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

Date: March 13, 2007

Project Name & Number: Utility System Master Plan – Phase II
Computer Maintenance Management System (CMMS) Software;
Project No. PW05-1447

CIP #: 50617

Project Description: Supply of Cityworks CMMS software which includes a one year maintenance agreement. Software will be used for management of maintenance data and information for the water and sewer systems.

Consultant: Azteca Systems, Inc.

Original Contract Amount:	$35, 555.00	Original Contract Date:	March 19, 2007	Original Completion Date:	April 19, 2007

Amendment Number:

Amendment Description:

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

Funding Source This Request:

Amount	Dept.	Line Item	Comments
$8,888.00	833	4223	
$8,889.00	834	4223	
$8,889.00	933	4223	
$8,889.00	934	4223	
$35,555.00	Total		

Agreement Review & Approvals

Project Manager	Date	Division Manager	Date

Department Director	Date	City Attorney	Date

ROUTING INSTRUCTIONS

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

FINANCE OFFICE USE ONLY

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

	Date	Initials	Approved	
Appropriation			Y	N
Cash Flow			Y	N

Cityworks ™

CITYWORKS ®
SOFTWARE LICENSE AGREEMENT
Contract No. **C132207**

This is a license agreement and not an agreement for sale. This license agreement (Agreement) is between **City of Rapid City, SD** (Licensee) and **Azteca Systems, Inc.** (Azteca Systems), a Utah corporation, with its principal place of business at 11075 South State Street, Suite #24 Sandy, Utah, 84070, and gives Licensee certain limited rights to use the proprietary software The Software Cityworks and Related Materials. All rights not specifically granted in this Agreement are reserved to Azteca Systems.

1. Definitions: As used herein, the following words, phrases, or terms in this Agreement shall have the following meanings:

1.1 "The Software Cityworks" means the actual copy of all or any portion of the computer programs delivered as listed in paragraph 5.1 Licensed Software, inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied by Azteca Systems.

1.2 "Related Materials" means all of the printed materials, user documentation, training documentation, and confidential activation code for The Software Cityworks supplied by Azteca Systems under this Agreement.

1.3 "Effective Date" shall mean the date on which Licensee receives the Software Cityworks and Related Material from Azteca Systems.

2. Term: This Agreement shall become effective on <u>March 19, 2007</u> and shall be valid for as long as Licensee complies with the Permitted Uses and Uses Not Permitted provisions of this Agreement. Azteca Systems may terminate this Agreement by 30 calendar days' prior written notice to Licensee if Licensee fails to comply with the Permitted Uses and Uses Not Permitted provisions of this Agreement. Unless otherwise agreed in writing, Licensee shall have 60 days after receiving notice of such failed compliance from Azteca Systems to cure the default. If this Agreement is terminated either under this Section 2 or Section 8 below, Licensee shall then return to Azteca Systems all of The Software Cityworks, related modules, related updates, and any whole or partial copies, codes, modifications, and merged portions in any form. Azteca will for no additional charge to Licensee and at Licensee's option either grant a perpetual license to the Licensee which will allow Licensee to retain the ability to access records and data contained in The Cityworks Software or will provide hard copies of all files needed by the Licensee. If termination occurs during the first year, Azteca shall return a prorated portion of the license fee to the licensee based on a twelve (12) month period from the Effective Date.   The parties

hereby agree that all provisions which operate to protect the intellectual rights of Azteca Systems shall remain in force should breach occur.

3. Reservation of Ownership and Grant of License: Azteca Systems retains exclusive title and ownership of any copy of The Software Cityworks and Related Material licensed under this Agreement and grants to Licensee a personal, nonexclusive, nontransferable license to use The Software Cityworks and Related Materials pursuant to the terms and conditions of this Agreement. From the Effective Date, Licensee agrees to use reasonable effort to protect The Software Cityworks and Related Materials from unauthorized use, reproduction, distribution, or publication.

4. Copyright: The Software Cityworks and Related Material are owned by Azteca Systems and are protected by United States copyright laws and applicable international treaties and/or conventions. Licensee agrees not to export The Software Cityworks into a country which does not have copyright laws that will protect Azteca System's proprietary rights.

5. Licensing and/or Royalty Fees: In consideration of the License fees ("License Fees") to be paid from Quote 12084 (Attachment A), Azteca Systems grants to Licensee a nonexclusive, nontransferable license to use the Licenses obtained under this Agreement as follows:

5.1 Licensed Software   **Cityworks Desktop – 5 Named Licenses**
Cityworks Desktop Service Request – 3 Named Licenses
Cityworks Desktop – 2 Concurrent Licenses
CCTV License

Add-ons: **None   **

5.2 Permitted Uses:
- Licensee may use the number of copies of The Software Cityworks specified in paragraph 5.1 for which License Fees have been paid on the computer systems(s) and/or specific computer networks(s) for Licensee's own internal use.
- Licensee may install the number of copies and modules of The Software Cityworks specified in paragraph 5.1 for which License Fees have been paid onto the permanent storage device(s) on the computer system(s) and/or specific computer network(s).
- Licensee may maintain one (1) copy of The Software Cityworks to a CD or DVD type medium for archival purposes during the term of this Agreement unless the right to make additional copies is granted to Licensee in writing by Azteca Systems. Regularly scheduled full system and partial system archival backups are allowable and specifically exempted from this provision.
- Licensee may use, copy, alter, modify, merge, reproduce, and create derivative works of the on-line documentation accessible on MyCityworks.com for Licensee's own internal use. The portions of the on-line documentation merged with other software, hard copy,

and digital materials shall continue to be subject to the terms and conditions of this Agreement and shall provide the following copyright attribution notice acknowledging Azteca Systems proprietary rights in the on-line documentation: "Portions of this document include intellectual property of Azteca Systems and are used herein by permission. Copyright © 2007 Azteca Systems, Inc. All Rights Reserved."

