

CITY OF OLATHE PRICE AGREEMENT

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and R.E. Pedrotti Co. Inc., hereinafter "Vendor" (each individually a "Party" and collectively, the "Parties"). City needs SCADA Services, and contracts with Vendor to supply the goods or services described in **Exhibit A**, as needed and as requested by City.

1. PRICE AGREEMENT, ORDERS, AND TERM. City agrees to pay Vendor at the prices listed in **Exhibit A** to supply the goods or services described in **Exhibit A**, as needed and as requested by City. City will have no financial obligation under this Agreement until an order has been placed. Any order placed under this Agreement remains subject to any applicable procurement policies of City, including approval by the appropriate authority based on the dollar amount of the order. Any order placed pursuant to this Agreement is subject to all terms and provisions of this Agreement. This contract will be a three (3)-year contract with the option to renew for additional periods upon the written agreement of both parties.

2. COOPERATIVE PROCUREMENT. This Agreement is being made based on the cooperative procurement allowed under 2021-071 ("Procurement Contract") between Vendor and Johnson County, Kansas. All terms and provisions of the Procurement Contract are incorporated by - reference into this Agreement, to the extent such terms and conditions do not conflict with the terms and provisions of this Agreement. To the extent the terms and provisions of the Procurement Contract conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement will control.

3. ADDITIONAL SERVICES. Vendor may provide services in addition to those listed **Exhibit A** when authorized in writing by City.

4. BILLING. Vendor may bill City monthly for all completed work and reimbursable expenses. Vendor must submit a bill which itemizes the work and reimbursable expenses. City agrees to pay Vendor within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy.

5. PAYMENT. If City becomes credibly informed that any representations of Vendor provided in its billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future due to Vendor until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction.

6. STANDARD OF CARE. Vendor will exercise the same degree of care, skill, and diligence in the performance of the work as is ordinarily possessed and exercised by a professional under similar circumstances. If Vendor fails to meet the foregoing standard, Vendor will perform at its own cost, and without reimbursement, any work necessary to correct errors and omissions which are caused by Vendor's negligence.

7. TERMINATION FOR CONVENIENCE. City may terminate this Agreement for convenience by providing fifteen (15) days' written notice to Vendor. City will compensate Vendor for all work completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.

8. TERMINATION FOR LACK OF FUNDS. If, for whatever reason, adequate funding is not made available by City to support or justify continuation of the level of work to be provided by Vendor under this Agreement, City may terminate or reduce the amount of work to be provided by Vendor under this Agreement. In such event, City will notify Vendor in writing at least thirty (30) days in advance of such termination or reduction of work for lack of funds.

9. DISPUTE RESOLUTION. The Parties agree that disputes regarding the work will first be addressed by negotiations between the Parties. If negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests. Notwithstanding any such dispute, Vendor will proceed with undisputed work as if no dispute existed, and City will continue to pay for Vendor's completed undisputed work. No dispute will be submitted to arbitration without both Parties' written approval.

10. SUBCONTRACTING. Vendor may not subcontract or assign any of the work to be performed under this Agreement without first obtaining the written approval of City. Unless stated in the written approval to an assignment, no assignment will release or discharge Vendor from any obligation under this Agreement. Any person or entity providing subcontracted work under this Agreement must comply with **Section 11 (Insurance)**.

11. OWNERSHIP OF DOCUMENTS. All final documents provided to City as part of the work provided under this Agreement, including but not limited to reports, plans, and related documents, will become City's property except that Vendor's copyrighted documents will remain owned by Vendor. Such documents must be clearly marked and identified as copyrighted by Vendor.

12. INSURANCE. Vendor and any subcontractor will maintain for the term of this Agreement insurance as provided in **Exhibit B**.

13. INDEMNIFICATION AND HOLD HARMLESS. For purposes of this Agreement, Vendor agrees to indemnify, defend, and hold harmless City, its officers, appointees, employees, and agents from any and all loss, damage, liability or expense, of any nature whatsoever caused or incurred as a result of the negligence or other actionable fault of Vendor, its affiliates, subsidiaries, employees, agents, assignees, and subcontractors and their respective employees and agents. Vendor is not required hereunder to defend City, its officers, appointees, employees, or agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence. City does not indemnify Vendor.

14. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT OR NEGLIGENT PERFORMANCE. Any attempt to limit liability for breach of contract or negligent performance to the amount of the payment to Vendor by City is void. Any attempt to limit Vendor's liability to City for consequential, exemplary, or punitive damages, or any other measure of damages permitted by law, in any action against Vendor for breach of contract is void.

15. KANSAS ACT AGAINST DISCRIMINATION. *Unless* Vendor employs fewer than four (4) employees during the term of this Agreement, or *unless* the total of all agreements (including this Agreement) between Vendor and City during a calendar year are cumulatively less than \$5,000, *then* during the performance of this Agreement, Vendor agrees that:

- a. Vendor will observe the provisions of the Kansas Act Against Discrimination

(K.S.A. 44-1001 *et seq.*) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, or ancestry;

- b. in all solicitations or advertisements for employees, Vendor will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
- c. if Vendor fails to comply with the way Vendor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Vendor will be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by City without penalty;
- d. if Vendor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Vendor will be deemed to have breached the present contract and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency; and
- e. Vendor will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

16. ENTIRE AGREEMENT. This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to by both Parties.

17. NO THIRD-PARTY BENEFICIARIES. Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

18. INDEPENDENT CONTRACTOR STATUS. Vendor is an independent contractor and not an agent or employee of City.

19. COMPLIANCE WITH LAWS. Vendor will abide by all applicable federal, state, and local laws, ordinances, and regulations.

20. FORCE MAJEURE CLAUSE. Neither Party will be considered in default under this Contract because of any delays in performance of obligations hereunder due to causes beyond the control and without fault or negligence on the part of the delayed Party, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, tornado, epidemic, quarantine restrictions, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the delayed Party must notify the other Party in writing of the cause of delay and its probable extent within ten (10) days from the beginning of such delay. Such notification will not be the basis for a claim for additional compensation. The delayed Party must make all reasonable efforts to remove or eliminate the cause of delay and must, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

21. APPLICABLE LAW, JURISDICTION, VENUE. Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County,

Kansas.

22. SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, unenforceable, or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.

23. ORDER OF PRECEDENCE. If there is any conflict between the terms of this Agreement, excluding exhibits, and anything contained in the exhibits referenced herein or attached hereto, the terms and provisions of this Agreement, excluding exhibits, shall control.

[The remainder of this page is intentionally left blank.]

The Parties hereto have caused this Agreement to be executed this _____ day of
_____ 20____.

CITY OF OLATHE, KANSAS

By: _____
Mayor

ATTEST:

City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney or Deputy/Assistant City Attorney

R.E. Pedrotti Co. Inc.

By: _____
Marc Pedrotti, President

2703 Fairfax Trafficway
Kansas City, KS 66115

Exhibit A
Vendor's Proposal



Financial Management & Administration

Contract Renewal Memo

Date: January 25, 2024
To: Robin Lynes
From: Megan Wasek
**RE: 2021-071 Contract Renewal No. 2
(SCADA Services)**

Vendor: R.E. Pedrotti Co. Inc.
Project Number: 2021-071
Service: SCADA Services
Department: JCW
Contract Renewal No.: 2
Contract Renewal Term: 3/01/2024 – 2/28/2025
Last Term Spend (to date): \$312,250.25*
*includes services performed outside of this contract
BOCC Approval Date: 2/10/2022
BOCC Approval Amount: \$1,000,000 annually
Renewal(s) Remaining: 2
Notes: Refer to IonWave for the original contract and past renewal (s)

**AMENDMENT AND CONTRACT RENEWAL NO. 2
SCADA SERVICES TERM & SUPPLY AGREEMENT
RFP 2021-071**

THIS AMENDMENT AND CONTRACT RENEWAL NO. 2, made in Olathe, Johnson County, Kansas, and effective as of the 1st day of March, 2024, by and between JOHNSON COUNTY, KANSAS (hereinafter “COUNTY”), and R.E. PEDROTTI CO. INC., (hereinafter “VENDOR”), each individually hereinafter as “Party” and together hereinafter the “Parties”.

