

August 31, 2023

Mr. Mike Dufrane
City of Vergas, MN

Quote Number: QUO-04754-W2B5R9

RE: Insight Addition to Water System
Vergas, MN

Mike,

We propose to supply the following equipment and services for the above referenced project

SCADA Web Insight System

- One (1) Modifications to the existing WTP Control Panel including:
- One (1) Insight™ System with one (1) year cellular and communication services
 - One (1) Lot power supplies, terminal blocks, and interfacing relays
 - One (1) UPS System

Supplied by SCC but installed by others

- One (1) Antenna w/cable

Total lump sum price.....\$ 11,600.00

Insight™ SCADA Web site and cellular service will be a re-occurring monthly fee of \$45.00 per site.

Insight SCADA features:

- Alarms sent via text, voice, or email
- Alarms sent to unlimited users
- Acknowledgment of Alarms stamped by logged in user.
- Web site to view Alarms, Set up Alarms, and Turn On/Off
- Full Control start/stop of equipment
- Trending
- Reports
- Remote Access by SCC for troubleshooting assistance

Pricing does not include inspections, installation, conduit, field wiring or applicable taxes. If the cellular antenna's do not have sufficient signal strength when mounted inside of the enclosure the

services to provide conduit, wire, and mounting of cellular antenna to the outside of a building(s) or structure(s) is not included in the above quotation.

Sweeney Controls Insight™ Web based SCADA system will allow you to receive real time control system Data, Alarms and Reports No Matter Where You Are!

Sweeney Controls Insight™, a password protected Cloud Based SCADA Web Site, provides operators with real time notification of any alarm condition in text, email and/or voice message per operator preference.

Operators can access the dynamic screen via any internet connected device such as smart phone, tablet or computer.

The **SCADA Web** site includes display of current levels, set points, pump run times and pump start counts. Historical levels and pump running information can be displayed as a graph and historical information is easily exportable into a spreadsheet format.

By accepting this quotation you agree to our terms and conditions. Pricing will be honored for 60 days from above quoted date.

If you have any questions or comments, please feel free to contact me at 1-800-743-6536.

Sincerely,

Mike Phillips

Mike Phillips | mphillips@sweeneycontrols.com

Contract Acceptance:

By signing below, or by returning your executed purchase order on these same terms, you have accepted the foregoing Scope Letter and the attached Terms and Conditions and this document becomes a legal and binding contract between the parties.

Selected Option(s):

☐ Option A

☐ Option B

By: _____

Print name: _____

Its: (title) _____

Date: _____

SWEENEY CONTROLS COMPANY – TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS: Any order submitted by a customer of Sweeney Controls Company shall be expressly conditioned upon these terms and conditions. No changes or modifications to these terms and conditions shall be binding unless put into a writing signed by both parties. If the agreed change results in greater or lesser cost, Sweeney Controls Company's compensation for the order will be adjusted accordingly.

These terms and conditions, along with the attached proposal, constitute the entire integrated agreement between Sweeney Controls Company and the customer for the services, deliverables and the project. These terms supersede all previous and contemporaneous agreements, proposals and representations, written or oral, concerning such matters. Any additional, conflicting or inconsistent customer terms (whether set forth in a request for proposals, purchase order or acknowledgement or in any other document) are expressly rejected by Sweeney Controls Company and are not a part of the agreement for the project.

PAYMENT: Our terms of payment are as follows: 10% due upon approval of submittals for the project, 80% due upon delivery of the equipment, and 10% due after successful completion of start-up. All product delivery terms are FOB shipping point, all payments are due NET 45 days, and any balance remaining due 46 days beyond the invoice date will be subject to a 1.5% monthly service charge until paid. The credit terms described herein are subject to Sweeney Controls Company's continuing approval of customer's credit, and Sweeney Controls Company at any time may withdraw its extension of credit and require modified payment terms (including pre-payment for services and/or for production of equipment) if Sweeney Controls Company determines in good faith that its right to payment for the applicable order(s) is not secure and the customer fails to promptly provide adequate assurances of its ability to make timely payment of all amounts due for such order(s).

It is specifically agreed and understood that this proposal is submitted with the understanding that Sweeney Controls Company shall be paid for its work and products in accordance with the terms above, regardless of whether or not the customer has been paid pursuant to any contract it may have with the project owner, a prime contractor or other contractors on the project. Sweeney Controls Company shall not be held responsible for, and shall not accept any back charge for, liquidated damages resulting from failure of the customer to complete the project contract on time, or any extra engineering costs necessitated by the continuance of work beyond the specified completion date.