5.3 Uses Not Permitted:
- Licensee shall not sell, rent, lease, sub-license, lend, assign, time-share, transfer or export, in whole or in part to unlicensed third parties, or provide access to prior or present versions of The Software Cityworks, any updates, or Licensee's rights under this Agreement. Nothing in this Section shall prevent use of and access to The Software Cityworks by Licensee's employees, agents or others performing work for or on behalf of the Licensee.
- Licensee shall not reverse engineer, decompile, or disassemble The Software Cityworks, or make any attempt to unlock or bypass The Software Cityworks keycode, as applicable, subject to local law.
- Licensee shall not make additional copies of The Software Cityworks and Related Materials beyond that described in the Permitted Uses section above.
- Licensee shall not remove or obscure any Azteca Systems copyright or trademark notices.

6. The Software Cityworks Update and Support: The Software Cityworks Update and Support: A one (1) year period of complimentary update and support services are provided to Licensee at no additional charge above the License Fees with each License effective from Effective Date. Update and support services consists of updates to The Software Cityworks and Related Materials, documentation updates and access to telephone user support, email support, web support, and other benefits deemed appropriate by Azteca Systems as outlined in the Attachment B - Complimentary Update and Support Services attached to this Agreement. Update and support services for The Software Cityworks beyond the complimentary period is available if Licensee and Azteca Systems have executed a Cityworks Update and Support Agreement. Fees for any such support services in excess of the complimentary period shall be governed by the Cityworks Update and Support Agreement.

7. Limited Warranty: Limited Warranty: Azteca Systems warrants that it owns or has the full right and authority and all associated intellectual property rights necessary to grant Licensee rights and licenses set forth in this Agreement to The Software Cityworks and Related Materials. Azteca Systems warrants that The Software Cityworks, unaltered, will substantially conform to the Related Materials for a period of one (1) year from the receipt of delivery of The Software Cityworks ("Warranty Period"). Azteca Systems warrants that the media upon which The Software Cityworks is provided will be free from defects in materials and workmanship under normal use and service during the Warranty Period.

AZTECA SYSTEMS DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE CITYWORKS. AZTECA SYSTEMS DOES NOT WARRANT THAT THE OPERATIONS OF ITS RESPECTIVE SOFTWARE AND RELATED MATERIALS WILL BE UNINTERRUPTED AND/OR ERROR FREE.

8. Exclusive Remedy and Limitation of Liability: Exclusive Remedy and Limitation of Liability: Except as set forth below and during the Warranty Period, Azteca System's entire liability and Licensee's exclusive remedy for breach of the warranties against defects in materials and workmanship or compliance with Related Materials provided in Section 7 above, Azteca shall attempt to remedy the defect by whatever means reasonably available to Azteca. If Azteca exhausts available remedies and is still unable to remedy the defects, then Licensee's exclusive remedy shall be for Azteca to correct or provide a work around for the errors, or to replace The Software Cityworks in accordance with the Azteca Systems Cityworks Update and Support Agreement (if then in effect with Licensee), or by written notice of its election to Licensee, terminate this Agreement for its convenience and return 100% of the License Fees paid upon the Licensee's return of The Software Cityworks to Azteca Systems. Azteca Systems shall not be liable for indirect, special, incidental, or consequential damages related to Licensee's use of The Software Cityworks, unless such damage is caused by Azteca System's actual negligence.

IN NO EVENT SHALL AZTECA SYSTEMS BE LIABLE TO THE LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOST SALES OR BUSINESS EXPENDITURES, INVESTMENTS, OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR USE OF THE SOFTWARE AND RELATED MATERIALS, UNLESS SUCH LOSS OR DAMAGE IS CAUSED BY AZTECA SYSTEM'S ACTUAL NEGLIGENCE.

9. Indemnity: Indemnity: Azteca Systems, at its own expense, will hold harmless, defend and indemnify Licensee from all claims that The Software Cityworks or Related Materials furnished under this Agreement infringes a U.S. Copyright or other intellectual property rights of a third party, provided that Licensee gives Azteca Systems prompt written notice of such claims and permits Azteca Systems the sole right to control the defense of such claims and provides Azteca Systems all reasonable cooperation.