WITNESSTH:

WHEREAS, on February 10, 2022, COUNTY’s Board of County Commissioners authorized a contract with VENDOR to provide supervisory control and data acquisition services as described in Request for Proposal No. 2021-071 and the Parties subsequently entered into such agreement (hereinafter “Agreement”); and

WHEREAS, the term of the Agreement is for a twelve (12) month period with four (4) additional renewal periods of twelve (12) months each; and

WHEREAS, on March 2, 2023, the Parties renewed the Agreement for a twelve (12) month period as part of the first renewal option; and

WHEREAS, Article IX the Agreement provides that the same may be amended by supplemental writing executed by duly authorized representatives of both Parties; and

WHEREAS, the Parties desire to amend and renew the Agreement as described herein (hereinafter “Amendment and Contract Renewal No. 2”).

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants hereinafter given, and for other good and valuable consideration, the Parties hereto agree as follows:

1. *Effective Date Clarification.* For clarification purposes, the effective date of the Agreement is March 1, 2022. The twelve (12) month renewal options shall run from March 1 through February 28 thereafter if mutually agreed upon.

2. *Subcontractor Markup Fee.* VENDOR’s Form 6 Cost Proposal is hereby amended to include a Subcontractor Markup Percentage in accordance with Article VII of the Agreement, as outlined in **Attachment A-1**, attached hereto and incorporated herein by reference.

3. *Renewal No. 2 Exercised.* The Parties hereby exercise Renewal No. 2 of 4 for a twelve (12) month period, effective March 1, 2024, through February 28, 2025.

4. *Status of Agreement.* All of the terms and conditions of the Agreement, unless otherwise modified by, or made inconsistent with, the provisions of this Amendment, shall remain in full force and effect, and shall be made binding on the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment and Contract Renewal No. 2 to be executed by their duly authorized representatives and made effective the day and year first above written.

R.E. PEDROTTI CO. INC.

JOHNSON COUNTY, KANSAS

Marc Pedrotti

By: Marc Pedrotti (Jan 25, 2024 16:24 CST) Robin Lynes, Purchasing Manager

Marc Pedrotti

Robin Lynes (Jan 25, 2024 16:26 CST)

Printed Name

President

Title

SCADA System Maintenance and Integration

ATTACHMENT A-1: SCHEDULE OF HOURLY BILLING RATES

| PERSONNEL CLASSIFICATION | Maximum Hourly Rate Billing | | |
|----------------------------------|-----------------------------|----------------------------------|--|
| | REGULAR HOURLY RATE | OVERTIME/ WEEKEND HOURLY RATE | EMERGENCY (2-HR RESPONSE TIME) HOURLY RATE |
| | \$/Hour ¹ | \$/Hour ¹ | \$/Hour ^{1,3} |
| Principal/Owner | \$185.00 | \$185.00 | \$185.00 |
| Project Manager | \$150.00 | \$150.00 | \$150.00 |
| Senior Engineer | \$150.00 | \$150.00 | \$150.00 |
| Engineer | \$150.00 | \$150.00 | \$150.00 |
| Senior Programmer/Integrator | \$150.00 | \$225.00 | \$300.00 |
| Programmer/Integrator | \$150.00 | \$225.00 | \$300.00 |
| Designer/Drafter | \$100.00 | \$100.00 | \$100.00 |
| Service Technician | \$120.00 | \$180.00 | \$240.00 |
| Estimator/Submittals Coordinator | \$100.00 | \$100.00 | \$100.00 |

| | | | |
|------------------------|---------|---------|---------|
| Clerk/Typist/Secretary | \$60.00 | \$60.00 | \$60.00 |
|------------------------|---------|---------|---------|

MATERIALS MARKUP

| Total Cost of Materials (Per Authorization) | Percentage Markup on all Materials ² |
|--|--|
| \$0-\$5,000 | 25% |
| \$5,001-\$20,000 | 20% |
| \$20,001+ | 20% |

SUBCONTRACTOR MARKUP

| | |
|---------------|-------|
| Subcontractor | 15.0% |
|---------------|-------|

PURCHASING CARD CHARGE

| | |
|--|------|
| Decimal Percent Charge for Use of P-Card ⁴ | 2.0% |
|--|------|

2016-004 – SCADA System Maintenance and Integration Services

2017-2018 Rates

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Notes:

¹ Labor rates include travel costs to and from site; if applicable.

