



MEETING AGENDA – OCTOBER 27, 2015

COMMUNITY ROOM
4000 EAST RIVER ROAD NE
ROCHESTER, MN 55906

4:00 PM

Call to Order

1. Approval of Agenda

2. Approval of Minutes

1. Public Utility Board - Regular Meeting - Sep 29, 2015 4:00 PM

3. Approval of Accounts Payable

1. A/P Board Listing

NEW BUSINESS

Open Comment Period

(This agenda section is for the purpose of allowing citizens to address the Utility Board. Comments are limited to 4 minutes, total comment period limited to 15 minutes. Any speakers not having the opportunity to be heard will be the first to present at the next Board meeting.)

4. Informational

1. Preliminary 2016 Electric and Water Budgets

5. Consideration Of Bids

1. West Side Energy Station Project Approval to proceed with purchase of Reciprocating Engine Generating Sets

Resolution: West Side Energy Station Project Approval to proceed with purchase of Reciprocating Engine Generating Sets

6. Regular Agenda

1. Epic - Amendment to Escrow and Disbursement Agreement
Resolution: Epic - Amendment to Escrow and Disbursement Agreement

2. Epic Memorandum of Understanding (MOU)
Resolution: Epic Memorandum of Understanding (MOU)

3. CapX - Self Performance Agreement
Resolution: CapX - Self Performance Agreement

4. Saint Mary's Tower - New Cingular Wireless (AT&T) Lease Amendment
Resolution: Saint Mary's Tower - New Cingular Wireless (AT&T) Lease Amendment

5. Sale of 0.65 Acres of RPU Service Center Property
Resolution: Sale of 0.65 Acres of RPU Service Center Property

7. General Managers Report

8. Division Reports & Metrics

9. Other Business

10. Adjourn

The agenda and board packet for Utility Board meetings are available on-line at www.rpu.org and <http://rochestercitymn.iqm2.com/Citizens/Default.aspx>



MEETING MINUTES – SEPTEMBER 29, 2015

BOARD ROOM
4000 EAST RIVER ROAD NE
ROCHESTER, MN 55906

4:00 PM

Call to Order

Attendee Name	Title	Status	Arrived
Michael Wojcik	Board Member	Present	
Jerry Williams	Board President	Present	
Dave Reichert	Board Member	Present	4:05 PM
Roger Stahl	Board Member	Present	4:05 PM
Mark Browning	Board Member	Present	
Terry Adkins	City Attorney	Present	

1. Approval of Agenda

Motion to: Approve the agenda as presented

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Dave Reichert, Mark Browning
SECONDER:	Michael Wojcik, Board Member
AYES:	Michael Wojcik, Jerry Williams, Mark Browning
ABSENT:	Dave Reichert, Roger Stahl

2. Approval of Minutes

Public Utility Board - Regular Meeting - Aug 25, 2015 4:00 PM

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Mark Browning, Board Member
AYES:	Michael Wojcik, Jerry Williams, Mark Browning
ABSENT:	Dave Reichert, Roger Stahl

3. Approval of Accounts Payable

A/P Board Listing

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Mark Browning, Board Member
AYES:	Michael Wojcik, Jerry Williams, Mark Browning
ABSENT:	Dave Reichert, Roger Stahl

NEW BUSINESS**Open Comment Period**

(This agenda section is for the purpose of allowing citizens to address the Utility Board. Comments are limited to 4 minutes, total comment period limited to 15 minutes. Any speakers not having the opportunity to be heard will be the first to present at the next Board meeting.)

President Williams opened the meeting up for public comment, the following came forward to speak:

Ivan Idso, 101 11th Street NW: 2015 Infrastructure update plan
 Ray Schmitz, 210 14th Street NE: Water Rates/ customer charge

4. Regular Agenda

1. Public Power Week October 2015

Rochester Public Utilities has tours at the Silver Lake Plant during Public Power week. The tours were advertised in Plugged In and made available by reservations with 3 tours, 30 people each, on Friday October 9th.

Resolution: Public Power Week October 2015

The board approved the resolution reading as follows:

PROCLAMATION RECOGNIZING PUBLIC POWER WEEK, OCT. 4-10:

A WEEK-LONG CELEBRATION OF ROCHESTER PUBLIC UTILITIES YEAR-ROUND SERVICE TO ROCHESTER

WHEREAS, we, the citizens of Rochester place high value on local control over community services and therefore have chosen to operate a community owned, locally controlled, not-for-profit electric utility and, as consumers and owners of our electric utility, have a direct say in utility operations and policies;

WHEREAS, Rochester Public Utilities provides our homes, businesses, farms, social service, and local government agencies with reliable, efficient, and cost-effective electricity employing sound business practices designed to ensure the best possible service at not-for-profit rates;

WHEREAS, Rochester Public Utilities is a valuable community asset that contributes to the well-being of local citizens through energy efficiency, customer service, environmental protection, economic development, and safety awareness;

WHEREAS, Rochester Public Utilities is a dependable and trustworthy institution whose local operation provides many consumer protections and continues to make our community a better place to live and work, and contributes to protecting the global environment;

NOW, THEREFORE BE IT RESOLVED: that Rochester Public Utilities will continue to work to bring lower-cost, safe, reliable electricity to community homes and businesses just as it has since 1894, the year when the utility was created to serve all the citizens of Rochester and

BE IT FURTHER RESOLVED: that the week of Oct. 4-10 be designated Public Power Week to recognize Rochester Public Utilities for its contributions to the community and to educate consumer-owners, policy makers, and employees on the benefits of public power;

BE IT FURTHER RESOLVED: that our community joins hands with more than 2,000 other public power systems in the United States in this celebration of public power, which is best for consumers, business, the community, and the nation.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of September, 2015.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Dave Reichert, Board Member
SECONDER:	Michael Wojcik, Board Member
AYES:	Wojcik, Williams, Reichert, Stahl, Browning

2. RPU Board Meeting Schedule 2016

Motion to: Approve the 2016 RPU Board meeting schedule as presented.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Dave Reichert, Board Member
AYES:	Wojcik, Williams, Reichert, Stahl, Browning

3. Billtrust Contract Renewal

Bryan Blom, Manager of Accounting, presented the Billtrust contract as a one year renewal. Billtrust is used for RPU web portal services, Interactive Voice Response (IVR) services, including Pay-by Phone, and billing print and mail services.

Comments were raised regarding the cost of this service and are we looking at ways to reduce it. There are new online & paper less billing efforts being looked at with our new Customer Relations Management(CRM) software. Thus the reason for only a one year renewal.

Resolution: Billtrust Contract Renewal

The board approved the resolution reading as follows:

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a one year contract renewal with Billtrust for

Web Portal Services, IVR Services to include Pay-by-Phone, and Bill Print & Mail Services.

The amount of the one year contract renewal to be FOUR HUNDRED NINETY TWO THOUSAND AND 00/100 DOLLARS (\$492,000.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of September, 2015.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Mark Browning, Board Member
AYES:	Wojcik, Williams, Reichert, Stahl, Browning

4. Common Council Resolution Adopting Limited §453 Powers for the West Side Energy Station Project

Wally Schlink, Director of Power Resources, briefed the board on the Chapter 453, Municipal Electric Power Statute. Rochester Public Utilities (RPU) has used these limited powers in the past for the CAPX transmission project and the Emission Reduction Project (ERP). The West Side Energy Station project has many attributes in common with the previous projects. City Attorney, Terry Adkins, has reviewed the resolution and if approved it will go on to the City Council for approval.

