

ITEM # 18-0965



City of Santa Fe Contract
Software Support Renewal

JUL 20 2018

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and **Standard Automation and Control DBA/ Wonderware West** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

B. "You" and "your" refers to **Contractor**. "We," "us" or "our" refers to the City and whose accounts are created under this Agreement.

2. **Scope of Work** Customer First – Citect SCADA Support and Renewal, as described in Exhibit "A" attached hereto and incorporated herein.

3. **Compensation**

The City shall pay to the Contractor based upon fixed prices for each Deliverable item as listed here.

<u>Deliverable item:</u>	<u>U/I (unit of issue)</u>	<u>Price</u>
01 Customer First CitectSCADA Support Renewal		\$12,626.24

The total compensation under this Agreement shall not exceed twelve thousand six hundred twenty six and twenty four cents (\$12,626.24), including New Mexico gross receipts tax.

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products,

the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

- B. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on date approved by the City, and end on June 30, 2019. The City reserves the right to renew the contract on an annual basis by mutual Agreement.

6. **Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this contract without cost to the City, if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the City due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. **Termination**

A. **Grounds.** The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. Notice; City Opportunity to Cure.

1. Except as otherwise provided in Paragraphs 7.A and 17, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

8. Amendment

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

11. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

12. **Non-Collusion**

In signing this Agreement, the Vendor/Contractor certifies the Vendor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

13. **Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

14. **Commercial Warranty**

The Vendor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

15. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

16. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state

and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

18. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

19. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

20. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement

was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

21. **Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

22. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

23. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

24. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. **Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

26. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

27. **Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

28. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

29. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers'

Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

30. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

31. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

C. If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

D. If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the City may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the contract for default.

32. **Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

33. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

34. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

35. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

36. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party

obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

37. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

38. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in

termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

39. **Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

40. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

Water Division Director
City of Santa Fe
01 W. San Mateo
Santa Fe, NM 87504

To Contractor:
Standard Automation and Control
DBA Wonderware West
600 Travis Street, Suite 5300
Houston, TX 77002

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

To Contractor:
Standard Automation and Control
DBA Wonderware West
600 Travis Street, Suite 5300
Houston, TX 77002

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

41. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:


CITY MANAGER

DATE: 8/2/10

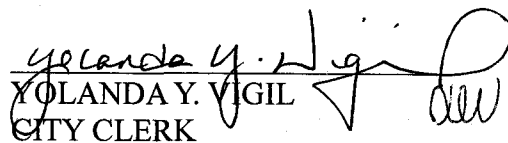
CONTRACTOR:

Standard Automation and Control
DBA Wonderware West

Scott Spencer - President
NAME AND TITLE

DATE: 8/20/18
CRS#02-0521435
Registration # 18-00144517

ATTEST:


YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY 6/19

APPROVED:


FINANCE DIRECTOR 07/24 

52361.530710
Business Unit Line Item

Corporate Address:
Standard Automation and Control
/DBA: Wonderware West
600 Travis Street, Suite 5300
Houston, TX 77002
Phone: 713-209-8884



Customer FIRST
Wonderware West
600 Travis Street, Suite 5300
Houston, TX 77002
713-209-8884
Customer.First@WonderwareWest.com

Quote

Customer: City of Santa Fe Sangre de Cristo WTP
Location: Santa Fe,
Phone#: (505)955-4375
Terms: Net 30
Contact: Gamino, Alex
Phone#: (505)955-4375
Email: aegamino@santafenm.gov

Q-ID: QUO-34268-L2F2L5 Rev:0
Date: 4/17/2018

**Quote Valid until 6/30/2018
for Serial Numbers Specified**

Reference: Support Renewal
Quote Ref: City of Santa Fe - Sangre de
Cristo-4-17-18-DM

THIS IS NOT AN INVOICE

DETAILS:

Line No.	Quantity	Part Number	Product Description	Price Per Unit	Extended Amount
1	1	CF-CIT-10-7001R	Customer FIRST - CitectSCADA - Standard Level Support - Renewal 48005589 VJCNS101199, 48005591 VJCNS101199, 48008029 VJCNS102099, 48008030 VJCNS102099, 48008031 VJCNS102099, 48064348 VJCNS102099, 48093222 VJCNS102099, 48093223 VJCNS102099, 48101005 CT101114	\$11,478.40	\$11,478.40
CS# 24585-Citect					
Agreement Dates: 6/30/2018 through 6/30/2019					
Subtotal:					\$11,478.40
Total If Purchased By 6/30/2018					\$11,478.40
Total If Purchased Between 6/30/2018 and 7/30/2018**					\$12,626.24

**A 10% reinstatement fee will be applied to your renewal if your order is not received by 6/30/2018. This reinstatement fee is only applicable until 7/30/2018 after which all renewal discounts are forfeited.

To ensure rapid processing of your Purchase Order, please note the following:

- By agreeing to purchase you are accepting the Wonderware West Terms and Conditions attached to this quotation.
- If this quotation includes Wonderware products, by agreeing to purchase you are accepting the Schneider Electric End User License Agreement found [HERE](#).
- Shipping Terms: FOB Shipping Point.
- Standard Payment Terms is NET 30.
- This quotation may contain products that are sold on a subscription basis. Subscription products require a purchase order to cover the full amount of the term of the subscription. Subscriptions will be invoiced on an annual basis and will be billed against the original purchase order.

As your Certified Wonderware Training Provider, we find that customers who attend training get the most out of their software investment. To learn more about the classes we offer and see our class schedule, please visit <https://wonderwarewest.com/training/>

Remittance Address:
Standard Automation & Control, LP
DBA Wonderware West
28373 Network Place

Chicago, IL 60673-1283

Phone: 713-209-8884

WINNER!

Control Engineering
Engineers' Choice Awards



Wonderware **InTouch Panel PC**

Wonderware
a Schneider Electric company
by Schneider Electric



November 15, 2017

Alex Gamino
CITY OF SANTA FE WATER DIVISION
801 W. San Mateo
Santa Fe, NM 87505

REF: Representation of Wonderware Operator Interface Products

This letter is to certify that Wonderware West is the only authorized distributor in the area of industrial operator interface products from Wonderware and the only company authorized by Wonderware to sell and support our products.

As the exclusive distributor of Wonderware operator interface products in New Mexico, Wonderware West is the only authorized distributor in the area for CITY OF SANTA FE WATER DIVISION to purchase Wonderware software and support.

Wonderware West is also the only authorized full line HMI/SCADA and Historian distributor for the Citect SCADA software line in the State of New Mexico.

Please call me or anyone at Wonderware West whenever we can be of service.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Talbott", written over a series of horizontal lines.

Eric Talbott
Schneider Electric Software
Channel Sales Operations Manager
Ph: 949-639-8609

Avantis. SimSci. Wonderware.

Avantis, SimSci and Wonderware products and services are developed and managed by a specialized team, now part of Schneider Electric.

TERMS AND CONDITIONS OF SALE
(Products, Software and/or Services)

1. Governing Effect of these Terms: An agreement for the sale and purchase of Products, Software and/or Services arises only upon Seller's acceptance of the Buyer's order. Seller's acceptance is expressly made conditional on Buyer's assent to these Terms and Conditions. Any additional or different terms and conditions set forth in the Buyer's order or any similar communication are objected to and will not be binding upon Seller unless agreed to by it.

2. Definitions:

(a) "Seller" means whichever of the following companies the Buyer is dealing with: Standard Automation & Control, LP d/b/a Wonderware West, MTL Instruments, Inc. or MTL Open Systems Technologies LP or any subsidiaries thereof.

(b) "Products" means equipment, software, components of either and combinations of both, sold by Seller.

(c) "Software" means all software and firmware programming routines and documentation thereof included in or supplied for use with, a Product, whether or not such Software was separately priced.

(d) "Services" mean services in the nature of installation, repair or maintenance performed by Seller's employees with respect to Products or Software and not the subject of terms and conditions included in a separate services contract.