As to The Software Cityworks which are or in the opinion of Azteca Systems may become subject to a claim of infringement, Azteca Systems, at its option, will obtain the right for Licensee to continue using The Software Cityworks or replace or modify The Software Cityworks so as to make them non-infringing. If none of the alternatives is available on commercially reasonable terms, then Licensee agrees to, upon Azteca Systems' written request, terminate for convenience the Agreement upon the Licensee returning The Software Cityworks to Azteca Systems and Azteca Systems will refund to the Licensee 100% of the License Fees paid.

Azteca Systems will not indemnify or defend Licensee from any infringement claim resulting from Licensee's unauthorized modification or alteration of The Software Cityworks or Related Materials.

This section states Azteca System's entire obligation to Licensee and Licensee's sole and exclusive remedy for infringement.

10. Additional Software Licenses: Additional copies and modules of The Software Cityworks licenses may be ordered without signed amendments provided the following language is incorporated in the signed Purchase Order: *"By accepting this order, both parties agree to amend the Master Software License Agreement Contract No. [insert Contract Number) between [insert Licensee name] and Azteca Systems, Inc., dated [insert Master Software License Agreement date], which is incorporated herein by reference, to include the above software licenses, which are hereby licensed under the same terms and conditions."*

11. Export Regulations: Licensee acknowledges that this Agreement and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders relating to the export of computer software or know-how relating thereto. The Software Cityworks are determined to be Technical Data under United States export laws. Licensee agrees to comply with all laws, regulations, and orders of the United States in regard to any export of such Technical Data. Licensee agrees not to disclose or re-export any Technical Data received under this Agreement in or to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer, unless Licensee has obtained prior written authorization from Azteca Systems and the U.S. Office of Export Control.

12. Force Majeure:
Neither party shall be liable to the other for failure or delay in the performance of a required obligation during any period where such failure or delay is caused by strike, riot, fire, flood, natural disaster, or other similar cause beyond such party's control, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible.

13. Severability: If any provision(s) of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The provisions of this Agreement shall be enforceable to the extent permissible under the laws of the State of South Dakota.

14. No Implied Waivers: No failure or delay by Azteca Systems and/or Licensee in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Azteca Systems and/or Licensee.

15. Order of Precedence: Any conflict between the terms of this License Agreement and any Purchase Order or other terms shall be resolved in favor of the terms of this License Agreement.

16. Governing Law: This Agreement, entered into in the County of Pennington shall be construed and enforced in accordance with, and be governed by, the laws of the State of South Dakota without reference to conflict of laws principles. The parties hereby consent to the personal jurisdiction of the courts of this county and waive their rights to change venue.

17. Termination for Convenience: In the event that either funding from the Licensee or other sources is withdrawn, reduced, or limited, or the authority of the Licensee to perform any of its duties is withdrawn, reduced, or limited in any way after the Effective Date of this Agreement and prior to normal completion, the parties shall have the authority to exercise the termination for convenience option to terminate this Agreement, in whole or in part.

Also, set forth elsewhere in this Agreement are specific provisions which allow the parties to terminate this Agreement for convenience (see Exclusive Remedy and Limitation of Liability provision).

If a party to this Agreement chooses to exercise any right to terminate for convenience it may have under the terms of this Agreement, that party may do so by thirty (30) days written notice to the other party.

If this Agreement is terminated for convenience, the Licensee is only liable for payment required by the terms of this Agreement for services rendered or software received and accepted prior to the Effective Date of termination.

18. Entire Agreement: This Agreement constitutes the sole and entire agreement of the parties as to the matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating hereto. Except as otherwise expressly provided herein, any Amendments to this Agreement must be in writing and signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.

Accepted and Agreed:

City of Rapid City, SD   Azteca Systems, Inc.
(Licensee)   (Azteca)

By:_____   By: _____
        Authorized Signature   Authorized Signature

Printed Name: Jim Shaw   Printed Name: Brian L. Haslam

Title: Mayor   Title: President

Date: March 19, 2007   Date: March 7, 2007

Attest: Witness:

By:_____ By:_____

Attachment A – Quote 12084

Cityworks™

Price Quotation

For: **Dan Coon**	Quote No: **12084**
Organization: **Rapid City**	By: Tom Palizzi
Department: **Public Works**	Date: Feb 21, 2007
Phone: **(605) 394-4154** Email: **dan.coon@rcgov.org**	Phone: 303-467-2738

Item	Software	Qty	Unit Price	Cost
1.1	Cityworks Desktop - Named/Fixed seat | First license	1	7,995	7,995
1.2	Cityworks Desktop - Named/Fixed seat | 2nd thru 5th license	4	3,995	15,980
1.3	Cityworks Desktop - Named/Fixed seat | Service Request	3	1,995	5,985
1.4	Cityworks Desktop - Concurrent seat | 6th thru 10th license	2	6,995	13,990
1.5	Cityworks CCTV Interface [Optional]	1	1,995	1,995
	Software includes media, documentation and first year Update & Support.			
	Less Discount:			(10,390)
	Software License sub-total:			**$35,555**

Item	Update & Support			
2.1	Software License Update & Support		10,285	
	Software Update & Support consist of all software and documentation updates and access to Technical Support (telephone, email, web-based MyCityworks.com). Update & Support for Cityworks software beyond the complimentary period is payable annually in advance at the rate indicated beginning following contract year.			
	Update & Support sub-total:			

Item	Implementation Services	LS	Rate	
3.1	Cityworks On-site user training (Optional)		10,500	
	Implementation Services sub-total:			
	Total:			**$35,555**

Notes:
- First year software license Update and Support is included in software license fee. Update and Support rate shown is for future years.
- On-site user training is **optional** and not a part of this contract.

