Agreement Between City of Rapid City and Dakota Pump, Inc. for Professional Services for Supervisory Control and Data Acquisition (SCADA) improvements associated with the Water Reclamation Facility Digester MCC and UV/Admin. Transfer Switch Replacement, Project No. 19-2485/CIP No. 51216

AGREEMENT made October 7, 2019, between the City of Rapid City, SD (City) and Dakota Pump, Inc., (Contractor), located at 25524 413th Ave., Mitchell, SD 57301. City intends to obtain services for Supervisory Control and Data Acquisition (SCADA) improvements associated with the Water Reclamation Facility Digester MCC and UV/Admin. Transfer Switch Replacement, Project No. 19-2485/CIP No. 51216. The scope of services is as described in Exhibits A and B.

The City and the Contractor agree as follows:

The Contractor shall provide professional services for the City as defined in Exhibits A and B.

Section 1—Basic Services of Contractor

1.1 General

1.1.1 The Contractor shall perform professional services described in this agreement. Contractor intends to serve as the City’s professional representative for those services as defined in this agreement and to provide advice and consultation to the City as a professional. Any opinions of probable project cost, approvals, and other decisions provided by Contractor for the City are rendered on the basis of experience and qualifications and represent Contractor’s professional judgment.

1.1.2 All documents including Drawings and Specifications provided or furnished by Contractor pursuant to this Agreement are instruments of service in respect of the Project and Contractor shall retain an ownership therein. Reuse of any documents pertaining to this project by the City on extensions of this project or on any other project shall be at the City’s risk. The City agrees to defend, indemnify, and hold harmless Contractor from all claims, damages, and expenses including attorney’s fees arising out of such reuse of the documents by the City or by others acting through the City.
1.2 **Scope of Work**

The Contractor shall:

1.2.1 Consult with the City, other agencies, groups, consultants, and/or individuals to clarify and define requirements for the Project and review available data.

1.2.2 Perform the tasks described in the Scope of Services. (Refer to Exhibits A and B.)

**Section 2—Information Provided by City**

The City will provide any information in its possession for the project at no cost to the Contractor.

**Section 3—Notice to Proceed**

The City will issue a written notification to the Contractor to proceed with the work. The Contractor shall not start work prior to receipt of the written notice. The Contractor shall not be paid for any work performed prior to receiving the Notice to Proceed.

**Section 4—Mutual Covenants**

4.1 **General**

4.1.1 The Contractor shall not sublet or assign any part of the work under this Agreement without written authority from the City.

4.1.2 The City and the Contractor each binds itself and partners, successors, executors, administrators, assigns, and legal representatives to the other party to this agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, regarding all covenants, agreements, and obligations of this agreement.

4.1.3 Nothing in this agreement shall give any rights or benefits to anyone other than the City and the Contractor.

4.1.4 This agreement constitutes the entire agreement between the City and the Contractor and supersedes all prior written or oral understandings. This agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

4.1.5 The Contractor shall make such revisions in plans which may already have been completed, approved, and accepted by the City, as are
necessary to correct Contractor’s errors or omissions in the plans, when requested to do so by the City, without extra compensation therefore.

4.1.6 If the City requests that previously satisfactorily completed and accepted plans or parts thereof be revised, the Contractor shall make the revisions requested by the City. This work shall be paid for as extra work.

4.1.7 The City may at any time by written order make changes within the general scope of this Agreement in the work and services to be performed by the Contractor. Any changes which materially increase or reduce the cost of or the time required for the performance of the Agreement shall be deemed a change in the scope of work for which an adjustment shall be made in the Agreement price or of the time for performance, or both, and the Agreement shall be modified in writing accordingly. Additional work necessary due to the extension of project limits shall be paid for as extra work.

4.1.8 Extra work, as authorized by the City, will be paid for separately and be in addition to the consideration of this Section.

4.1.9 For those projects involving conceptual or process development services, activities often cannot be fully defined during the initial planning. As the project does progress, facts and conditions uncovered may reveal a change in direction that may alter the scope of services. Contractor will promptly inform the City in writing of such situations so that changes in this agreement can be renegotiated.

4.1.10 This Agreement may be terminated (a) by the City with or without cause upon seven days’ written notice to the Contractor and (b) by the Contractor for cause upon seven days’ written notice to the City. If the City terminates the agreement without cause, the Contractor will be paid for all services rendered and all reimbursable expenses incurred prior to the date of termination.

If termination is due to the failure of the Contractor to fulfill its agreement obligations, the City may take over the work and complete it. In such case, the Contractor shall be liable to the City for any additional cost to the extent directly resulting from Contractor’s action.