3. Prices and Quotations: Prices of Products or Services shall either be based upon Seller's published price lists current at the time, specified in an applicable Quotation or other written confirmation from Seller or contained in separate contract between Buyer and Seller. Quotations of prices and specifications for Products and Services must be in writing and will expire on the expiration date indicated on said Quotation, or, if no date is specified, then sixty (60) days after the date of the Quotation. Seller reserves the right to change the prices on its price list on thirty (30) days notice. Quotations are subject to these Terms and Conditions of Sale.

4. Services: In the case of Services, normal working hours are 8:00 AM to 5:00 PM. A "man day" is eight (8) hours time, per man, per day during normal working hours. "Time" is on-the-job time, plus travel time to and from the job. "Time" starts and ends at the office location, unless otherwise agreed upon prior to the start of work. Saturdays, Sundays and Holidays will be charged at overtime rates. Overtime rates will apply when hours worked in one given day exceeds eight (8) hours. Over time rate is 1-1/2 times applicable service rate. A minimum charge of 1/2 days' time, plus expenses will be charged when work done is under four (4) hours. Travel and living expenses are billed at cost. Automobile travel is billed at the allowable IRS rate then in effect per mile from office location, which is the point of origin and return, plus any required local travel. For larger jobs extending more than one month, travel and living expenses will be billed on a monthly basis.

5. Orders and Acceptance of Orders: All orders must be bona fide commitments specifying the Product(s) or Services, requested shipping dates, stipulated quantities and prices. No order or other commitment shall be binding upon Seller unless and until accepted in writing by an authorized officer of Seller.

6. Taxes: Prices do not include federal, state or local sales, use or other taxes now or hereafter enacted (unless otherwise specifically stated in Seller's acceptance) applicable to the Product(s) or Services. Such taxes will, in any event, be paid by Buyer unless Buyer provides a proper tax exemption certificate. Should Buyer fail to pay any such taxes and any taxing authority seeks to collect such taxes from Seller, Buyer agrees to indemnify Seller and hold it harmless from any such tax and any and all interest and penalties related thereto. Seller may, in its discretion, add such taxes to the sales price or bill for such taxes separately.

7. Shipments: All Products will be shipped F.O.B. Seller's shipping location. In the absence of specific instructions, Seller will select the carrier and, at its discretion, ship "collect" or prepaid, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Seller. Buyer must provide its own insurance. Title and risk of loss or damage to the Products shall pass from Seller to Buyer upon delivery by Seller to the possession of the carrier. Any claims for loss or damage or misdelivery shall be filed with the carrier. Products may be delivered in installments. The Buyer will clear the Products for export from the United States and import into the country of delivery.

8. Delivery Dates: The estimated shipping schedule stated in the Quotation or order acceptance does not constitute a commitment to deliver Products in accordance therewith. However, Seller will use reasonable efforts to ship on or before the estimated shipping dates indicated. Delay in delivery of any installments will not entitle the Buyer to refuse acceptance or terminate the agreement. If Buyer refuses to accept delivery, Seller may (without prejudice to other rights) store or dispose of the Products, in which case the Buyer will pay upon request the amount of any reasonable storage or disposal charges. Missing or damaged items must be reported within 5 days of delivery.

9. Payments and Credit:

(a) Payment terms are net thirty (30) days upon approval for credit. All payments are to be made in U.S. Dollars, unless otherwise agreed to in writing by Seller.

(b) Method of payment will be as specified in the Quotation or order acceptance, whichever applies. Extensions of credit and time for payment may be subject to limitations and vary, in Seller's discretion, as determined by (a) type of Product or Service, (b) magnitude of order, and (c) ultimate shipment destination. The amount of credit or terms of payment may be changed or credit withdrawn at any time. If Buyer fails to pay the price when due, Seller may recover, in addition to the price, interest thereon at the rate of 1 1/2% per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable attorney's fees.

10. Security Interest: Where requested by Seller as a condition of the extension of credit, Buyer agrees to grant Seller a Uniform Commercial Code purchase money security interest in the Products purchased as security for the performance of Buyer's obligations and to execute such documents to evidence, perfect and enforce said security interest as Seller may require.