Attachment B – Complimentary Update and Support Services

THE PARTIES AGREE AS FOLLOWS:

1. <u>**DEFINITIONS**</u>

1.1   "Custom Applications" shall mean any scripts, interfaces, reports or program code requested by the Licensee, other than Program Modifications to the Cityworks applications, that provide specific functionality uniquely designed for the Licensee. Any Custom Applications delivered to Licensee shall NOT become part of the Licensed Software, but shall none-the-less be licensed to Licensee under the terms the Agreement. The Custom Applications scripts, interfaces, reports and program code shall be provided to the client, however Azteca shall retain the right to utilize, modify and enhance the scripts, interfaces, reports or program code of the Custom Applications as Azteca deems appropriate.

1.2   "Licensed Software" shall mean the particular software, scripts, interfaces and custom code identified in Cityworks Software License Agreement paragraph 5.1.

1.3   "Program Fixes" shall mean minor corrections to the Licensed Software to correct deviations in The Software Cityworks. Any Program Fixes delivered to Licensee shall become part of The Software Cityworks licensed under this Agreement.

1.4   "Program Modifications" shall mean new versions of the Licensed Software, which adds to, enhances or alters the function(s) of The Software Cityworks, and/or adds new modules or products adapted to interface with The Software Cityworks, requested by the Licensee. Any Program Modifications delivered to Licensee shall become part of the The Software Cityworks licensed under this Agreement.

1.5   "Product Updates" are Program Fixes, Program Upgrades and Program Modifications.

1.6   "Program Upgrades" shall mean new versions of, or additions to, the Licensed Software prepared by Azteca Systems that improve its operating performance but do not add to or alter the basic function(s) of The Software Cityworks. Any Program Upgrades delivered to Licensee shall become part of The Software Cityworks licensed under this Agreement.

1.7   "The Complimentary Update & Support Period" shall mean the initial complimentary update and support period commencing upon the Effective Date of this Agreement, as set forth in Cityworks Software License Agreement section 6.

1.8   "The Software Cityworks" shall mean as defined in the Cityworks Software License Agreement Definitions section 1.

2. <u>**SUPPORT**</u>

2.1   The services to be provided during The Complimentary Update & Support Period include Azteca Systems application updates to The Software Cityworks including Program Modifications (not Custom Applications). Azteca Systems will ensure upward compatibility for The Software Cityworks within a reasonable timeframe for minor and major ArcGIS releases and for supported databases. For all Licensed Software identified in Cityworks Software License Agreement paragraph 5.1, Azteca Systems will ensure upward compatibility within a reasonable timeframe for Licensee's Custom Applications when there are minor ArcGIS and supported databases revisions (for example, from rev 9.1 to rev 9.2). Azteca Systems will not ensure upward compatibility for Licensee's Custom Applications when there are major ArcGIS and supported databases revisions (for example, from rev 9.x to rev 10.x), Azteca Systems will make all reasonable efforts to provide upward compatibility.

2.2   Azteca Systems shall, with out additional charge, during the term of this Agreement:

(a) Make all reasonable efforts to provide those Program Fixes, if any, that are necessary to assure The Software Cityworks is functioning properly; provided Licensee provides Azteca Systems with written notice specifying particularity in narrative, non-technical terms to the best of Licensee's staff ability the apparent error in the system and the manner in which The Software Cityworks is not functioning properly (see Section 3); and

(b)   Deliver to Licensee any Program Upgrades relating to The Software Cityworks made generally available to other licensed users.

(c)   Provide telephone user support, email support, web support, during normal business hours 8:00 AM – 5:00 PM Mountain Time Monday through Friday (excepting Holidays) and after hour emergency support through messaging service, and other benefits deemed appropriate by Azteca Systems and made generally available to other licensed users (see Section 8).

(d)   Implement and maintain a means of secure, remote direct network access (such as VPN, Web-access, dial-up, etc) to the Licensee's systems in order to perform thorough remote diagnostics and effect remote repairs, upgrades, and fixes.

2.3   The following items, among others, however, are specifically excluded as support of this Agreement:

(a) interpretation of program results;

(b)   assistance with questions related to computer hardware and peripherals that are not directly related to the use of The Software Cityworks;

(c) assistance with computer operating system questions not directly pertinent to The Software Cityworks;

(d)   data debugging and/or correcting;

(e) services necessitated as a result of any cause other than authorized ordinary and proper use by The Software Cityworks, including but not limited to neglect, abuse, unauthorized modification, unauthorized updates, and electrical, fire, water or other damage;

(f) consulting services for system implementation that are normally covered by a separate implementation services agreement; and

(g) Custom Applications created to function with The Software Cityworks unless the Custom Application is identified as Licensed Software.

