

REQUEST AUTHORIZATION FOR MAYOR AND FINANCE OFFICER TO SIGN PROFESSIONAL SERVICES AGREEMENT OR AMENDMENT

Date: July 18, 2016

Project Name & Number: Water Distribution Supervisory Control and Data Acquisition (SCADA) Improvements – Implementation Phase; Project No. 14-2218 **CIP #:** 51067

Project Description: Replacement and upgrade of the Water Distribution SCADA used to monitor and control the water distribution system.

Consultant: Dakota Pump, Inc.

Original Contract Amount: \$896,049.00	Original Contract Date: July 18, 2016	Original Completion Date: 12 Months after Notice to Proceed
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Addendum No:


Amendment Description:



Current Contract Amount: _____	Current Completion Date: _____
Change Requested: _____	
New Contract Amount: _____ \$0.00	New Completion Date: _____

Funding Source This Request:

Amount	Dept.	Line Item	Fund	Comments
\$896,049.00	933	4225	602	Water Replacement / Improvements
\$896,049.00	Total			

Agreement Review & Approvals

	6/30/16	
Project Manager	Date	
	7/6/16	
Compliance Specialist	Date	
	7/13/16	
City Attorney	Date	


	7-6-16	
Division Manager	Date	
	7-6-16	
Department Director	Date	

ROUTING INSTRUCTIONS

Route two originals of the Agreement for review and signatures.
 Finance Office - Retain one original
 Project Manager - Retain second original for delivery to Consultant
 cc: Public Works
 Engineering
 Project Manager

FINANCE OFFICE USE ONLY

(Note to Finance: Please write date of Agreement in appropriate space in the Agreement document)

	Date	Initials	Approved	
Appropriation	7/13/16		<input checked="" type="checkbox"/>	N
Cash Flow			<input checked="" type="checkbox"/>	N

**Agreement Between City of Rapid City and Dakota Pump, Inc.
for Professional Services and Equipment Installation for the Water Distribution
Supervisory Control and Data Acquisition (SCADA) Improvements
Implementation Phase, Project No. 14-2218 / CIP No. 51067**

AGREEMENT made July 18, 2016, between the City of Rapid City, SD (City) and Dakota Pump, Inc., (Contractor), located at 25524 413th Avenue, Mitchell, SD 57301. City intends to obtain services for Water Distribution Supervisory Control and Data Acquisition (SCADA) Improvements Implementation Phase, Project No. 14-2218, CIP No. 51067. 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 and equipment installation for the City in all phases of the Project as defined in Exhibits A and B

Section 1—Basic Services of Contractor

1.1 General

1.1.1 The Contractor shall perform professional and installation 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. (See 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 sub-contractors 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 \$896,049.00 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 the services within 12 months of receipt of a Notice to Proceed with the project.



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.



- 7.4.3 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-Performance Bond

The surety bond executed by the Contractor, issued to the City, shall be a guarantee:

- A. For the faithful performance and completion of the work in strict accordance with the terms of the contract, specifications, and detailed plans;
- B. For the payment to the City of all sums due or which may become due by the terms of the contract; as well as by reason of any violation thereof by the Contractor;
- C. For the payment of all bills, including the hire, rental or lease of equipment or machinery, and the operators thereof, used on the work, and for all materials, lubricants, oils and gasoline used in or consumed in the construction of such work and for all labor performed in such work whether by sub-contract or otherwise;
- D. The payment of any and all judgments and costs of suits and actions brought against the City or officials thereof, for any cause whatsoever, arising from or on account of any injuries or damages to life or property suffered or sustained by any person, firm or corporation, caused by the Contractor, his or its agents, servants or employees in the construction of said work, or by or in consequence of any negligence, carelessness or misconduct in guarding or protecting the same, or any act or omission of the said Contractor his agents, servants, employees;
- E. And for the protection of the City against all suits and claims for infringements or alleged infringements of patent rights processes.

This section shall in no way be construed as limiting the obligation under the Performance Bond actually furnished, but may be an addition thereto.

The City agrees to mail a notice to the Contractor, calling his attention to any failure to comply with the requirements of the bond, not more than ten (10) days before notifying his bondsmen of such failure to comply with the terms of said bond.



Section 17-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 18-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 19-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 tests 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 20-Project Acceptance and Warranty Period

Final acceptance of the project by the City will be documented by the issuance of an acceptance letter, which is issued according to the following criteria:

- 1) Construction has been substantially completed and the facilities can be put to their intended use.
- 2) All testing has been completed, and the required results have been met.

The date of the acceptance letter documents the start of the two-year warranty period, during which the Contractor shall be notified in writing of any defects in the project and shall submit to the Public Works Dept. a construction schedule to correct the defects at their expense within ten (10) days of receipt of the notice. Failure to correct or undertake, with due diligence, to correct the deficiencies within the specified time may cause the City to make the necessary repairs and bill the Contractor one and one-half (1 1/2) times the costs incurred; providing, however, that in case of an emergency, where, in the judgment of the City, delay would cause serious loss or damage, repairs



may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

The City reserves the right to extend the warranty period if excessive problems are apparent during the initial two-year period.