CHANGES, CANCELLATIONS AND RETURNS: All changes, cancellations, or returns must have Seller's prior written approval and are conditional on compliance with manufacturer's cancellation/return policies and subject to restocking fees and service charges. Authorized returned equipment must be packaged and shipped prepaid to manufacturer. Sweeney Controls Company must be notified in writing of accepted changes in scope; verbal change in scope will not be accepted. Sweeney Controls Company will advise the customer of any revisions in the price and/or deliver schedule.

LIMITED WARRANTY: Sweeney Controls Company warrants to the original purchaser that the product or services delivered herewith, to the extent the product has been manufactured by Sweeney Controls Company, will at the time of delivery comply with the material aspects the design specifications set out in the attached proposal and be free from material defects in material and workmanship and, for a period of one year from the date of purchase under normal use and conditions, will comply with the material aspects of the operational specifications set out in the attached proposal. Products not created by Sweeney Controls Company, but provided under this agreement as a part of the project, are warranted only by, and only to the extent of the express written warranties of, the manufacturer(s) of such products, if any. Services provided by Sweeney Controls Company under this agreement will be provided in accordance with the generally recognized standards in the industry. SWEENEY CONTROLS COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ANY OTHER WARRANTIES (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE/AGAINST INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE) ARE EXPRESSLY DISCLAIMED BY SWEENEY CONTROLS COMPANY TO THE FULLEST EXTENT PERMITTED BY LAW.

EXCLUSIVE REMEDY: In the event the customer believes Sweeney Controls Company owes a warranty obligation applicable to the product, or has otherwise failed to comply with any other contract obligation, it must notify Sweeney Controls Company in writing within 20 days of its discovery of such obligation and in no event later than 90 days after delivery of the product or services. If Sweeney Controls Company owes a warranty obligation, it will promptly commence to remedy and cure such default upon receipt of such notice from the customer at Sweeney Controls Company's own cost and expense or, at Sweeney Controls Company's option, will refund to the customer the portion of the compensation paid for any defective products or services. Such performance or refund by Sweeney Controls Company is the customer's sole and exclusive remedy in the event of a warranty obligation of Sweeney Controls Company or any other failure of Sweeney Controls Company to comply with its contract obligations. In addition to the foregoing, the customer will inspect all deliverables immediately upon receipt and will report to Sweeney Controls Company any shortages and damages within 3 days of receipt or such claims shall be deemed waived by the customer.

In no event shall Sweeney Controls Company be liable for any incidental, special, punitive or consequential damages of any kind, including, without limitation, loss of use, productivity, reputation, financing, business opportunities or profits, even if Sweeney Controls Company had been advised of the possibility of such damages. MOREOVER, TO THE FULLEST EXTENT PERMITTED BY LAW, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR STRICT LIABILITY), IN NO EVENT WILL SWEENEY CONTROLS COMPANY'S TOTAL AGGREGATE LIABILITY RELATED TO THE SERVICES, DELIVERABLES OR THIS AGREEMENT EXCEED THE AMOUNT OF COMPENSATION PAID BY THE CUSTOMER TO SWEENEY CONTROLS COMPANY UNDER THIS AGREEMENT.

LIMITATION, DISCLAIMER, AND EXCLUSION OF WARRANTY: In no event will Sweeney Controls Company be responsible for (a) any modifications to any product made by anyone other than Sweeney Controls Company; (b) damages caused by misuse, negligence, abuse, neglect, accident, or improper operation or improper or insufficient maintenance of any product or defects that arise after the warranty period described herein or for which the customer has failed to provide prompt notice in accordance with these terms and conditions; (c) normal wear and tear; (d) any data loss or corruption or personal information data breach; (e) any alleged defects in any product that arise from Sweeney Controls Company's compliance with designs or other criteria or requirements provided by or through the customer; (f) damage resulting from connection or removal of components/parts of the product; or (g) damages arising from claims of third parties related to or connected with the use or performance of any of deliverables or services provided under the applicable order(s).

INTELLECTUAL PROPERTY RIGHTS: Sweeney Controls Company retains all rights, title and interest in its services and products, including patents and copyrights; however, upon payment of the agreed compensation to Sweeney Controls Company, the customer will be deemed to have been granted a non-exclusive, non-transferable, royalty-free, perpetual license to use the services and products for the purposes contemplated in the attached proposal, except that third-party "shrink-wrapped" software or "off-the-shelf" hardware provided through Sweeney Controls Company will be subject to the customer's compliance, at its own costs, with all applicable manufacturer licensing requirements. Customer may not sell, sublicense, assign or transfer its license to the services and products provided by Sweeney Controls Company without the prior written consent of Sweeney Controls Company, nor may the customer reverse engineer or make derivative works from Sweeney Controls Company's services or products.