3. <u>PROCEDURES FOR ACCESSING SUPPORT</u>

3.1 All problem categories from routine through critical that occur during normal business hours shall procedurally occur as follows: 1) Licensee's system administration staff as first line of support, 2) Azteca Systems staff as the second line of support. Azteca will make all reasonable efforts to acknowledge all requests for support within 24 hours.

3.2 Prior to calling Azteca Systems for support services, the Licensee will first attempt to isolate any problems that occur with the system. The Licensee will try to reduce the problem down to a specific software or system component. If it is determined that the problem is The Cityworks Software component the Licensee will first try and resolve the problem without Azteca Systems' involvement. If the Licensee cannot resolve the problem, the User will call Azteca Systems directly. If the Licensee is unable to isolate the problem the Licensee may call Azteca Systems to assist in isolating the problem.

3.3 For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the Licensee, Azteca Systems will provide an after-hours phone number or pager number that will forward the call or page to the currently assigned Azteca Systems support staff. Azteca Systems will make all reasonable efforts to acknowledge the request for support for critical problems within 4 hours of receipt of the call from a designated and authorized Licensee representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. Depending upon the type of problem, Azteca Systems support staff may need to be sent from Azteca Systems offices to the Licensee location. Azteca project management will confer with the Licensee's representative or project management before making this decision. The speed at which remote Azteca Systems staff can respond may be limited by the driving time or the airline flights that are available. The Licensee will reimburse Azteca Systems for all reasonable and customary travel expenses associated with resolving the problem (see paragraph 3.3).

3.4 For all problems involving The Cityworks Software component that are resolved without Azteca Systems involvement, the Licensee will document the problem and the

resolution and send a report to Azteca Systems so that it can be tracked, monitored, and historically recorded.

Azteca Systems, Inc.
11075 South State St.
Suite 24
Sandy, Utah 84070

Cityworks ™

Phone: (801) 523-2751
FAX (801) 523-3734
Email: info@azteca.com
http://www.azteca.com

CITYWORKS ®
UPDATE & SUPPORT AGREEMENT
Contract No. C132207

This agreement (Agreement) is between **City of Rapid City, SD** (hereafter the User), as specified in paragraph 9.1, and **Azteca Systems, Inc**. (hereafter Azteca Systems), a Utah corporation, with its principal place of business at 11075 South State Street, Suite #24 Sandy, Utah, 84070. Azteca Systems and the User have entered into a license agreement with respect to use of The Cityworks Software (the "Cityworks Software License Agreement"); and User also desires to secure software Cityworks update and support services from Azteca Systems with respect to such Software as more specifically enumerated in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1   "Covered Software" shall mean the particular Software, scripts, interfaces and custom code identified in paragraph 9.3.

1.2   "Custom Applications" shall mean any scripts, interfaces, reports or program code requested by the User, other than Program Modifications to the Cityworks applications, that provide specific functionality uniquely designed for the User. Any Custom Applications delivered to User shall NOT become part of the Licensed Software, but shall none-the-less be licensed to Licensee under the terms of the Cityworks Software License Agreement. The scripts, interfaces, reports and program code of the Custom Applications shall be provided to the client, however, Azteca Systems shall retain the right to utilize, modify and enhance the scripts, interfaces, reports or program code as Azteca Systems deems appropriate.

1.3   "Effective Date" shall mean the date on which User receives the Software City Works software from Azteca Systems in accordance with the City Works Software License Agreement between User and Azteca Systems.

1.4   "Licensed Software" shall mean the particular Software identified in the Cityworks Software License Agreement.

1.5   "Program Fixes" shall mean minor corrections to the Licensed Software to correct deviations in the Licensed Software. Any Program Fixes delivered to User

shall become part of the Licensed Software under the Cityworks Software License Agreement.

1.6   "Program Modifications" shall mean new versions of or additions to the Licensed Software, which adds to or alters the function(s) of the Licensed Software and new modules or products adapted to interface with the Licensed Software and add to or alter the function(s) of the Licensed Software, requested by the User.   Any Program Modifications delivered to User shall become part of the Licensed Software under the Cityworks Software License Agreement.

1.7   "Product Updates" are Program Fixes, Program Upgrades and Program Modifications.

1.8   "Program Upgrades" shall mean new versions of, or additions to, the Licensed Software prepared by Azteca Systems that improve its operating performance but do not add to or alter its basic function(s).   Any Program Upgrades delivered to User shall become part of the Licensed Software.

1.9   "Software" shall mean Cityworks source code, machine-readable code, and related documentation.

1.10 "Update & Support Period" shall mean the initial Update and Support period commencing upon the Effective Date of this Agreement, as set forth in section 9.2, and any subsequent twelve-month period.

1.11 "Update & Support Agreement" or "Agreement" shall mean this Update & Support Agreement between Azteca Systems and User identified in paragraph 9.1, the terms and conditions of which are hereby incorporated by reference.