President Williams wished to discuss both the Resolution adopting limited powers as well as the Permitting resolution together before voting on each.

Bill Cook, Director of Field Services stated that permitting is critical to the process in order for us to meet the 2018 date. The preparation of the permit application and EAW are critical.

No approval for equipment manufacture or bond financing will be issued until the permitting process is completed. There is a substation and gas supply on the current site which is located in Cascade Township. Orderly annexation will be used for the site.

President Williams asked what will happen during this time frame? Wally Schlink stated the timeline includes: modeling, historical review, air permitting, bids on gas turbines and the design structure around them with construction contracts complete by May of 2018. The board will be asked for approval of the engine bids at the October meeting and future contracts will each come to the board for approval. The total cost is estimated at \$25 million for the engines.

Ivan Idso commented on CC1's history. Wally Schlink stated that while Mr. Idso's data was correct it has now been running on average 4-5 days a week since June, for MISO demand, which is a change from the past.

Resolution Adopting Limited §453 Powers for the West Side Energy Station Project

The board approved the resolution reading as follows:

WHEREAS, the City of Rochester wishes to participate in the West Side Energy Station Project; and

WHEREAS, the West Side Energy Station Project consists of various activities ultimately used to provide capacity and energy through construction of a generation facility; and,

WHEREAS, the West Side Energy Station Project is intricate, complex, and unique requiring multiple project participants within and without the State of Minnesota and requiring the planning, acquisition and construction of a generation facility which includes design, engineering, procurement, construction, project management and erection of equipment, systems and all appurtenances; and,

WHEREAS, Minn. Stat. §453.58, subd. 1, authorizes the City to exercise any of the powers granted to a municipal power agency in Minn. Stat. §§453.51 - 453.62 notwithstanding any provision of any city charter or any other law denying, limiting, or placing conditions upon the exercise of any such power; and,

WHEREAS, the City has previously exercised the powers granted under Chapter 453 of the 2013 Minnesota Statutes Municipal Electric Power in prior projects and has found those powers to be the most effective process for joint participant electric power projects; and,

WHEREAS, Minn. Stat. 453.54, subd. 2, states that a City may plan, acquire, construct, reconstruct, operate, maintain, repair, extend, or improve one or more projects within or outside the state; and,

WHEREAS, Minn. Stat. 453.52, subd. 10 defines "Project" to mean "any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, purchase, sale, exchange, or

interchange of electric energy or any interest therein or capacity thereof;” and,

WHEREAS, the West Side Energy Station Project satisfies the definition of a Project as a system used or useful in the generation of electric energy and,

WHEREAS, in participating in the West Side Energy Station Project, the City wishes to invoke the authority provided to it in Minn. Stat. §453.58, subd. 1 and exercise the powers granted by Section 453.51 to 453.62 to include the power to:

- plan, acquire, construct, operate, maintain, repair, extend or improve one or more projects within or outside the state*
- perform any act authorized by sections 453.51 to 453.62 through or by means of its officers, agents, or employees or by contract with any person*
- acquire, own, hire, use, operate and dispose of personal property*
- acquire, own, use, lease as lessor or lessee, operate and dispose of real property and interests in real property and make improvements thereon*
- contract with any person, within or outside the state, for the construction of any project or for the sale, with or without advertising for bids, or transmission of electric energy generated by any project or for any interest therein or any right to capacity thereof, on such terms and for such period of time as its board of directors determines.*
- contract for the planning, acquisition, construction, reconstruction, operation, maintenance, repair, extension, and improvement of generation and transmission facilities outside of its corporate limits or those of its members, or may contract with other public or private owners of these facilities to perform these functions, without advertising for bids, preparing final plans and specifications in advance of construction, or securing performance and payment bonds, except to the extent that its governing body determines that these actions are desirable in furtherance of the purposes of sections 453.51 to 453.62; and,*

BE IT RESOLVED by the Public Utility Board and the Common Council of the City of Rochester, Minnesota, to adopt this resolution in order to fulfill the requirements of Minn. Stat. §453.58, subd. 1.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Rochester that the City does hereby invoke its authority under Minn. Stat. §453.58, subd. 1 to exercise any of the powers granted in Minn. Stat. §§453.51 - 453.62 to a municipal power agency.

BE IT FURTHER RESOLVED by the Common Council of the City of Rochester that, pursuant to Minn. Stat. §453.58, subd. 2, the City Clerk is directed to publish this resolution in the City’s official newspaper.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of September, 2015.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Roger Stahl, Board Member
SECONDER:	Dave Reichert, Board Member
AYES:	Wojcik, Williams, Reichert, Stahl, Browning

5. Westside Energy Station - Permitting

Resolution: Westside Energy Station - Permitting

The board approved the resolution reading as follows:

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota and that the Common Council authorize issuance of a Purchase Order for:

Wenck Associates, for permitting activities for the planned Westside Energy Station.

The amount of the PO to be ONE HUNDRED EIGHTY THOUSAND, SEVEN HUNDRED AND 00/100 DOLLARS (\$180,700.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of September, 2015.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Roger Stahl, Board Member
SECONDER:	Dave Reichert, Board Member
AYES:	Wojcik, Williams, Reichert, Stahl, Browning

6. Water Cost of Service Study Results and Notification of Proposed Rate Increase

Peter Hogan, Director of Corporate Services, summarized the water cost of service study results and asked the board to place on file the water cost of service study and authorize staff to put notice of the proposed rate increase in the newspaper.

Michael Wojcik wanted to make sure cost of service policy is being followed with the rate changes. Water is very inexpensive and we want to be fair to all parties, low income etc. but we are headed where we need to be after several years of no increases. The actual increase is about \$.61 for the average user of 7CCF per month.

Resolution: Water Cost of Service Study Results and Notification of Proposed Rate Increase

The board approved the resolution reflecting the wording change, each year; reading as follows:

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to:

1. *Accept and place on file the Water Cost of Service Study;*
2. *Authorize staff to give preliminary notice to the public of the intent to increase the overall general water rates up to 6.0% each year for 2016 - 2018 based on the individual rate class recommendations on or about January 1st of each year.*

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of September, 2015.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Dave Reichert, Board Member
SECONDER:	Roger Stahl, Board Member
AYES:	Wojcik, Williams, Reichert, Stahl, Browning

5. Informational

Commercial Marketing and Website Redesign Plans for 2016-2018

Patty Hanson, Manager of Marketing and Tony Benson, Communications Coordinator, gave an overview of the proposed commercial marketing and website redesign plans for 2016-2018.

Mark Browning asked where we draw the line on visiting our commercial customers, based on the numbers given it is once every 7 years. We want to try and interact and engage better with our commercial customers. The Commercial Plugged In is a great idea.

President Williams was happy to see our measures of success and asked what we would look for in these new positions. Qualifications such as; a technical background, previous work with commercial customers, and engineering would be preferred.