11. Excusable Delays: Seller shall not be liable for any delay in performance of Services or delivery or non delivery Products, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or its suppliers, including by way of illustration but not limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public worry, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. If any contingency occurs, Seller may allocate production and deliveries among Seller's customers and shall be entitled to a price adjustment, where equitable, in addition to extension of the time for performance.

12. Substitutions and Modifications: Seller may modify the specifications of components designed by Seller and incorporated into the Product, provided the modifications do not adversely affect the performance of the equipment. Seller may furnish suitable substitutes for materials unobtainable because of priorities, or regulations established by government authority, or non-availability of materials from suppliers.

13. Software: Seller shall at all times retain title to and full ownership of all Software created and supplied by it. Seller grants to Buyer a fully paid license to use the Software with the Product. Buyer shall have the right to make copies of the Software in any human or machine-readable form only to the extent necessary for the efficient use of the Product. Buyer shall not remove any statutory copyright notice included in the Software furnished to Buyer and shall reproduce all such notices on all copies of any form including revised, modified, or translated version made by Buyer, unless otherwise directed by Seller in writing. Buyer shall limit use and access of all Software provided by Seller, and copies thereof, to such of Buyer's employees as are directly involved in the operation and maintenance of the Product. Buyer shall require its employees not to make any disclosure of such Software or copies, except as required for the operation and maintenance of the Product. The rights and licenses granted to Buyer with respect to any Software Furnished by Seller may not be assigned or transferred to another party without the prior written consent of Seller, except that such rights and licenses may be assigned or transferred upon the transfer of the Product to which such rights and licenses apply and the transferee's acceptance of such Product shall be deemed its agreement to assume and comply with any and all obligations of Buyer with respect to such Software. When Buyer no longer desires to use the Software, it shall notify Seller in writing and destroy all copies thereof.

Where Seller sells or licenses Software accompanied by a separate Software License, the terms and conditions of the latter will control in the case of any variances with these Terms and Conditions.

14. Warranties:

(a) Equipment: Seller warrants that its equipment will conform to Seller's specifications and shall be free from defects under normal use in material and workmanship for a period of one (1) year from receipt at destination. No equipment will be accepted for warranty consideration without a specific Return Material Authorization ("RMA") number furnished by Seller in advance of the return shipment. If equipment or components covered by warranty and assigned a RMA number are returned to the original shipping point, transportation charges and all other charges including but not limited to custom duties and insurance prepaid, within eighteen (18) months of invoice or twelve (12) months of installation whichever occurs first, and Seller determines to its satisfaction that the returned items are defective in material or workmanship and such defect was not caused by accident, misuse, neglect, alteration, improper installation, repair, improper testing or operation, or by improper packing for return, then Seller shall at its option (1) repair or replace the defective parts and ship prepaid to Buyer, excluding any custom duties and/or import fees etc., which shall be Buyer's responsibility, or (2) credit the account of Buyer for the original cost of the equipment plus original transportation charges. If Seller elects to repair or replace the defective parts, it shall have a reasonable time to do so. Seller shall not be responsible for failure of its equipment to perform specified functions or any other non conformance caused by or attributable to (a) any associated or complimentary equipment, parts or software not furnished by Seller, (b) misuse, neglect or abuse of, or accident to the Product, use of sub-standard consumables, reasonable wear and tear or operator error, (c) exposure of the Product to conditions beyond the environmental, power and operating constraints specified by Seller, or (d) installation or wiring practices not in accordance with those recommended by Seller.

(b) Software: Seller warrants that any Software accompanying its Products will perform in accordance its software documentation. If, during the period ending ninety (90) days after delivery, the occurrence of any material error in the Software or any failure of the Software substantially to conform to Seller's software documentation that limits or prevents use of the Software by Buyer is promptly reported by the Buyer to Seller, Seller agrees to use its reasonable efforts to correct any such error or failure, but Seller does not warrant that the Software is free from defects or that all defects can be corrected; further, this warranty shall apply only to those portions of the Software, or its replacement that incorporate all program corrections and modifications, if any, delivered to Buyer, and provided further that this warranty shall not apply to any error or failure due to the misuse or negligence, incorrect installation or operation, improper repair or maintenance, the use of sub-standard consumables, or by any person other than Seller and shall not apply to any Software which has been modified by any person other than Seller.

