31,810.00
	RNI YEAR 5	\$36,016.00
	<b>SENSUS AMI INFRASTRUCTURE Total:</b>	<b>\$268,986.31</b>
<b>Total Quote before Taxes:</b>		<b>\$268,986.31</b>

#### SENSUS AMI INFRASTRUCTURE HARDWARE

Qty	Unit	Description	Price	Total Price
1	4.0 EA	SENSUS BASE STATION Part#: M400B W/SPM-900 4 EA SPEC TO BE ADVISED-M400B WITH SPM-900	\$25,524.00	\$102,096.00
2	1.0 EA	R100NA Outdoor Collector 1,2,7,11 R100NA Collector Antenna Kit8 PM INST R100NAC	\$8,699.31	\$8,699.31
3	1.0 EA	RF Field Engineer for five days RFE Services include: <ul style="list-style-type: none"> <li>• Perform visual inspection of all mounting hardware, including clamp, cables and antennae.</li> <li>• RF Sweep of antennae system.</li> <li>• Verify transmit mode is set for strict sync transmit operation.</li> <li>• Verify Transmitter Operation through RNI Data Portal.</li> <li>• Verify Transmitter Operation Does Not Cause Any "Red Light" Failures.</li> <li>• Measure Transmitter power output.</li> <li>• Normal Channel Reception Confirmed.</li> <li>• Noise verification, record, low, high and average readings ensuing &lt;15 db.</li> <li>• Perform receiver Sensitivity and Offset Calibration.</li> <li>• Measure Vol</li> </ul>	\$12,000.00	\$12,000.00
4	1.0 EA	ANNUAL RNI SAAS FEE YEAR 1	\$18,386.00	\$18,386.00
5	1.0 EA	RNI SETUP FEE #MSSURNISAAS1	\$7,957.00	\$7,957.00
6	1.0 EA	#EDRNIONSITE TRAINING (AMI FLEXNET CORE EDUCATION)	\$5,500.00	\$5,500.00
7	1.0 EA	ANNUAL RNI SAAS FEE	\$0.00	\$0.00
			<b>\$154,638.31</b>	

Total Units: 1.0      Average Cost per Each: \$154,638.31

#### RNI YEAR 2

Qty	Unit	Description	Price	Total Price
1	1.0 EA	ANNUAL RNI SAAS FEE YEAR 2	\$20,515.00	\$20,515.00
2	1.0 EA	ANNUAL RNI SAAS FEE	\$0.00	\$0.00
			<b>\$20,515.00</b>	

Total Units: 1.0      Average Cost per Each: \$20,515.00

### RNI YEAR 3

Qty	Unit	Description	Price	Total Price
1	1.0 EA	ANNUAL RNI SAAS FEE YEAR 3	\$26,007.00	\$26,007.00
2	1.0 EA	ANNUAL RNI SAAS FEE	\$0.00	\$0.00
				\$26,007.00

Total Units: 1.0      Average Cost per Each: \$26,007.00

### RNI YEAR 4

Qty	Unit	Description	Price	Total Price
1	1.0 EA	ANNUAL RNI SAAS FEE YEAR 4	\$31,810.00	\$31,810.00
2	1.0 EA	ANNUAL RNI SAAS FEE	\$0.00	\$0.00
				\$31,810.00

Total Units: 1.0      Average Cost per Each: \$31,810.00

### RNI YEAR 5

Qty	Unit	Description	Price	Total Price
1	1.0 EA	ANNUAL RNI SAAS FEE	\$0.00	\$0.00
2	1.0 EA	ANNUAL RNI SAAS FEE YEAR 5	\$36,016.00	\$36,016.00
				\$36,016.00