6. General Managers Report

Mark Kotschevar gave his General Managers report:

1. Mark Beauchamp is working on determining the value of a new customer to the customer base and a draft policy with the changes will be brought forward.
2. We are still waiting to receive the broadband study from Alcatel. Dale Martinson and a select RPU group will be formed to review the study. The Burns and McDonnell proposal will follow once completed.
3. The undergrounding discussion will start at an upcoming Committee of the Whole (COW) meeting to discuss this topic and how RPU and the City wish to proceed.
4. The PPA Solar contract has been executed and the solar panels should be up by the end of the year.
5. Silver Lake Plant operating permit renewal was posted in the Post Bulletin.
6. The Bond refunding process to price is planned for October 21-22. We will have some numbers at the October board meeting.
7. The SMMPA board retreat will be held October 1-2, discussion will include the SMMPA rate increase that will be voted on at the SMMPA Annual Meeting on October 15-16.

Division Reports & Metrics

7. Other Business

8. Adjourn

1. **Motion to:** adjourn the meeting

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mark Browning, Board Member
SECONDER:	Roger Stahl, Board Member
AYES:	Wojcik, Williams, Reichert, Stahl, Browning

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Submitted by:

Secretary

Approved by the Board

Board President

Date

Minutes Acceptance: Minutes of Sep 29, 2015 4:00 PM (Approval of Minutes)

ACCOUNTS PAYABLE

Meeting Date: 10/27/2015

SUBJECT: A/P Board Listing

PREPARED BY: Terri Engle

Please approve

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

1	<u>Greater than 50,000 :</u>		
2			
3	SOUTHERN MN MUNICIPAL POWER A	Monthly Billing	8,014,623.36
4	XCEL ENERGY CORP	CapX - LaCrosse Project CMA	1,625,127.82
5	MN DEPT OF REVENUE	Aug Sales and Use Tax	718,087.50
6	MN DEPT OF REVENUE	Sept Sales and Use Tax	656,614.22
7	CONSTELLATION NEWENERGY-GAS D	Gas at Cascade Creek	429,402.00
8	CONSTELLATION NEWENERGY-GAS D	SLP Pilot and Boiler Gas	374,648.21
9	SCHUMACHER ELEVATOR COMPANY	SLP Elevator Upgrade	287,380.00
10	CB & I INC.	St. Bridget's Water Tower	242,885.00
11	THE ENERGY AUTHORITY INC	TEA MISO Transmission	221,631.45
12	JF BRENNAN CO INC	Silver Lake Dam Repairs	186,790.00
13	WRIGHT TREE SERVICE INC	401C Line Clearance~	81,249.80
14	BURNS & MCDONNELL INC	Engineering Study Install Peak Resource	77,800.00
15	MAVO SYSTEMS INC (P)	SLP Asbestos Removal & Repair	59,309.45
16	KEMA INC	Communications Study Substations	54,000.00
17			
18		Price Range Total:	13,029,548.81
19			
20	<u>5,000 to 50,000 :</u>		
21			
22	BILLTRUST dba	Credit Card/Billing/Mailing/IVR Services	41,642.34
23	BURNS & MCDONNELL INC	2015 financial modeling through May 21,2	39,500.00
24	PEOPLES ENERGY COOPERATIVE (P)	Services Compensable to PCPA, 9/1/2015-9	35,812.38
25	ADAPTASPACE INC.	Adjustable Height Control Console	34,084.58
26	STUART C IRBY CO INC	Wire, AL, 15kV, 1/0 Solid, 1/C, Jacketed	32,165.38
27	SPARTA CONSULTING INC	2015 SAP Application Support	29,120.00
28	WRIGHT TREE SERVICE INC	2015 Hourly Tree Contract~	27,714.86
29	ASTOUND LLC	PIES FINANCING	25,000.00
30	STUART C IRBY CO INC	Wire, AL, 15kV, 1/0 Solid, 1/C, Jacketed	21,217.62
31	THE ENERGY AUTHORITY INC	TEA Resource Fee	21,150.00
32	BARR ENGINEERING COMPANY (P)	Construction Management-Silver Lake Dam	20,342.80
33	BLUESPIRE STRATEGIC MARKETING	2015 RPU Plugged In Contract	20,010.70
34	WESCO DISTRIBUTION INC	Trans, PM, 3ph, 300kVA, 13.8/8, 480/277	19,884.41
35	EATON CORPORATION	Cap Control, Pole Mt w/ethernet, 7pin	19,691.72
36	MN DEPT OF COMMERCE	CIP Facilities energy / R&D grants/Tech	19,058.77
37	UTILITY FINANCIAL SOLUTIONS L	Water Cost of Service Study	18,860.00
38	ADAPTASPACE INC.	Adjustable Height Control Console	18,199.74
39	MASTEC NORTH AMERICA INC	2015 Directional Boring/Misc Excavation	17,977.53
40	JENNINGS, STROUSS & SALMON PL	FERC Filing	17,503.71
41	BADGER METER INC (P)	HRE Badger M-25 100W Itron ERT Integral	17,400.00
42	CITY OF ROCHESTER	Pictometry, Pmt 2 of 2	17,389.50
43	DAKOTA SUPPLY GROUP	Meter, FM2S CL200 240V AMR	17,217.56
44	U S ALLIANCE GROUP	Credit card processing fee for Sept 2015	16,154.32
45	TSP INC	Update Facility Master Plan	16,000.00
46	MINNESOTA ENERGY RESOURCES CO	SLP Pilot and Boiler Gas	15,878.53
47	MINNESOTA ENERGY RESOURCES CO	Cascade Creek Gas	15,668.85
48	WESCO DISTRIBUTION INC	Trans, PM, 3ph, 112.5kVA, 13.8/8, 208/120	15,057.49
49	STUART C IRBY CO INC	Trans, PM, 3ph, 112.5kVA, 13.8/8, 208/120	14,955.00
50	A F P TRANSFORMERS INC	Transformer, 1ph, 60HZ	14,386.00
51	SCHUMACHER ELEVATOR COMPANY	Contract Retention Release	14,369.00
52	SURE POWER CONSULTING LLC	CRM Consulting Services	14,000.00
53	XYLO TECHNOLOGIES INC	David McCollister - Field Svcs/GIS	13,760.00
54	STUART C IRBY CO INC	Trans, PM, 3ph, 225kVA, 13.8/8, 208/120	13,648.00
55	BARR ENGINEERING COMPANY (P)	Lake Zumbro Improvement Service	13,417.15

Attachment: A/p Board listing [Revision 1] (4643 : A/P Board Listing)