² Materials markup shall be calculated by multiplying the total cost of materials for a given authorization by the corresponding decimal percentage markup + 1 (Example: 15% markup on \$100 = \$100*1.15 = \$115).

³ Emergency rates shall be applicable to after-hours emergency requests and during working hours if previously agreed to by JCW.

⁴ For small expenditures (generally under \$10,000), JCW may elect to pay by Purchasing Card (P-Card). If your firm charges a markup for P-Card use, it must be documented here. If your firm does not, mark 0%.

All other expenses including local vehicle mileage, local and long distance telephone, fax, cell phones, printing, reproduction, computer use, photographs, video, software use, postage, delivery, contract accounting, and miscellaneous shall be included in the hourly labor rates above, and shall not be billed or reimbursed separately.

Exhibit B

CITY OF OLATHE INSURANCE REQUIREMENTS

These requirements apply to the vendor or contractor ("Vendor") entering into an Agreement with the City of Olathe ("City").

A. Insurance. Secure and maintain for the term of the Agreement insurance of such types and in at least such amounts as set forth below from a Kansas authorized insurance company which carries a Best's Policyholder rating of "A-" or better and carries at least a Class "VII" financial rating or better, unless otherwise agreed to by City:

1. Commercial General Liability: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any commercial general liability policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

Limits: Per Occurrence, including Personal & Advertising Injury and Products/Completed Operations: \$1,000,000; General Aggregate: \$2,000,000.

2. Business Auto Insurance: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any automobile policy of insurance. Insurance must apply separately to each insured against whom claim is made or suit is brought, subject to liability limits.

Limits: All Owned Autos; Hired Autos; and Non-Owned Autos: Per occurrence, combined single limit: \$500,000.

Notwithstanding the foregoing, if Vendor does not own any automobiles, then Vendor must maintain Hired and Non-Owned Auto insurance.

3. Worker's Compensation and Employer's Liability: Workers compensation insurance must protect Vendor against all claims under applicable state Worker's Compensation laws at the statutory limits, and employer's liability with the following limits.

Limits: \$500,000 Each Accident/\$500,000 Policy Limit/\$500,000 Each Employee

4. Professional Liability (if applicable): **Unless excused by the Agreement with the City**, Vendor must maintain for the term of this Agreement and for a period of three (3) years after the termination of this Agreement, Professional Liability Insurance.

Limits: Each Claim: \$1,000,000; General Aggregate: \$1,000,000.

5. Cyber Insurance (if applicable): **IF** accessing the City's network or City's data, **THEN** maintain the following coverages throughout for the term of this Agreement and for a period of three (3) years after the termination of this

Agreement: Cyber Incident/Breach Response and Remediation Expenses, Digital Data Recovery, Privacy and Network Security Liability, and Notification Expense.

Limits: Per claim, each insuring agreement: \$1,000,000; Aggregate: \$1,000,000.

B. Exposure Limits. Above are minimum acceptable coverage limits and do not imply or place a liability limit nor imply that the City has assessed the risk that may be applicable to Vendor. Vendor must assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverage. The Vendor's insurance must be primary, and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Vendor.

C. Costs. Insurance costs must be at Vendor's expense and accounted for in Vendor's bid or proposal. Any deductibles or self-insurance in the above-described coverages will be the responsibility and at the sole risk of the Vendor.

D. Verification of Coverage

1. Must provide certificate of insurance on ISO form or equivalent, listing the City as certificate holder, and additional insured endorsements for requested coverages.
2. Any self-insurance must be approved in advance by the City and specified on the certificate of insurance. Additionally, when self-insured, the name, address, and telephone number of the claim's office must be noted on the certificate or attached in a separate document.
3. When any of the insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage must be submitted along with the application for final payment.
4. For cyber insurance, the certificate of insurance confirming the required protection must confirm the required coverages in the "Additional Comments" section or provide a copy of the declarations page confirming the details of the cyber insurance policy.

E. Cancellation. No required coverage may be suspended, voided, or canceled, except after Vendor has provided thirty (30) days' advance written notice to the City.

F. Subcontractor's Insurance: If a part of this Agreement is to be sublet, Vendor must either cover all subcontractors under its insurance policies; **OR** require each subcontractor not so covered to meet the standards stated herein.