2. <u>SUPPORT</u>

2.1   The services to be provided during the initial year and subsequent annual Update & Support Period include Azteca Systems Product Updates to Azteca System's Cityworks applications including Program Fixes, Program Upgrades and Program Modifications (not Custom Applications).   Azteca Systems will ensure upward compatibility for The Cityworks Software applications within a reasonable timeframe for minor and major ESRI® ArcGIS and Cityworks supported databases revisions. If identified in paragraph 9.3 as "Covered Software", Azteca Systems will ensure upward compatibility within a reasonable timeframe for User's Custom Applications when there are minor ArcGIS and Cityworks supported databases revisions (for example, from rev 9.1 to rev 9.2).   Azteca Systems will not ensure upward compatibility for User's Custom Applications when there are major ESRI ArcGIS and Cityworks supported databases revisions (for example, from rev 9.x to rev 10.x), Azteca Systems will make all reasonable efforts to provide upward compatibility.

2.2 Azteca Systems shall, with out additional charge (except as allowed for in paragraph 3.4 and 7.3), during the term of this Agreement:

(a) Make all reasonable efforts to provide those Program Fixes, if any, that are necessary to assure the Covered Software is functioning properly; provided User provides Azteca Systems with written notice specifying particularity in narrative, non-technical terms to the best of District staff's ability the apparent error in the system and the manner in which the Covered Software is not functioning properly (as provided in Section 8); and

(b) Deliver to User any Program Upgrades relating to the Covered Software made available to others.

(c) Provide Telephone User Support, Email Support, Web Support, during normal business hours Monday through Friday (excepting Holidays) and after hour emergency support through messaging service, and other benefits deemed appropriate by Azteca Systems (as set forth in Section 7).

(d) Implement and maintain a means of secure, remote direct network access (VPN, Web-access, dial-up, etc) to the User's systems in order to perform thorough remote diagnostics and effect remote repairs, upgrades, and fixes.

2.3 The following items, among others, however, are specifically excluded as support services under this section of this Agreement:

(a) interpretation of program results;

(b) assistance with questions related to computer hardware and peripherals that are not related to the use of the Covered Software;

(c) assistance with computer operating system questions not directly pertinent to the Covered Software or Program Modifications;

(d) data debugging and/or correcting;

(e) services necessitated as a result of any cause other than authorized ordinary and proper use by the User of the Covered Software, including but not limited to neglect, abuse, unauthorized modification, unauthorized updates or electrical, fire, water or other damage; and

(f) consulting regarding Custom Applications created to function with the Covered Software unless the Custom Application is identified as Covered Software in paragraph 9.3.

3. CHARGES

3.1   For services hereunder, User shall pay Azteca Systems an annual fee. The annual fee for the initial Update & Support Period is set forth in paragraph 9.2, and shall be paid prior to the start of the initial Update & Support Period. The annual fee for successive Update & Support Periods (twelve-month periods commencing upon the anniversary of the initial Update & Support Period) shall become due prior to the end of the preceding paid-up Update & Support Period.

3.2 Upon 90 days written notice, the fee for Update and Support Periods listed in paragraph 9.2 subsequent to the third Update and Support Period may be adjusted by Azteca to reflect increases in costs of providing the services described herein and/or to reflect increases in the population, users, size, usage, and other factors of User; provided, however, that (a) if the above factors remain constant the increase in the pricing shall not exceed the Consumer Price Index and (b) if any such proposed cost increase is in User's opinion excessive, User shall be entitled to terminate this Agreement prior to the start of the applicable Update & Support Period and shall not be liable for any further payment under this Agreement. Azteca will notify User of the new pricing no later than 90 days prior to the annual renewal date of the year preceding the year for which such adjusted pricing applies.

3.3   In addition to charges due under this Agreement, User shall pay amounts equal to any sales tax, duties, or other consumption taxes, however designated, which are levied or based upon such charges, or upon this Update & Support Agreement.

3.4   In the event it becomes necessary for Azteca Systems to be on-site to provide support for the Covered Software, the User will reimburse Azteca Systems for reasonable and customary travel expenses directly related to the on-site work. Azteca Systems shall provide an estimate and get the prior approval of User before incurring any costs for which it shall seek reimbursement from User under this Section. Any reimbursement shall be subject to Azteca providing verifiable documentation of such expenses to User. User reserves the right to require an audit of any such cost related records of Azteca to the extent reimbursement has been made by User under the terms of this Section.

4. <u>LIMITED WARRANTY</u>

4.1 Azteca Systems will provide warranty services for the Cityworks Software, Enhancements to Cityworks Software and Custom Applications created by Azteca Systems identified as Covered Software in paragraph 9.3. The warranty services are provided as part of the Azteca Systems Update and Support services and will be in-force for the duration of this Agreement. Update & Support Periods beyond the initial Update & Support Period are renewable unless terminated as provided in Section 6 below. The Update and Support Services consists of software and documentation updates and access to technical support via telephone, email, web-based (MyCityworks.com) and after hours support via pager as set forth in Section 2 above. The User will provide Azteca Systems in writing the names of the User

individuals who are authorized to contact Azteca Systems and request support services.

4.2 Azteca Systems warrants that trained personnel employed or contracted by Azteca Systems will perform the services performed hereunder in conformance with best industry standards.