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

56	VISION COMPANIES LLC (P)	Org Strategy	13,275.00
57	STUART C IRBY CO INC	Trans, PM, 1ph, 25kVA, 13.8/8, 240/120	13,056.00
58	USIC LOCATING SERVICES INC	2014-2015 Locating Services	12,984.74
59	A B M EQUIPMENT & SUPPLY INC	Install body on V556	12,637.00
60	McGRANN SHEA CARNIVAL STRAUGH	Legislative - 3rd Qtr	12,500.00
61	BORDER STATES ELECTRIC SUPPLY	Arrester, 106kV, Station, W/ Ring, Poly	12,425.49
62	VIKING ELECTRIC SUPPLY INC	Well house #41 motor control center	12,120.00
63	ARNOLDS SUPPLY & KLEENIT CO (	2014-2015 SC Monthly Cleaning Services	11,775.48
64	CRW ARCHITECTURE + DESIGN GRO	A/E Services- Zumbro Hydro Roof Repairs	11,076.39
65	WESCO DISTRIBUTION INC	Wire in Duct, AL, 600V, 4/0-2/0 Tri Urd	10,804.61
66	CONSOLIDATED COMMUNICATIONS d	Firewall Cards	10,170.00
67	TSP INC	TSP Design System Operations	9,816.59
68	BARR ENGINEERING COMPANY (P)	Water Sustainability Study Phase 3A	9,440.90
69	DAKOTA SUPPLY GROUP	Luminaire, Residential, LED, PC, 120V	9,405.00
70	CONSOLIDATED COMMUNICATIONS d	Installation of Router	9,289.59
71	CORPORATE RISK SOLUTIONS INC	NERC CIP 5 Compliance Mgmt Prgm -Phase 2	9,193.00
72	WESCO DISTRIBUTION INC	P/C, 120V-305V, 20 yr	9,137.82
73	MEDORA CORPORATION (P)	Submersible Electric Mixer	8,875.00
74	CHS ROCHESTER	Monthly Fuel, Electric	8,624.21
75	REDI HAUL TRAILERS INC	Reel Trailer #T521	8,436.00
76	REDI HAUL TRAILERS INC	Reel Trailer #T574	8,436.00
77	AMERICAN ENGINEERING TESTING	Soil Boring/Geotech	7,880.00
78	MASTEC NORTH AMERICA INC	conduit for apache dr - St lights	7,735.50
79	WELLS FARGO BANK ACCT ANALYSI	2015 Banking Services	7,507.25
80	MITSUBISHI ELECTRIC POWER PRO	GCB Tripping Coil (G1), Mits Bkr	7,365.37
81	D P C INDUSTRIES INC	2015 Hydrofluorosilicic Acid - Delivered	6,949.22
82	KATS COMPANY LLC	Contractor repaired water main break for	6,550.00
83	CITY OF ROCHESTER	Legal Services	6,250.00
84	WESCO DISTRIBUTION INC	Trans, PM, 1ph, 100kVA, 13.8/8, 240/120	6,150.12
85	BORDER STATES ELECTRIC SUPPLY	Clamp, DE, U-Bolt,2-2/0 ACSR,1-3/0	6,013.86
86	SIEMENS INDUSTRY INC.	Switch, Air, Unit Arm, 3ph, 600A, LB	5,707.13
87	GRAINGER INC	Calibration tools for CC	5,701.55
88	XYLO TECHNOLOGIES INC	2015 Dominic Avila - Corp Svcs/IS	5,472.00
89	REDI HAUL TRAILERS INC	Reel Trailer T549	5,236.40
90	REDI HAUL TRAILERS INC	Reel Trailer T548	5,236.40
91	REDI HAUL TRAILERS INC	Reel Trailer T559	5,236.40
92	MULCAHY COMPANY INC	VFD, 50HP, 460V	5,094.00
93	MN GROUND WATER ASSOC	National Sinkhole Conf/MN Groundwater As	5,000.00
94	BARRY MICHAEL	CIP Conserve & Save Rebates	5,000.00
95			
96		Price Range Total:	1,041,801.96
97			
98	<u>1,000 to 5,000 :</u>		
99			
100	BADGER METER INC (P)	Meter, Bare 5/8x3/4" Badger Disc	4,873.50
101	MOTOROLA INC	APX1500 Radio for substation	4,776.76
102	ARNOLDS SUPPLY & KLEENIT CO (	2015 Mowing Services Well Houses	4,740.00
103	MN DEPT OF COMMERCE	Energy Facility Permitting Assesment	4,614.17
104	BORDER STATES ELECTRIC SUPPLY	Wire, AL, 600V, 4/0-2/0 NEU YS Tri Urd	4,599.00
105	MISSISSIPPI WELDERS SUPPLY CO	new Welder	4,527.58
106	VERIZON WIRELESS	2015 Cell & Ipad Monthly Service	4,350.31
107	CARLO LACHMANSINGH SALES	SL Base, Brkaway, Steel (Use w/2693)	4,328.44
108	ADAPTASPACE INC.	Console Delivery and Installation	4,301.72
109	NALCO COMPANY	DI Vessels, Anion, CC	4,039.88
110	STUART C IRBY CO INC	2015 Rubber Goods Testing & Replacement	4,035.44

Attachment: A/p Board listing [Revision 1] (4643 : A/P Board Listing)