(c) Services: Seller warrants that Services are performed in a good and workmanlike manner and conforms to any specification set forth in the Quotation, if any, relating to such Services. If the Services with regard to any Product are found defective under normal intended usage or operation within 90 days from the time of completion of the Services, Seller will correct such defects provided written notice of a claimed defect is given promptly upon discovery and within the services warranty period.



(d) Non-Seller products or software: Seller warrants products or software supplied by third parties (non-Seller Parties) only to the extent that such non-Seller Parties allow Seller to transfer to the Buyer the warranties of such non-Seller Parties. Seller will, to the extent permitted, assign to Buyer any such warranties. Buyer's sole remedy for breach of such warranty shall be the remedy offered by and available from the non-Seller Party, if any. Products or software from non-Seller which are not accompanied by non-Seller Party warranties are sold on an "AS IS, WHERE IS, WITH ALL FAULTS" basis.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS, SOFTWARE AND SERVICES AND ANY DEFECTS THEREIN OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN THIS SECTION AND SECTION 14.

15. Limitations on Liability:

(a) SELLER'S LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY PRODUCTS COVERED BY OR FURNISHED UNDER A CONTRACT HEREUNDER OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL IN NO CASE EXCEED THE CONTRACT PRICE EXCEPT AS TO TITLE TO ANY PRODUCTS FURNISHED. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD SPECIFIED IN SECTION 13 ABOVE.

(b) IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL SELLER AND OR ITS EMPLOYEES BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS FOR SUCH DAMAGES. BUYER WILL INDEMNIFY SELLER AND ITS EMPLOYEES AGAINST ANY SUCH CLAIMS FROM THE BUYER'S CUSTOMERS. IF THE PRODUCTS OR SERVICES BEING PROVIDED BY SELLER WILL BE FURNISHED BY THE BUYER TO A THIRD PARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN THE BUYER AND A THIRD PARTY, THE BUYER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING SELLER THE PROTECTION OF THIS AND THE PRECEDING PARAGRAPH.

16. Warranty Termination Upon Buyer Default: Upon the occurrence of any default by Buyer in payment of any portion of the purchase price when due, all warranties and all obligations of Seller to service the Product or components delivered by Seller to Buyer whether under this transaction or otherwise shall terminate.

17. Patent Infringement: Seller warrants that any Products or Software it manufactures will be free of any rightful claim of another for infringement of any United States patent. Provided Buyer gives Seller prompt notice in writing of such claim and permits Seller to contest or settle the same through its own counsel, Seller will defend Buyer, or may settle, at its expense, any suit or proceeding against Buyer based upon a claimed infringement which would result in a breach of this warranty and pay any settlement amounts or damages awarded against Buyer provided, however, that Seller shall not be liable to the Buyer for any indirect, consequential or incidental damages including but not limited to lost profits. Seller will, at its own cost, obtain for the Buyer the right to use the Product or Software, or modify it to avoid infringement or reclaim and replace it with a non infringing Product or Software, or to grant Buyer a credit for the then value (after reasonable depreciation) of the Product, and accept its return.

The above warranty shall apply neither to any software the warranties of which are solely expressed in a software license accompanying such software nor to any products which are (a) not of Seller's manufacture, (b) manufactured to Buyer's own design, (c) furnished in conjunction with any other products in a combination not offered by Seller as part of the transaction.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENTS AND IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED IN REGARD THERETO.

18. Confidential Information: Documentation, data, software, computer applications, and the like, whether in written or machine readable form, which Seller supplies to the Buyer shall constitute Confidential Information. Buyer agrees not to disseminate or copy any software or computer applications and to take reasonable measures to ensure the confidentiality of such Confidential Information, including the obtaining of binding agreements to this effect from its employees, and not to disclose the Confidential Information to any third party, except as may be authorized in writing by Seller. This provision shall not apply to information in the Buyer's legitimate possession prior to receipt from Seller or information which is or becomes available to the public or becomes general knowledge in the industry, otherwise than through the fault of Buyer.