4.1.11 The City or its duly authorized representatives may examine any books, documents, papers, and records of the Contractor involving transactions related to this agreement for three years after final payment. All examinations will be performed at reasonable times, with
proper notice. Contractor's documentation will be in a format consistent with general accounting procedures.

4.1.12 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Contractor in order to avoid unreasonable delay in the orderly and sequential progress of the Contractor's services.

4.1.13 Costs and schedule commitments shall be subject to renegotiation for delays caused by the City's failure to provide specified facilities or information or for delays caused by other parties, excluding subcontractors and sub-consultants, unpredictable occurrences including without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdowns, acts of God, or the public enemy, or acts of regulations of any governmental agency or any other conditions or circumstances beyond the control of the City or Contractor. Temporary delays of services caused by any of the above which results in additional costs beyond those outlined may require renegotiation of this agreement.

4.1.14 The City will give prompt written notice to the Contractor if the City becomes aware of any fault or defect in the Project or nonconformance with the Project Documents.

4.1.15 Unless otherwise provided in this Agreement, the Contractor and the Contractor's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.

4.1.16 In the event asbestos or toxic materials are encountered at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of Contractor's services, Contractor may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the City retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials.

4.1.17 Contractor hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales, use or excise tax for
transactions which are taxable under the laws of the State of South Dakota.

4.2 **City of Rapid City Nondiscrimination Policy Statement**

In compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination act of 1975, the Americans with Disabilities Act of 1990, and other nondiscrimination authorities, it is the policy of the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701-5035, to provide benefits, services, and employment to all persons without regard to race, color, national origin, sex, disabilities/handicaps, age, or income status. No distinction is made among any persons in eligibility for the reception of benefits and services provided by or through the auspices of the City of Rapid City.

Contractor will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.

**Section 5—Payments to the Contractor**

5.1 **Fee**

The maximum amount of the fee for the services as detailed in Section 1.2 shall not exceed $6,780.00 unless the scope of the project is changed as outlined in Section 4. If expenses exceed the maximum amount, the Contractor shall complete the project as agreed upon here without any additional compensation.

5.2 **Progress Payments**

Monthly progress payments shall be processed by the City upon receipt of the claim as computed by the Contractor based on work completed during the month and approved by the City.

Net payment to the Contractor shall be due within forty-five (45) days of receipt by the City.

**Section 6—Completion of Services**

The Contractor shall complete services on or before December 20, 2019 based on a Notice to Proceed date of October 11, 2019 or earlier.
Section 7—Insurance Requirements

7.1 Insurance Required

The Contractor shall secure the insurance specified below. The insurance shall be issued by insurance company(s) acceptable to the City and may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance including any policy endorsements shall be provided to the City prior to or upon the execution of this Agreement.

7.2 Cancellation

The Contractor will provide the City with at least 30 days’ written notice of an insurer’s intent to cancel or not renew any of the insurance coverage. The Contractor agrees to hold the City harmless from any liability, including additional premium due because of the Contractor’s failure to maintain the coverage limits required.

7.3 City Acceptance of Proof

The City’s approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the coverages and limits described in this agreement are adequate to protect the Contractor, its consultants or subcontractors interests, and assumes no liability therefore. The Contractor will hold the City harmless from any liability, including additional premium due, because of the Contractor’s failure to maintain the coverage limits required.

7.4 Specific Requirements

7.4.1 Workers’ compensation insurance with statutory limits required by South Dakota law. Coverage B-Employer’s Liability coverage of not less than $500,000 each accident, $500,000 disease-policy limit, and $500,000 disease-each employee.

7.4.2 Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury and property damage liability coverage with limits of not less than $1,000,000 per occurrence, $2,000,000 general aggregate, and $2,000,000 aggregate products and completed operations. If the occurrence form is not available, claims-made coverage shall be maintained for three years after completion of the terms of this agreement. The policy shall name the City and its representatives as an additional insured.
Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than $1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.

Section 8—Hold Harmless
The Contractor hereby agrees to hold the City harmless from any and all claims or liability including attorneys’ fees arising out of the services furnished under this Agreement, and for bodily injury or property damage arising out of services furnished under this Agreement, providing that such claims or liability are the result of a negligent act, error or omission of the Contractor and/or its employees/agents arising out of the services described in the Agreement.

Section 9—Independent Business
The parties agree that the Contractor operates an independent business and is contracting to do work according to his own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship between the City and the Contractor shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to the Contractor is inclusive of any use, excise, income or any other tax arising out of this agreement.