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

111	D P C INDUSTRIES INC	2015 Carus 8500 Aqua Mag Kjell F35	3,993.10
112	BOB THE BUG MAN LLC	Annual insect spraying at wellhouses	3,920.00
113	CHS ROCHESTER	Monthly Fuel, Water	3,917.85
114	NALCO COMPANY	Nalco, 7293, Resin-Rinse (DEMIN)	3,912.30
115	BRAUER ROOFING INC	Replace roof on Site 1 Baihly Booster We	3,890.00
116	BADGER METER INC (P)	HRE Badger M-35 100W Itron ERT Integral	3,840.00
117	BORDER STATES ELECTRIC SUPPLY	Grd Sleeve, 3ph Sect. Encl, 18 x 67 x 23	3,630.00
118	RESCO	Mast Arm, Residential LED, Extension	3,545.58
119	BADGER METER INC (P)	Mag meter, 6"	3,541.70
120	ADAPTASPACE INC.	Control Desk	3,441.00
121	D P C INDUSTRIES INC	2015 Chlorine, 150 lb Cyl	3,425.00
122	MN PIPE & EQUIPMENT	Valve, Gate, MJ, 6.0	3,312.00
123	QUANTITATIVE MARKET INTELLIGE	2015 Qtly Customer Satisfaction Survey	3,206.25
124	DOBLE ENGINEERING COMPANY	ProTest Software License - 2015	3,206.25
125	STEVE BENNING ELECTRIC	Budgeted Capital project - Manual switch	3,096.61
126	TWIN CITY SECURITY INC	Security Services April-Oct 2015	3,094.83
127	CITY OF ROCHESTER	Workers Cmp Reins, Install #4	2,938.31
128	BARR ENGINEERING COMPANY (P)	2014 Lake Zumbro Dam Periodic Inspection	2,914.25
129	BORDER STATES ELECTRIC SUPPLY	Elbow, 15kV, 200A, LB, 1/0 Sol,175-220Mil	2,886.00
130	BADGER METER INC (P)	Meter, Bare 2" Badger Compound Round Flg	2,850.00
131	MADSEN BRIAN	2014-2015 Printer Maintenance contract	2,838.60
132	SURE POWER CONSULTING LLC	Travel Expenses for CRM Consulting	2,802.07
133	PITNEY BOWES GLOBAL FINANCIAL	Inserter and Mailing System Lease	2,759.65
134	WRIGHT TREE SERVICE INC	Hourly Tree Removal-	2,747.85
135	SOLARWINDS INC	2016 Network Performance Renewal	2,736.00
136	ASPEN INC	Relay database maintenace (2015-2018)	2,727.48
137	MASTEC NORTH AMERICA INC	Replacement concrete	2,700.00
138	ANDING BILL	CIP Conserve & Save Rebates	2,660.00
139	BORDER STATES ELECTRIC SUPPLY	Cutting tool w/120v charger	2,575.00
140	BOWMANS SAFE & LOCK SHOP LTD	Padlock A, Sub, Brass 2"	2,551.50
141	PAYMENT REMITTANCE CENTER	CPPS, Shots Fired/Lightning Strikes Trai	2,525.00
142	MUELLER DUSTIN	CIP Conserve & Save Rebates	2,520.00
143	SOMA CONSTRUCTION INC	Class 5 crushed concrete	2,511.15
144	MN PIPE & EQUIPMENT	WB67 hysteria hydrant package, 1'-6"	2,500.00
145	ROCH SIGN SERVICE INC	Stickers, RPU Door Signs, 11" x 20"	2,431.41
146	BILLTRUST dba	Charges for Energy Assistance bill print	2,400.00
147	ALL SYSTEMS INSTALLATION INC	Fiber splices to replace damaged section	2,385.00
148	BOB BRAATEN CONSTRUCTION INC	Retention Release	2,350.00
149	SHORT ELLIOTT HENDRICKSON INC	Verizon SE Antenna Site Review	2,340.69
150	VOSS CLARK	Travel, VM World Conf, hotel	2,327.22
151	MASTEC NORTH AMERICA INC	new service - 2290 cedar park ct se	2,312.50
152	WIRE CLOTH MANUFACTURERS INC	Pole Wrap, Wire Fence Fabric, .50" Hole	2,304.00
153	CITY OF ROCHESTER	Workers Comp	2,267.74
154	ARNOLDS SUPPLY & KLEENIT CO (	2015 Mowing Services Substations	2,167.43
155	DAVIES PRINTING COMPANY INC	2015 Cold weather bill insert	2,114.73
156	BADGER METER INC (P)	Mag meter, 8"	2,089.00
157	STEVE BENNING ELECTRIC	Repair lightning damage to equipment	2,063.50
158	WESCO DISTRIBUTION INC	Meter Seal, Yellow Padlock	2,053.55
159	WHKS & CO	Engineering Services St. Bridget's Tower	2,033.60
160	MASTEC NORTH AMERICA INC	New Service 28th ST SE	1,984.20
161	CONSOLIDATED COMMUNICATIONS d	2015 Network Maintenance Services	1,983.86
162	SHI INTERNATIONAL CORP (P)	Symantec B/U Exec Agent App DB	1,982.53
163	NETWORKFLEET INC	2015 Monthly Charge - GPS Fleet Tracking	1,972.20
164	SPECTRUM REACH	Advertising spots	1,943.00
165	BADGER METER INC (P)	HRE Badger M-35 100W Itron ERT Integral	1,920.00
166	FIRST SUPPLY (P)	North Bathroom A/C	1,891.23

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

167	INSTITUTE FOR ENVIRONMENTAL	Asbestos Project Management	1,890.00
168	CONSOLIDATED COMMUNICATIONS d	Maintenance Smartnet Interface	1,846.80
169	CDW GOVERNMENT INC	Multifunction color laserjet printer	1,845.99
170	SPARTA CONSULTING INC	2015 SAP Application Support Travel Exp	1,760.72
171	PAYMENT REMITTANCE CENTER	Travel, MMUA First Line Supr,Gunderson,K	1,755.00
172	STEVE BENNING ELECTRIC	tank mixer installation	1,747.00
173	RESCO	Label, Warning, Secondary Ped. 25/PKG	1,723.36
174	SHI INTERNATIONAL CORP (P)	Symantec B/U Exec Agent Windows Svr	1,699.31
175	BADGER METER INC (P)	Meter, Bare 1" Badger Disk	1,692.90
176	STUART C IRBY CO INC	Pedestal Cover, Box Style, FG	1,667.25
177	WIESER PRECAST STEPS INC (P)	Manhole barrel section, 60"	1,586.10
178	FCX PERFORMANCE INC	Asco solenoid valve, 3/8" NPT, NC, 3-way	1,584.00
179	NIETZ ELECTRIC INC	Streetlight Installation	1,560.00
180	KONECRANES INC	Overhead hoisting equipment inspections	1,535.00
181	MN PIPE & EQUIPMENT	Valve, Gate, MJ, 10.0	1,488.00
182	ALL SYSTEMS INSTALLATION INC	System Ops Backbone Wiring	1,457.00
183	VISION COMPANIES LLC (P)	Consulting Services	1,425.00
184	SHORT ELLIOTT HENDRICKSON INC	AT&T St. Mary's Rochester II Ant Review~	1,411.20
185	LARSON DRU	Travel, APPA Key Accounts Certification,	1,402.17
186	BADGER METER INC (P)	Meter, Bare 2" Badger T-200 Round Flange	1,385.10
187	STUART C IRBY CO INC	Pedestal Base, Secondary, FG, w/o Cover	1,380.00
188	CENTURYLINK	2015 Monthly Telecommunications	1,368.84
189	NALCO COMPANY	DI Vessels, Cation, CC	1,346.63
190	STUART C IRBY CO INC	Glove, Leather Work, Hvy Duty, Large	1,335.08
191	WRIGHT TREE SERVICE INC	402C Line Clearance~	1,330.51
192	AFFILIATED CREDIT SERVICES IN	2015 Third Party Collections	1,324.46
193	CITY OF ROCHESTER	Medical	1,305.00
194	WESCO DISTRIBUTION INC	Rubber Cover Up	1,295.16
195	AIR CLEANING SPECIALISTS INC	Exhaust hose and nozzle adapter for Flee	1,288.91
196	CITY OF ROCHESTER	Berkley, Admin Fees, April	1,282.00
197	CITY OF ROCHESTER	Berkley Admin Fees, Aug	1,282.00
198	WINTHROP & WEINSTINE INC	CapX - legal expense	1,275.00
199	KRANZ JEFFREY A	Travel, DobleUser Group Conf, hotel	1,271.50
200	MASON TED	Travel, DobleUser Group Conf, hotel	1,271.50
201	MN PIPE & EQUIPMENT	Coupling,10" Romac Alpha 2Bolt Restraint	1,269.00
202	FCX PERFORMANCE INC	Asco rebuild kit	1,252.00
203	CITY OF ROCHESTER	USGS 37th St Gauging Station, Workers Co	1,248.50
204	CONSOLIDATED COMMUNICATIONS d	2014-2017 Monthly Data Services	1,222.75
205	UTILITY FINANCIAL SOLUTIONS L	Travel Costs	1,190.00
206	CONSOLIDATED COMMUNICATIONS d	2014-2017 Collocation Agreement	1,169.07
207	PAYMENT REMITTANCE CENTER	114-570 Trans-Mntc-Station Eqpt	1,154.24
208	MN PIPE & EQUIPMENT	Coupling,6" Romac Alpha 2-Bolt Restraint	1,152.00
209	GRAINGER INC	Eye Wash Station Cartridge	1,149.40
210	BORDER STATES ELECTRIC SUPPLY	Arrester Cover-Up	1,137.26
211	CONSOLIDATED COMMUNICATIONS d	2014-2017 Total Care Support	1,135.00
212	FEDEX FREIGHT INC	Postage And Shipping	1,130.49
213	GOPHER STATE ONE CALL	Electric	1,120.13
214	GOPHER STATE ONE CALL	Water	1,120.12
215	PAAPE ENERGY SERVICE INC	SC Heat Pump repair labor/trip/ rebuilt	1,087.90
216	ONLINE INFORMATION SERVICES I	2015 Utility Exchange Report	1,075.20
217	MEDORA CORPORATION (P)	GS Series Control Box w/SCADA monitoring	1,070.00
218	BAIER GERALD	2015-2016 Sweeping Services Jan-December	1,068.75
219	STEVE BENNING ELECTRIC	Repair equipment hit by lightning	1,050.35
220	BADGER METER INC (P)	HRE Badger M-120 100W Itron ERT Integral	1,050.00
221	ROCHESTER ARMORED CAR CO INC	2015/16 Pick Up Services May-April	1,041.89
222	EXPRESS SERVICES INC	2015 Diane Bengtson - Prof Services	1,031.63