19. Termination: Orders accepted by Seller may be canceled by Buyer only with the written consent of Seller (which consent Seller may withhold) and upon payment of reasonable cancellation or restocking charges. Seller shall have the right to cancel any order placed or to refuse, or to delay, the shipment thereof for failure of Buyer to meet promptly payments due Seller, or any other reasonable requirements established by Seller, or for any acts or omissions of Buyer that delay or impair Seller's performance. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer, voluntarily or involuntarily, under any provision of the Bankruptcy Act or any insolvency law, SELLER shall be entitled to cancel any order then outstanding, at any time during the period allowed for filing claims against the estate, and shall receive reimbursements for its reasonable and proper cancellation charges. If Seller elects to continue to make shipments under any of the circumstances referenced above, its action shall not constitute a waiver of any default by Buyer or in anyway affect Seller's legal remedies.

20. Applicable Law: The validity, performance and construction of this contract shall be governed by the law of the Commonwealth of Massachusetts (excluding its laws regarding conflicts of laws) and the parties expressly disclaim any applicability of the United Nations Convention on the International Sale of Goods.

21. Government Contract Provisions: If the Product to be furnished under this contract is to be used in the performance of a Government contract or subcontract, the Government contract number and a statement to this effect shall appear on Buyer's purchase order, and in such event those clauses of the applicable Government procurement regulation which are, mandatorily required by Federal Statute to be included in Government subcontracts shall be incorporated herein by reference, including, without limitation, the Equal Opportunity clause specified in 41 CFR Section 60 250.4, and the Affirmative Action For Handicapped Workers clause specified in 41 CFR 60-741.4.

22. Interference with Seller Employees:

(a) Buyer shall not interfere with any employment relationship between Seller and any employee of Seller, including offering to employ the employee or engaging the employee as a consultant of Buyer or any of its affiliates or its other suppliers. The term "employee" includes any person who performs any work for or supplies any services to Seller or for or to its customers (on behalf of Seller) for wages, including but not limited to under a contract of hire by Seller.

(b) In the event that Buyer does interfere with an employment agreement or arrangement between the employee and Seller, including offering to employ the employee or engaging the employee as a consultant of Buyer or any of its affiliates or its other suppliers, then Buyer shall pay Seller the equivalent amount of that employee's gross wages earned during the six month period immediately prior to the last date of employment of employee by Seller ("damages") to compensate Seller for its investment in training such employee. Buyer agrees that in no event will it request or otherwise induce or permit employee to disclose to anyone any of the Confidential Information of Seller.

(c) Section 21 shall apply regardless of whether the employee in question had or has a "covenant not to compete" with Seller.

23. Exports: Any instructions by Buyer for delivery of Products outside the United States shall be deemed a representation and warranty that such instructions correctly specifies the consignee and correctly describes the ultimate destination of the Products. Buyer agrees to provide such additional information as SELLER may request regarding the identity of the consignee.

24. Assignment: This contract shall be binding upon and inure to the benefit of the parties and the successor and assigns of the entire business and goodwill of either Seller or Buyer or of that part of the business of either used in the performance, of this contract, but shall not be otherwise assignable.

25. Complete Agreement Modifications: This contract constitutes the entire agreement between the parties relating to the sale of the Product or the performance of Services and no addition to or modification of any provision shall be binding Seller unless made in writing and signed by an authorized officer of Seller.

26. Notice: All notices given hereunder shall be in writing, mailed first class, certified or registered, or delivered by hand to the address of other party set forth in the Quotation or to such other address as such party may designate from time to time by such notice, and shall take effect (a) when mailed, or (b) when received if delivered by hand.

27. Remedies: All Seller rights and remedies whether evidenced hereby or by any other agreement, instrument, or paper shall be cumulative and may be exercised singularly or concurrently.