Total Units: 1.0      Average Cost per Each: \$36,016.00

## Material List

Prod ID	Description	Unit	Qty	Unit Price	Total Price
74EDRNI0NSITENS	#EDRNI0NSITE TRAINING (AMI FLEXNET CORE EDUCATION)	EA	1.0	\$5,500.00	\$5,500.00
74M400BNS	SENSUS BASE STATION Part#: M400B W/SPM-900 4 EA SPEC TO BE ADVISED-M400B WITH SPM-900	EA	4.0	\$25,524.00	\$102,096.00
74MSRNIISAASNS	ANNUAL RNI SAAS FEE	EA	5.0	\$0.00	\$0.00
74MSSURNISAAS1NS	RNI SETUP FEE #MSSURNISAAS1	EA	1.0	\$7,957.00	\$7,957.00
74RFENGNS	RF Field Engineer for five days RFE Services include: <ul style="list-style-type: none"> <li>Perform visual inspection of all mounting hardware, including clamp, cables and antennae.</li> <li>RF Sweep of antennae system.</li> <li>Verify transmit mode is set for strict sync transmit operation.</li> <li>Verify Transmitter Operation through RNI Data Portal.</li> <li>Verify Transmitter Operation Does Not Cause Any "Red Light" Failures.</li> <li>Measure Transmitter power output.</li> <li>Normal Channel Reception Confirmed.</li> <li>Noise verification, record, low, high and average readings ensuing &lt;15 db.</li> <li>Perform receiver Sensitivity and Offset Calibration.</li> <li>Measure Vol</li> </ul>	EA	1.0	\$12,000.00	\$12,000.00
74RI100NANS	R100NA Outdoor Collector 1,2,7,11 R100NA Collector Antenna Kit8 PM INST R100NAC	EA	1.0	\$8,699.31	\$8,699.31
745SX441YEARIS	ANNUAL RNI SAAS FEE YEAR 1	EA	1.0	\$18,386.00	\$18,386.00
745SX442YEARIS	ANNUAL RNI SAAS FEE YEAR 2	EA	1.0	\$20,515.00	\$20,515.00
745SX443YEARIS	ANNUAL RNI SAAS FEE YEAR 3	EA	1.0	\$26,007.00	\$26,007.00
745SX444YEARIS	ANNUAL RNI SAAS FEE YEAR 4	EA	1.0	\$31,810.00	\$31,810.00
745SX445YEARIS	ANNUAL RNI SAAS FEE YEAR 5	EA	1.0	\$36,016.00	\$36,016.00

Total before Taxes: **\$268,986.31**



EXHIBIT 2

DANA KEPNER COMPANY, LLC

Dana Kepner Sales Rep (if known): \_\_\_\_\_

STANDARD TERMS AND CONDITIONS OF SALE

TAXES – All Federal, State and Local sales, use or similar taxes will be for buyer’s account.

\*INITIAL \_\_\_\_\_  
\*DATE \_\_\_\_\_

PAYMENT TERMS – The net amount of invoices shall be due and payable in cash 30 days after invoice date. The material is subject to shipment in whole or in part at the option of the seller and each such shipment is subject to immediate invoicing. If at any time seller deems the financial responsibility of the buyer unsatisfactory, it reserves the right to require payment in advance, or other security or guarantee that invoices will be paid promptly when due. If buyer fails to comply with the terms of payment or with any other terms of sale, seller shall have the right to withhold further deliveries or to cancel the unfilled portion of any order. All unpaid accounts shall thereupon become due and payable without prejudice to any claims for damages seller may be entitled to make. All past due amounts are subject to a service charge of 2% per month (24% per annum) or up to the maximum rate permitted by law, and if the account is not paid when due, buyer agrees to pay all reasonable costs of collection including a reasonable sum for attorney fees.

SHIPMENT – All risk of loss, damage and other incidence of title and ownership shall pass to the buyer upon delivery to carrier at seller’s shipping point and such delivery shall constitute delivery to purchaser. Seller will not guarantee shipping dates or time of arrival of shipment at destination. Seller shall not be liable for any delays or defaults in making shipment where occasioned by any cause of any kind or extent beyond its control, or the control of its suppliers, manufacturers or contractors, which prevent or interfere with seller making shipment on an estimated date. In event of shipment delay, if the buyer and seller do not mutually agree to cancel the order for the item involved, the shipping date shall be automatically extended to the manufacturer’s current estimate.

WARRANTY – Any warranties expressed or implied are limited to those provided by the manufacturer to the purchaser. Seller expressly warrants title. EXCEPT FOR SUCH EXPRESS WARRANTY, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND OTHER WARRANTIES OF WHATEVER KIND, ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED. Seller assumes no liability for any failure of buyer’s specifications to meet buyer’s requirements, nor does seller guarantee that materials furnished meet or conform to any specifications except as specifically noted in writing by seller.