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

223	BOWMANS SAFE & LOCK SHOP LTD	High density metal door, 4' x 7'	1,022.00
224	EINCK KATHY	CIP Conserve & Save Rebates	1,000.00
225			
226			279,985.69
227			
228	<u>0 to 1,000 :</u>		
229			
230	EXPRESS SERVICES INC	Summarized transactions: 22	15,082.85
231	REBATES	Summarized transactions: 67	12,858.31
232	MN PIPE & EQUIPMENT	Summarized transactions: 37	10,646.48
233	Customer Refunds (CIS)	Summarized transactions: 60	7,385.23
234	PAYMENT REMITTANCE CENTER	Summarized transactions: 52	7,125.33
235	STUART C IRBY CO INC	Summarized transactions: 22	7,093.43
236	BORDER STATES ELECTRIC SUPPLY	Summarized transactions: 25	4,336.10
237	VIKING ELECTRIC SUPPLY INC	Summarized transactions: 36	3,367.60
238	CINTAS CORP	Summarized transactions: 89	3,251.27
239	INNOVATIVE OFFICE SOLUTIONS L	Summarized transactions: 31	3,216.68
240	ARNOLDS SUPPLY & KLEENIT CO (	Summarized transactions: 14	3,188.70
241	GRAYBAR ELECTRIC COMPANY INC	Summarized transactions: 8	3,154.07
242	LAWSON PRODUCTS INC (P)	Summarized transactions: 15	2,607.93
243	FIRST CLASS PLUMBING & HEATIN	Summarized transactions: 13	2,518.24
244	REDI HAUL TRAILERS INC	Summarized transactions: 8	2,453.71
245	CITY OF ROCHESTER	Summarized transactions: 11	2,375.15
246	DAKOTA SUPPLY GROUP	Summarized transactions: 22	2,131.46
247	ALDEN POOL & MUNICIPAL SUPPLY	Summarized transactions: 8	1,920.96
248	WRIGHT TREE SERVICE INC	Summarized transactions: 4	1,901.33
249	WIESER PRECAST STEPS INC (P)	Summarized transactions: 5	1,832.50
250	WESCO DISTRIBUTION INC	Summarized transactions: 9	1,717.90
251	CENTURYLINK	Summarized transactions: 6	1,699.83
252	GRAINGER INC	Summarized transactions: 18	1,627.41
253	SHI INTERNATIONAL CORP (P)	Summarized transactions: 2	1,622.10
254	ACTION BATTERY WHOLESALERS IN	Summarized transactions: 4	1,532.59
255	CRESCENT ELECTRIC SUPPLY CO	Summarized transactions: 20	1,485.51
256	COOKE ROBERT	Summarized transactions: 4	1,481.97
257	HUSKIE TOOLS INC	Summarized transactions: 11	1,451.87
258	MISSISSIPPI WELDERS SUPPLY CO	Summarized transactions: 15	1,360.83
259	LOCATORS AND SUPPLIES	Summarized transactions: 6	1,206.46
260	HALLIDAY PRODUCTS INC	Summarized transactions: 3	1,171.22
261	RICHARDSON DONN	Summarized transactions: 3	1,147.67
262	METRO SALES INC	Summarized transactions: 3	1,140.78
263	TOMPKINS MARY	Summarized transactions: 4	1,112.05
264	ROCH PLUMBING & HEATING CO IN	Summarized transactions: 2	1,098.34
265	KLAMERUS DOUG	Summarized transactions: 3	1,072.45
266	BADGER METER INC (P)	Summarized transactions: 17	1,037.04
267	MCMASTER CARR SUPPLY COMPANY	Summarized transactions: 30	1,032.44
268	VERIZON WIRELESS	Summarized transactions: 2	1,022.73
269	AIR CLEANING SPECIALISTS INC	Summarized transactions: 3	1,014.42
270	BOWMANS SAFE & LOCK SHOP LTD	Summarized transactions: 5	1,003.46
271	MEINERS TYLER J	Summarized transactions: 4	1,002.21
272	CORPORATE WEB SERVICES INC	Summarized transactions: 3	980.25
273	HAWKEYE SERVICES	Summarized transactions: 2	961.87
274	CUSTOM COMMUNICATIONS INC	Summarized transactions: 2	956.53
275	BOBCAT OF ROCHESTER	Summarized transactions: 2	938.89
276	FIEK STEVEN	Summarized transactions: 3	918.54
277	BENNETT PETER	Summarized transactions: 3	918.54

Attachment: A/p Board listing [Revision 1] (4643 : A/P Board Listing)