4.3 With respect to the services provided hereunder and to the extent permitted by applicable law, this warranty is in lieu of all other warranties, whether written or oral, express or implied, including without limiting the generality of the foregoing, any warranty of non-infringement, merchantability or fitness for a particular purpose.

5. <u>LIMITATION OF LIABILITY</u>

5.1 In no event shall Azteca Systems be liable for any incidental, indirect, special, or consequential damages whatsoever (including but not limited to lost profits) arising out of or related to the support and services provided hereunder by Azteca Systems, even though Azteca Systems may have been advised, know or should have known of the possibility of such damages, unless such damage is caused directly by Azteca System's actual negligence.

6. <u>TERM AND TERMINATION</u>

6.1   The effective date of this Agreement, as set forth in section 9.2, shall continue until terminated.

6.2   This Agreement shall be terminated upon termination of the Cityworks Software License Agreement and, after the initial Update & Support Period, may be terminated by either party upon 30 days' written notice prior to the end of the then current Update & Support Period. If termination occurs during a successive Update & Support Period for which the User has paid the renewal fee in full, Azteca Systems shall return a prorated portion of the renewal fee for that period to the User.

7. <u>PROCEDURES FOR ACCESSING SUPPORT</u>

7.1   All problem categories from routine through critical that occur during normal business hours shall procedurally occur as follows: 1) User's system administration staff as first line of support, 2) Azteca Systems staff as the second line of support. Azteca Systems will make all reasonable efforts to acknowledge all requests for support within 24 hours.

7.2   Prior to calling Azteca Systems for warranty services, the User will first attempt to isolate any problems that occur with the System. The User will try to reduce the problem down to a specific software or system component. If it is determined that the problem is The Cityworks Software component the User will

first try and resolve the problem without Azteca Systems' involvement. If the User cannot resolve the problem, the User will call Azteca Systems directly. If the User is unable to isolate the problem the User may call Azteca Systems to assist in isolating the problem.

7.3   For critical problems that occur outside of Azteca Systems' normal business hours (8 AM to 5 PM, Mountain Time) and cannot be isolated and resolved by the User, Azteca Systems will provide an after-hours phone number or pager number that will forward the call or page to the currently assigned Azteca Systems support staff. Azteca Systems will make all reasonable efforts to acknowledge the request for support for critical problems within 4 hours of receipt of the call from a designated and authorized User representative. Critical problems are defined as problems that cause several users to be unable to perform their duties. Depending upon the type of problem, Azteca Systems support staff may need to be sent from Azteca Systems offices to the User location. Azteca Systems project management will confer with the User's representative or project management before making this decision. The speed at which remote Azteca Systems staff can respond may be limited by the driving time or the airline flights that are available. The User will reimburse Azteca Systems for all reasonable and customary travel expenses associated with resolving the problem (pursuant to the provisions of paragraph 3.4).

7.4   For all problems involving The Cityworks Software component that are resolved without Azteca Systems' involvement, the User will document the problem and the resolution and send a report to Azteca Systems so that it can be tracked, monitored, and historically recorded.

8. **MISCELLANEOUS**

8.1   Azteca Systems and/or User shall not be in default under this Agreement for its failure to perform or its delay in performing any obligation under this Agreement Documents (other than the reimbursement of fees as set forth in paragraph 5.1) during any period of time during which such delay is due to fire, flood, earthquake, strike, labor trouble or other industrial disturbance, war (declared or undeclared), embargo, blockage, legal prohibition or governmental action, riot, insurrection, damage, destruction or any other cause beyond the control of Azteca Systems and/or User or any of its contractors preventing or delaying the performance of such obligation, provided that such obligation shall be performed immediately upon the termination of such cause preventing or delaying such performance; and provided further that the sole effect of any delay by Azteca Systems shall be a related delay in payment by the User pursuant to the relevant schedule.

8.2   The illegality, invalidity or unenforceability of any provision of the Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision. The provisions of this Agreement shall be enforceable to the extent permissible under the laws of the State of **South Dakota**.

8.3   This Agreement constitutes the entire agreement between the parties with respect to the subject matter; all prior statements, negotiations, and undertakings are superseded hereby, and may not be amended, modified or supplemented except in a writing executed by both parties, expressly purporting to amend this Agreement.

8.4   This Agreement may not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld. User may not sublicense or encumber the Licensed Software without prior written consent of Azteca Systems.

8.5   Section headings herein are for the sake of convenience only and are not intended to affect in any way the meaning of this Agreement or the related paragraphs.

8.6   This Agreement becomes effective only upon execution by both parties. One fully executed copy of this Agreement shall be delivered by User to Azteca Systems at its office in Sandy, Utah 84070.

8.7   Until further written notice, all payments and notices relevant to this Agreement shall be sent to the following addresses:

   Azteca Systems: Azteca Systems, Inc.
                11075 South State St.
                Suite 24
                Sandy, UT 84070
                Attention: Brian L. Haslam

   User: The address set forth in paragraph 9.1.