CLAIMS – Any claims or exceptions by buyer for defective material must be made in writing within 30 days after buyer’s receipt of materials, and buyer shall give seller an opportunity to investigate. SELLER IS FURNISHING BASIC MATERIALS AND PRODUCTS OF VARIOUS MANUFACTURERS AT STANDARD PRICES AND IS NOT INSURING BUYER AGAINST POSSIBLE CONSEQUENCES OR ERROR, OMISSION OR NEGLIGENCE IN MANUFACTURE, PRODUCTION OR DELIVERY, EXCEPT FOR BREACH OF THE EXPRESS WARRANTY SPECIFIED ABOVE, SELLER SHALL NOT, UNDER ANY PURPOSE, OF ANY PRODUCT OR MATERIAL SOLD HEREUNDER, WHETHER CAUSED BY SELLER’S NEGLIGENCE OR OTHERWISE, IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR CONTINGENT DAMAGES, OR ANY OTHER CLAIM OR DEMAND WHATSOEVER, EXCEPT TO THE EXTENT OF THE PURCHASE PRICE OF THE PRODUCT, THE REFUND OF WHICH SHALL BE BUYER’S SOLE AND EXCLUSIVE REMEDY HEREUNDER, BUYER ASSUMES ALL RISK OF LOSS, DAMAGE, OR DELAY INCIDENT TO THE FURNISHING OF ANY PRODUCT BY SELLER HEREUNDER, OR THE UTILIZATION THEREOF, EXCEPT TO THE EXTENT EXPRESSLY ABOVE PROVIDED. Seller shall have no responsibility to make any claim for loss, damage or injury to shipment caused by a carrier or others, after delivery to carrier at seller’s shipping point. Any claim by buyer against seller for shortage or damage occurring prior to delivery to carrier must be made within 5 days after receipt of materials and accompanied by original transportation bill signed by carrier noting that carrier received material from shipper in the condition claimed.

GENERAL – All prices on seller’s quotations are for immediate acceptance subject to change without notice. Neither seller’s quotation prices or invoice charges for material include any field or service work, or operator training. If buyer requests technical assistance for material furnished seller, (s)he may either arrange for this direct with the manufacturer at the manufacturer’s normal charges, or by the seller’s representative, in which case such technical assistance shall be at the cost of \$1,000.00 per day plus expenses.

When seller’s quotation prices or invoice charges for material include standard shipping charges, it is understood the method of shipment will be at the seller’s option and buyer is responsible for furnishing labor and equipment for unloading within the time limit allowed by the carrier. Seller’s quotations do not guarantee to include all material required by a specific project, nor that the material quantities, sizes or specifications noted are correct. Buyer assumes all liability for type and quantity of material ordered. Orders are not subject to cancellation return or back charge, or change in specifications, shipping schedule or other conditions without the seller’s written consent. When orders have been filled as specified, no goods may be returned, nor will any credit be allowed, unless consent of seller has first been secured, and only standard stock goods returned will, if accepted, be credited less the cost of handling and the freight costs involved. Materials not normally stocked by seller may not be returned for credit.

All quotations and sales shall be subject to seller’s standard terms and conditions and buyer is conclusively presumed to have accepted such terms and conditions unless otherwise agreed in writing.

In the event buyer’s purchase order states terms additional to or different from these terms and conditions of sale, then seller’s acknowledgement in accordance with the terms herein shall be deemed a notification of objection to such additional or different terms. In the event such purchase order expressly limits acceptance to its terms the seller’s acknowledgement in accordance with the terms herein shall be deemed a rejection of buyer’s offer to purchase, and in either event seller’s acknowledgement shall constitute an offer to sell which may be accepted only in accordance with its terms and conditions without modification, addition or alteration. Under those circumstances the failure of buyer to deliver notification of objection to these terms and conditions of sale within a reasonable time shall be deemed an acceptance thereof and a contract shall be formed only upon such terms and conditions of sale.

This agreement constitutes the sole and entire agreement between buyer and seller and none of the terms and conditions contained herein may be added to, deleted, modified or altered except by written instrument signed by seller. There are no oral understandings, representations or agreements relative to this agreement, which are not fully expressed herein. The laws of the State of Colorado shall govern the validity, interpretation and enforcement hereof, and venue for any litigation involving this agreement or transaction shall be proper in the City and County of Denver, Colorado. All orders are received subject to approval and acceptance by an officer of the Company and seller reserves the right to reject any orders as well as the right to select its own customers.





**EXHIBIT 3**

**CERTIFICATE OF INSURANCE**