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

278	REINDERS INC	Summarized transactions: 5	909.87
279	DZUBAY TONY	Summarized transactions: 6	902.42
280	TWIN CITY SECURITY INC	Summarized transactions: 1	894.07
281	CONSOLIDATED COMMUNICATIONS d	Summarized transactions: 3	886.69
282	DAVIES PRINTING COMPANY INC	Summarized transactions: 2	876.71
283	CINTAS CORP	Summarized transactions: 5	828.70
284	MASTEC NORTH AMERICA INC	Summarized transactions: 1	825.16
285	BASLER ELECTRIC COMPANY	Summarized transactions: 3	811.21
286	HEWLETT PACKARD ENTERPRISE CO	Summarized transactions: 1	810.65
287	DAKOTA SUPPLY GROUP	Summarized transactions: 4	796.96
288	SELECTIVE INSURANCE COMPANY O	Summarized transactions: 1	752.00
289	FEDEX	Summarized transactions: 12	747.72
290	PAYMENT REMITTANCE CENTER	Summarized transactions: 3	746.42
291	SOLARWINDS INC	Summarized transactions: 1	731.03
292	ASPEN INC	Summarized transactions: 1	728.75
293	HACH COMPANY	Summarized transactions: 4	719.66
294	CITY OF ROCHESTER	Summarized transactions: 2	716.57
295	MIDCONTINENT ISO INC	Summarized transactions: 1	704.44
296	GHA TECHNOLOGIES INC	Summarized transactions: 3	686.67
297	AUTHORIZE.NET	Summarized transactions: 1	684.30
298	KRANZ JEFFREY A	Summarized transactions: 2	672.45
299	ALL SEASONS POWER & SPORT INC	Summarized transactions: 1	670.05
300	ROOT RIVER HARDWOODS INC	Summarized transactions: 2	662.63
301	CLEMENTS CHEVROLET CADILLAC S	Summarized transactions: 3	654.85
302	STEVE BENNING ELECTRIC	Summarized transactions: 2	652.00
303	U S A SAFETY SUPPLY	Summarized transactions: 2	650.66
304	INSTY PRINTS ROCHESTER (P)	Summarized transactions: 3	640.62
305	SCHONSTEDT INSTRUMENT COMPANY	Summarized transactions: 3	636.29
306	ZEE MEDICAL SERVICE INC (P)	Summarized transactions: 3	631.27
307	PAAPE ENERGY SERVICE INC	Summarized transactions: 1	611.33
308	GREAT RIVER ENERGY	Summarized transactions: 1	600.11
309	ADKINS TERRY L	Summarized transactions: 1	593.20
310	BAIER GERALD	Summarized transactions: 1	575.00
311	PEOPLES ENERGY COOPERATIVE (P)	Summarized transactions: 3	572.75
312	ON SITE SANITATION INC	Summarized transactions: 4	560.70
313	NAPA AUTO PARTS (P)	Summarized transactions: 28	558.91
314	DOBLE ENGINEERING COMPANY	Summarized transactions: 1	534.38
315	MASON TED	Summarized transactions: 2	528.45
316	METTLER TOLEDO THORNTON INC	Summarized transactions: 1	527.96
317	RESCO	Summarized transactions: 6	521.04
318	WHITewater WIRELESS INC	Summarized transactions: 2	511.34
319	SCHUTZ CEDRIC	Summarized transactions: 1	500.00
320	GATEWAY	Summarized transactions: 1	500.00
321	OLSON, TREVOR	Summarized transactions: 1	500.00
322	SCHNEIDER ELECTRIC USA INC. (	Summarized transactions: 1	496.97
323	NETWORK SERVICES COMPANY	Summarized transactions: 4	496.16
324	NARDINI FIRE EQUIPMENT CO INC	Summarized transactions: 1	496.00
325	WIRE CLOTH MANUFACTURERS INC	Summarized transactions: 1	483.58
326	WENCK ASSOCIATES INC	Summarized transactions: 1	482.50
327	VOSS CLARK	Summarized transactions: 2	476.50
328	IRON MOUNTAIN DBA	Summarized transactions: 2	466.65
329	PULSTAR INC	Summarized transactions: 4	464.91
330	CANADIAN HONKER RESTAURANT &	Summarized transactions: 6	459.07
331	FEDEX FREIGHT INC	Summarized transactions: 2	457.76
332	SCHMIDT GOODMAN OFFICE PRODUC	Summarized transactions: 1	454.75
333	RAIN RICHARD	Summarized transactions: 2	452.26

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ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

334	HIMEC INC (P)	Summarized transactions: 1	450.00
335	POMPS TIRE SERVICE INC	Summarized transactions: 3	440.47
336	LARSON DRU	Summarized transactions: 3	421.20
337	McGRANN SHEA CARNIVAL STRAUGH	Summarized transactions: 1	418.75
338	POSSABILITIES OF SOUTHERN MN	Summarized transactions: 1	418.00
339	AMERICAN PAYMENT CENTER	Summarized transactions: 1	413.00
340	MULCAHY COMPANY INC	Summarized transactions: 2	400.00
341	FRONTIER	Summarized transactions: 1	388.08
342	MISSISSIPPI WELDERS SUPPLY CO	Summarized transactions: 2	347.08
343	FASTENAL COMPANY	Summarized transactions: 11	346.74
344	CUSTOM TRUCK BODY & EQ CO INC	Summarized transactions: 2	346.43
345	READY MIX CONCRETE COMPANY LL	Summarized transactions: 2	343.07
346	BURNS & MCDONNELL INC	Summarized transactions: 1	334.38
347	MOTOROLA INC	Summarized transactions: 2	328.40
348	BLUESPIRE STRATEGIC MARKETING	Summarized transactions: 2	327.08
349	CENTURYLINK	Summarized transactions: 1	325.95
350	WARNING LITES OF MN INC	Summarized transactions: 1	322.08
351	TOTAL RESTAURANT SUPPLY	Summarized transactions: 5	318.82
352	PEOPLES ENERGY COOPERATIVE (P	Summarized transactions: 1	308.95
353	ULTEIG ENGINEERS INC	Summarized transactions: 1	305.00
354	ALTEC INDUSTRIES INC	Summarized transactions: 2	300.12
355	WUMS AMER POWER DISPATCHERS A	Summarized transactions: 1	300.00
356	HUDSON WORKWEAR CO INC	Summarized transactions: 2	295.00
357	AFFILIATED CREDIT SERVICES IN	Summarized transactions: 1	290.69
358	KEACH TODD	Summarized transactions: 2	281.60
359	MINNESOTA ENERGY RESOURCES CO	Summarized transactions: 3	277.45
360	RONCO ENGINEERING SALES INC	Summarized transactions: 2	274.21
361	HALO BRANDED SOLUTIONS	Summarized transactions: 2	269.59
362	BOB GANDER PLUMBING & HEATING	Summarized transactions: 1	263.10
363	TOTAL TOOL SUPPLY INC (P)	Summarized transactions: 2	259.99
364	BARRY SCREEN PRINT CO dba	Summarized transactions: 4	256.50
365	IFIXIT	Summarized transactions: 12	252.06
366	WINKELS ELECTRIC INC	Summarized transactions: 1	251.25
367	MN DEPT OF HEALTH - WELL MGMT	Summarized transactions: 1	250.00
368	BEST BUY BUSINESS ADVANTAGE d	Summarized transactions: 4	247.45
369	SCHLINK WALTER	Summarized transactions: 3	246.85
370	KAESER COMPRESSORS INC.	Summarized transactions: 5	246.82
371	METTLER TOLEDO THORNTON INC	Summarized transactions: 1	245.81
372	MN MUNICIPAL POWER AGENCY	Summarized transactions: 1	244.72
373	ADAPTASPACE INC.	Summarized transactions: 1	236.57
374	MAJERUS WILLIAM	Summarized transactions: 1	234.00
375	MENARDS ROCHESTER SOUTH	Summarized transactions: 4	233.79
376	ANDERTON RANDY	Summarized transactions: 1	232.00
377	KOTSCHEVAR MARK	Summarized transactions: 2	229.11
378	SHERWIN WILLIAMS CO	Summarized transactions: 4	226.51
379	WIDSETH SMITH NOTLING & ASSOC	Summarized transactions: 1	224.00
380	MSC INDUSTRIAL SUPPLY CO INC	Summarized transactions: 8	215.10
381	FCX PERFORMANCE INC	Summarized transactions: 4	214.52
382	CDW GOVERNMENT INC	Summarized transactions: 6	208.73
383	NU-TELECOM dba	Summarized transactions: 1	208.66
384	QUALITY OVERHEAD DOOR INC	Summarized transactions: 1	200.00
385	COMMUNITY EDUCATION	Summarized transactions: 1	200.00
386	REBATES	Summarized transactions: 5	200.00
387	HY VEE	Summarized transactions: 3	197.63
388	STURM DANNY K	Summarized transactions: 1	197.00
389	WRIGHTS SMALL ENGINE SERVICE	Summarized transactions: 3	195.81