During a period of two years after the completion of the work covered by this contract and the final acceptance in writing thereof by the City, the Contractor shall make all needed repairs arising out of defective workmanship or materials furnished by the Contractor; or both, which in the judgment of the City shall become necessary during said period. The City is hereby authorized to make such repairs at the Contractor's expense, if within ten days after the receipt of a written notice to the Contractor, or his agent, the said Contractor shall neglect to make, or undertake with due diligence to make, the aforesaid repairs; providing, however, that in case of an emergency, where in the judgment of the City, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor and the Contractor shall pay the cost thereof.

Section 21-Waiver of Rights

Neither the inspection by the City or any of their employees, nor any 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 this 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.



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:

Contractor:

MAYOR

James J. Schult

DAKOTA PUMP, INC.

DATE: _____

DATE: 06/29/2016

ATTEST:

FINANCE OFFICER

Reviewed By:

Dan Coon

DAN COON, OPERATIONS MANAGEMENT ENGINEER

DATE: 6/30/16

CITY'S DESIGNATED PROJECT
REPRESENTATIVE

NAME: Dan Coon
PHONE: (605) 394-4154
EMAIL: dan.coon@rcgov.org

CONTRACTOR'S DESIGNATED
PROJECT REPRESENTATIVE

NAME: Quinten Schultz
PHONE: (605) 716-7505
EMAIL: controls@dakotapump.com



EXHIBIT A

**City of Rapid City
Water Distribution System
Supervisory Control and Data Acquisition (SCADA) Improvements
Project No. 14-2218/CIP No. 51067
Implementation Phase**

The Scope of Services for the Water Distribution Supervisory Control and Data Acquisition (SCADA) Improvements Implementation Phase, Project No. 14-2218/CIP No. 51067 shall be as stated in the document titled:

Implementation Plan For Water Distribution Supervisory Control and Data Acquisition Improvements, Project No. 14-2218/CIP No. 51067, City of Rapid City, South Dakota, dated June 28, 2016

This Plan includes all necessary services and equipment for successful completion of the project. Modifications to this plan and scope of services shall be made in accordance with Section 4 of the Agreement.

EXHIBIT B
City of Rapid City
Water Distribution System
Supervisory Control and Data Acquisition (SCADA) Improvements
Project No. 14-2218/CIP No. 51067
Implementation Phase

Item	Site Name	Upgrade Cost
1.1.1	HMI Software - VTScada	\$88,823.00
1.1.2	SCADA Maintenance Equipment	\$7,246.00
1.1.3	RTU_00 Master Panel	\$31,029.00
1.1.4	Radio Equipment	\$13,632.00
1.2.2	RTU_7 Well 12/Stoney Creek Booster	\$40,789.00
1.3.2	RTU_11 Well No. 8	\$25,430.00
1.4.2	RTU_34 Well No. 5	\$21,624.00
1.5.2	RTU_35 Well No. 6	\$20,293.00
1.6.2	RTU_39 Well No. 9	\$20,346.00
1.7.2	RTU_40 Well No. 10	\$20,346.00
1.8.2	RTU_41 Well No. 11	\$20,346.00
1.9.2	RTU_19 Girl Scouts Gallery	\$26,060.00
1.10.2	RTU_5 Red Rock Reservoir	\$14,004.00
1.11.2	RTU_6 Arrowhead Reservoir	\$68,142.00
1.12.2	RTU_10 South Pinedale Reservoir	\$27,508.00
1.13.2	RTU_13 Low Level Reservoirs	\$35,883.00
1.14.2	RTU_15 Palo Verde Reservoir	\$28,839.00
1.15.2	RTU_21 Robbinsdale Reservoir	\$19,464.00
1.16.2	RTU_24 Skyline Reservoir	\$16,188.00
1.17.2	RTU_30 Southwest Reservoir	\$21,904.00
1.18.2	RTU_44 Low Level Elk Vale Reservoir	\$14,057.00
1.19.5	RTU_45 North Ridge Reservoir/Booster	\$23,448.00
1.20.2	RTU_46 North Pinedale Reservoir	\$10,528.00
1.21.4	RTU_47 Kepps Reservoir	\$21,293.00
1.22.2	RTU_9 North Pinedale Booster	\$23,449.00
1.23.2	RTU_16 West Street Booster	\$25,607.00
1.24.2	RTU_17 Mountain View Booster	\$21,904.00
1.25.2	RTU_20 South Pinedale Booster	\$25,738.00
1.26.2	RTU_21 Robbinsdale Booster	\$24,460.00
1.27.2	RTU_26 North Rapid Booster	\$23,449.00
1.28.2	RTU_28 Hall Street Booster	\$25,260.00
1.29.2	RTU_31 Southwest Booster	\$21,904.00
1.30.2	RTU_42 Skyline Booster	\$23,968.00
1.31.2	RTU_43 Terracita Booster	\$21,904.00
1.32.2	RTU_29 Ellsworth AFB	\$16,924.00
2.1	Progress Meeting Costs	\$4,260.00
Total		\$896,049.00