EXPORT RESTRICTIONS: Customer acknowledges that the services and products may be subject to export and use restrictions under applicable law, including Export Administration Regulations maintained by the United States Department of Commerce. Customer agrees to comply with all such requirements and to hold Sweeney Controls Company harmless from any violations of such requirements.

FORCE MAJEURE: In the event that performance of the services and/or delivery to the customer of the products is delayed by circumstances beyond the reasonable control of Sweeney Controls Company (including, without limitation, changes to the scope of work, delays by the customer in providing information to Sweeney Controls

Company, fire, natural disasters, civil disturbances, acts of governmental authorities, labor disputes, unavailability of materials or equipment or shipping delays), Sweeney Controls Company will promptly notify the customer of such circumstances in writing and Sweeney Controls Company will be granted an equitable extension of the time to meet its obligations under the proposal.

SWEENEY CONTROLS COMPANY'S STATUS: Sweeney Controls Company is an independent contractor of the customer and will have sole charge over, and be solely responsible for, (a) the payment of its employees and subcontractors and (b) the means, methods, techniques and sequences used in the performance of the services and the creation of its deliverables. Both Sweeney Controls Company and the customer assume that the industrial exemption applies to all services and the proposal, and the customer acknowledges that individuals not licensed as professional engineers may execute some or all of the services and create some or all of the products.

NON-SOLICITATION: To the fullest extent permitted by law, during the course of the performance of this agreement, and for one year thereafter, the customer agrees that it will not hire or retain, or offer to hire or retain, any of Sweeney Controls Company's employees that have been involved in performing the scope of work set forth in the proposal, nor will customer otherwise induce or seek to induce, directly or indirectly, any such Sweeney Controls Company employees to leave Sweeney Controls Company's employment.

DISPUTE RESOLUTION: In the event Sweeney Controls Company and the customer cannot resolve any claim or dispute between them arising out of or related to the proposal, this agreement or the scope of work or project through direct negotiations, such dispute shall be subject to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration proceedings will be held in North Dakota before a single arbitrator with experience in resolving disputes arising from information technology services. The prevailing party (as determined by the arbitrator) will be entitled to recover from the other party all costs incurred in resolving the dispute, including reasonable attorneys and expert fees and the costs of arbitration. The arbitrator's award shall be final and may be entered as a judgment in any court with jurisdiction.

SUSPENSION AND TERMINATION: If the customer fails to comply with its obligations under the proposal or these terms and conditions (including, without limitation, the full and timely payment to Sweeney Controls Company), Sweeney Controls Company may provide written notice of such default to the customer and may thereafter suspend further performance until such default is cured by the customer. When such default is cured by the customer, the amount to be paid for the scope of work will be equitably increased to account for Sweeney Controls Company's damages arising from such suspension (including, without limitation, demobilization and remobilization expenses and increased costs of performance) and the time for Sweeney Controls Company to complete the scope of work will be equitably extended to account for such suspension. If the customer fails to cure such default within 30 days of its receipt of such notice from Sweeney Controls Company, the customer cancellation the project, or the customer requests Sweeney Controls Company to stop work Sweeney Controls Company may terminate its agreement with the customer by providing written notice to the customer and in such an event, the customer will pay Sweeney Controls Company for all portions of the scope of work performed (in whole or in part) through the date of such termination, materials purchased (including any restocking charges incurred), Sweeney Controls Company's demobilization expenses and other reasonable termination costs, the amount of expected overhead and profit Sweeney Controls Company would have earned on the cancelled portions of the scope of work if not for the customer's default, and any collection costs incurred by Sweeney Controls Company in obtaining payment for its services and deliverables from customer.

ASSIGNMENT: Neither the customer nor Sweeney Controls Company may assign its respective rights and obligations under their agreement without the written consent of the other party. However, Sweeney Controls Company may subcontract or delegate its work obligations to other persons or entities, but will nonetheless be responsible to the customer for the performance of the work as required by the proposal. Both the customer and Sweeney Controls Company agree that there are no third-party beneficiaries to their agreement.

CHOICE OF LAW: The proposal and these terms and conditions will be governed by the laws of North Dakota and

of the United States of America (including the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* with respect to the parties' agreement to arbitrate any dispute arising out of or related to this agreement), without regard to rules governing choice or conflict of laws. The customer and Sweeney Controls Company agree that the proposal is predominately for the performance of services, not for the sale of goods, and further agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to their agreement.

SAVINGS CLAUSE AND WAIVER: If any term of the proposal or these terms and conditions is found to be unenforceable, the remaining terms will remain in effect. The failure of either Sweeney Controls Company or the customer to exercise any rights under their agreement will not be deemed a waiver of such right except as agreed in writing or as otherwise set forth in these terms and conditions.