9.   **IDENTIFICATION AND AMOUNTS**

9.1   (a) User Name: <u>City of Rapid City, SD</u>

(b) User Contact: <u>Dan Coon</u>

Number and Street: <u>   300 Sixth Street </u>

City/Province/Zip/Country: <u>Rapid City, SD 57701</u>

Phone: <u>(605) 394-4154</u> Email: <u>dan.coon@rcgov.org</u>

9.2   User Agreement: Between Azteca Systems and the User dated:

(a) Effective Date (ddmmyy): <u>March 19, 2007</u>

(b) Initial Update & Support period and fee for beyond the software license

complimentary update & support:

Fee: <u>$0.00 (first year complimentary)</u>

From: (ddmmyy): <u>March 19, 2007</u>

To: (ddmmyy): <u>March 19, 2008</u>

(c) Renewal Date: Successive twelve-month periods:

From: (ddmmyy): <u>March 19, 2008</u>

(b) Renewal Date: Successive twelve-month periods from the Effective
Date, subject to termination as provided in paragraph 6.2.

Fee: <u>$10,285.00</u>

(a) Description of Covered Software:

> **Cityworks Desktop – 5 Named Licenses**
> **Cityworks Desktop Service Request – 3 Named Licenses**
> **Cityworks Desktop – 2 Concurrent Licenses**
> **Cityworks CCTV Interface**

(b) Add-ons: **None**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective, valid, and binding upon the parties as of the date below as executed by their duly authorized representatives.

Accepted and Agreed:

City of Rapid City, SD   Azteca Systems, Inc.
(User)   (Azteca Systems)

By:_____   By: _____
       Authorized Signature   Authorized Signature

Printed Name: Jim Shaw   Printed Name: Brian L. Haslam

Title:Mayor   Title: President

Date: 3/19/2007   Date: March 7, 2007

Attest   Witness

By:_____ By:_____

Azteca Systems, Inc.
Cityworks

<div align="right">Price Quotation</div>

AZTECA SYSTEMS QUOTATION TERMS AND CONDITIONS

Azteca Systems, Inc. 11075 South State Street, Suite 24, Sandy UT 84070 • 801-523-2751 • fax 801-523-3734

All quotations are valid for ninety-days (90) unless otherwise stated on the quotation form. These prices and terms are valid only for items purchased for use and delivery within the Unites States.

All pricing for services are a firm fixed price and include travel costs. Tasks invoiced upon completion.

Cityworks is commercial-off-the-shelf software that can be tailored to the workflow of an organization. If additional functionality is requested, Azteca can provide time and material estimates as needed.

Cityworks Desktop, Cityworks Anywhere and Cityworks Server are designed as an "extension" to various ESRI GIS software and are available in "Standalone" configuration. Cityworks does not include ArcGIS, ArcMap, ArcView, ArcEditor, ArcInfo, ArcIMS, ArcGIS Engine, ArcGIS Server, ArcSDE or other ESRI products. ESRI licenses will be from the customer's existing stock. If additional licenses are required, the customer will purchase these directly from ESRI.

The procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the customer. Currently, Cityworks supports Oracle, SQL Server, Informix, and Adaptive Server Anywhere.

Specific requirements for on-site Cityworks training are the responsibility of the Customer.

All hardware, software, and networking equipment used in conjunction with Cityworks are the responsibility of the Customer to purchase and maintain.

The networking of client machines to the Cityworks database and GIS file servers are the responsibility of the Customer.

This quotation information is proprietary and may not be copied or release other than for the express purpose of the current system selection and purchase. This information may not be given to outside parties or used for any other purpose without written consent from Azteca Systems, Inc.

To expedite your order, please reference the quotation number on your purchase order.

Order Process
The order process is initiated when Azteca Systems receives an original Purchase Order or some form of advance payment. Several additional documents will be required including, Software License Agreement, Tax Exemption Certification and Cityworks Site Profile to complete your order. The need for these documents may vary by the type of software ordered or generally accepted industry practices. Please consult your Account Representative for assistance. If delivery must be expedited, please notify your Account Representative.

IMPORTANT! Collectively, these documents contain the authorization and information necessary to ship the proper version of the software and on the correct media. Please return them promptly to avoid unnecessary delays in shipping and incompatible media. Please return all documents by mail or express delivery, or as otherwise directed.

Software Licensing
All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense and subject to Azteca Systems commercial license terms and conditions. Azteca Systems software is subject to Azteca Systems Software License Agreement. A fully executed copy of the Software License Agreement is required before delivery and installation.

Delivery
FOB Sandy, UT 84070, USA.

Allow thirty-days (30) from Azteca System's receipt of the Purchase Order, signed Software License Agreement and other documents, as required.

Standard delivery method is ground or two-day air for software. Actual delivery method and time may vary depending on conditions. Other delivery service is available for an additional fee (e.g., overnight delivery).

Payment Terms
Net thirty-days (30), on approved credit. Orders below $800 require prepayment by check or credit card unless your organization is a government agency, university, college, or Fortune 500 company.

Taxes
Prices quoted do not include applicable sales or use taxes unless so stated. In preparing your budget, please allow for applicable sales and use taxes, as necessary. Azteca Systems reserves the right to collect sales and use tax assessed by states as required by law. Azteca Systems will add applicable state sales tax to the invoice unless proof with the order is shown that your organization is tax exempt or pays state tax directly.