Section 10—Controlling Law and Venue
This Agreement shall be subject to, interpreted and enforced according to the laws of the State of South Dakota, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the State of South Dakota, 7th Judicial Circuit, Pennington County.

Section 11—Severability
Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and effect.

Section 12—Funds Appropriation
If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this agreement, this agreement shall impose no obligation on the City for payment. This agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of the Contractor, its successors or assignees, for any further payments. For future phases of this or any project, project components not
identified within this contract shall not constitute an obligation by the City until funding for that component has been appropriated.

**Section 13-Responsibility of Contractor**

General Responsibility: The Contractor shall furnish all transportation, ways, works, machinery, and plant, and all suitable appliances required for the safe, proper, and lawful construction, maintenance, and use thereof. The Contractor shall be fully responsible for the materials and equipment used for the work and for safeguarding the work against damage or destruction until its final acceptance by the City. The Contractor agrees to make no claims for damage to the work prior to final acceptance and will make no claims for damage to the materials except through negligence or willful act of the City.

Before the completion and acceptance of this Contract shall be made good by him, he shall be solely answerable for all damage to the City or the property of the City; to other contractors, or other employees of the City; to the neighboring premises or to any private or personal property due to improper, illegal, or negligent conduct of himself or his subcontractors; employees or agents in and about said work or in the execution of the work covered by this Contract or any extra work undertaken herein provided; or to any defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery or plant. He shall indemnify and save harmless the City and its officers and agents from all claims relating to labor, materials, and methods used in executing the work.

**Section 14-Patents**

It is further agreed that all royalties for patents or patent infringement claims, whether such patents are for processes or devices, that might be involved in the construction or use of the work, shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and shall be liable for any damages or claims for patent infringements; and the Contractor shall, at his own expense, defend any and all suits or proceedings that might be instituted at any time against the City for infringement or alleged infringement of any patent or patents involved in the work; and in case of an award of damages, the said Contractor shall pay such award; final payment to the Contractor by the City will not be made while any such suits or claims remain unsettled.

**Section 15-Indemnity**

The Contractor shall indemnify and save harmless the City from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against him, by reason of any act or omission of the said Contractor, his agents or employees, in the execution of the work or in the guarding of it and this shall include acts or omission of subcontractor.
The Contractor shall, and is hereby authorized to, maintain any part for such insurance, issued in the name of the City, as will protect the City from his contingent liability under this Contract, and the City’s right to enforce against the Contractor any provision of this Section shall be contingent upon the full compliance by the City with the terms of applicable insurance policy or policies, a copy of which shall be deposited with the City.

Section 16-Laws and Ordinances

The Contractor shall keep himself fully informed of all existing and current regulations of the City, County, State, and Nation, which in any way limit or control the actions or operations of those engaged upon the work, or affecting the materials supplied to or by them. He shall at all times observe and comply with, all ordinances, laws, rules and regulations and shall protect and indemnify the City and the City’s officers and agents against any claims or liability arising from or based on any violation of the same. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the City, he shall bear all costs arising therefrom. Such performance shall constitute a waiver of any and all claims associated with the work.

Section 17-Permits and Licenses

Unless otherwise specified, permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City, unless otherwise specified.

Section 18-Testing of Completed Work

Before final acceptance, all parts of the work shall be tested and each part shall be in good condition and proper working order or shall be placed in such condition and order at the expense of the Contractor, unless otherwise specified. All test of completed work required under this contract shall be made under the direction of the City by and at the expense of the Contractor, who shall repair at his own expense all damage resulting therefrom.

Section 19-Waiver of Rights

Neither the inspection by the City or any of their employees, nor an order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the equipment, material, or work by the City, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of the Contract, or of any power herein reserved to the City or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.
Before final acceptance, all parts of the work shall be tested and each part shall be in good condition and proper working order or shall be placed in such condition and order at the expense of the Contractor, unless otherwise specified. All test of completed work required under this contract shall be made under the direction of the City by and at the expense of the Contractor, who shall repair at his own expense all damage resulting therefrom.
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

City of Rapid City: 

__________________________________________
MAYOR

DATE: ________________________________

ATTEST:

__________________________________________
FINANCE OFFICER

Dakota Pump, Inc.:

Will Lind

DATE: Sep 11 2019

Reviewed By:

Stacey Titus, OPERATIONS MANAGEMENT ENGINEER

DATE: ________________________________

CITY’S DESIGNATED PROJECT REPRESENTATIVE 
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