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

390	HACH COMPANY	Summarized transactions: 3	191.19
391	ADVANTAGE DIST LLC (P)	Summarized transactions: 2	189.00
392	SCHONSTEDT INSTRUMENT COMPANY	Summarized transactions: 2	182.00
393	JESTUS TIM	Summarized transactions: 1	182.00
394	KURTZ DALE	Summarized transactions: 1	182.00
395	INSTITUTE FOR ENVIRONMENTAL	Summarized transactions: 1	179.88
396	FLOETER CHARLES	Summarized transactions: 2	177.99
397	JOHNSON PRINTING CO INC	Summarized transactions: 2	175.93
398	NAPA AUTO PARTS (P)	Summarized transactions: 1	168.47
399	LIFELINE INCORPORATED	Summarized transactions: 3	168.24
400	KAMAN INDUSTRIAL TECHNOLOGIES	Summarized transactions: 6	166.42
401	P F C EQUIPMENT INC (P)	Summarized transactions: 3	163.21
402	SNAP ON INDUSTRIAL	Summarized transactions: 1	158.04
403	PROGRESSIVE TRUCK BODY REPAIR	Summarized transactions: 3	153.09
404	OSWEILER TODD	Summarized transactions: 2	151.68
405	KIWANIS CLUB OF ROCHESTER WES	Summarized transactions: 1	150.00
406	ALTERNATIVE TECHNOLOGIES INC	Summarized transactions: 1	140.00
407	WRIGHTS SMALL ENGINE SERVICE	Summarized transactions: 1	131.87
408	NIGHTHAWK dba	Summarized transactions: 1	130.12
409	NORTHERN / BLUETARP FINANCIAL	Summarized transactions: 1	125.99
410	MENARDS ROCHESTER NORTH	Summarized transactions: 2	124.26
411	OPTIV SECURITY INC	Summarized transactions: 1	118.46
412	TRUCK UTILITIES INC	Summarized transactions: 2	113.75
413	DWYER INSTRUMENTS INC	Summarized transactions: 2	113.17
414	NOVASPECT INC	Summarized transactions: 2	112.59
415	OLM COUNTY	Summarized transactions: 1	112.00
416	JASPER ENGINEERING & EQUIP CO	Summarized transactions: 2	111.21
417	FRANZ REPROGRAPHICS INC	Summarized transactions: 3	108.21
418	MN PIPE & EQUIPMENT	Summarized transactions: 3	107.74
419	TEXTILE CARE SERVICES	Summarized transactions: 1	106.88
420	BENSON ANTHONY	Summarized transactions: 1	101.20
421	MEDORA CORPORATION (P)	Summarized transactions: 1	100.00
422	DEX MEDIA	Summarized transactions: 1	99.00
423	HEIMER MICHAEL	Summarized transactions: 2	97.50
424	HOEFT MONA	Summarized transactions: 1	96.96
425	OLM COUNTY PROPERTY RECORDS	Summarized transactions: 3	96.00
426	MN SUPPLY COMPANY INC	Summarized transactions: 2	91.21
427	SARGENTS LANDSCAPE NURSERY IN	Summarized transactions: 2	87.64
428	WARNING LITES OF MN INC	Summarized transactions: 1	85.40
429	SLEEPY EYE TELEPHONE CO	Summarized transactions: 1	84.76
430	CHARTER COMMUNICATIONS HOLDIN	Summarized transactions: 1	83.85
431	LYLES SALES & SERVICE	Summarized transactions: 1	83.04
432	BECKER, JOSEPH	Summarized transactions: 1	81.36
433	LORTON DATA INC	Summarized transactions: 1	79.55
434	MENARDS ROCHESTER NORTH	Summarized transactions: 3	77.43
435	C & N UPHOLSTERY	Summarized transactions: 1	75.00
436	ROCH AREA CHAMBER OF COMMERCE	Summarized transactions: 1	75.00
437	GARCIA GRAPHICS INC	Summarized transactions: 2	75.00
438	VANCO SERVICES LLC	Summarized transactions: 1	74.30
439	POST BULLETIN CO	Summarized transactions: 1	73.44
440	FIRST SUPPLY (P)	Summarized transactions: 1	68.59
441	AGRICULTURAL WEATHER INFO SER	Summarized transactions: 1	65.00
442	AMAZON.COM	Summarized transactions: 2	64.10
443	BAUER BUILT INC (P)	Summarized transactions: 2	63.51
444	FEDEX	Summarized transactions: 2	61.29
445	MN DEPT OF LABOR & INDUSTRY	Summarized transactions: 1	59.00

ROCHESTER PUBLIC UTILITIES

A/P Board Listing By Dollar Range

For 09/12/2015 To 10/14/2015

Consolidated & Summarized Below 1,000

446	MENARDS ROCHESTER SOUTH	Summarized transactions: 2	53.71
447	PROFESSIONAL INSTRUMENT COMPA	Summarized transactions: 1	48.09
448	THOMAS TOOL & SUPPLY INC	Summarized transactions: 4	44.85
449	T E C INDUSTRIAL INC	Summarized transactions: 2	42.26
450	WHKS & CO	Summarized transactions: 1	38.53
451	POWER DYNAMICS INC	Summarized transactions: 3	32.06
452	DOUBLETREE HOTEL - BGDS HOTEL	Summarized transactions: 1	30.00
453	BREKKE MATTHEW	Summarized transactions: 1	29.32
454	OLM COUNTY CENTRAL FINANCE	Summarized transactions: 1	28.80
455	A T & T MOBILITY	Summarized transactions: 1	27.75
456	ARROW ACE HARDWARE-ST PETER	Summarized transactions: 2	23.57
457	EAGLE EYE POWER SOLUTIONS LLC	Summarized transactions: 3	23.51
458	MINNESOTA ENERGY RESOURCES CO	Summarized transactions: 1	23.25
459	ELECTRICAL CONSULTANTS INC (P	Summarized transactions: 1	21.96
460	DAVE SYVERSON TRUCK CENTER IN	Summarized transactions: 1	20.87
461	HILGRAEVE INC	Summarized transactions: 2	20.28
462	BUTTON BARB	Summarized transactions: 1	20.00
463	BATTERIES PLUS	Summarized transactions: 1	19.22
464	GOODIN COMPANY	Summarized transactions: 4	17.52
465	CHS ROCHESTER	Summarized transactions: 1	17.42
466	ARROW ACE HARDWARE-ST PETER	Summarized transactions: 2	15.56
467	HUMPHREY STEPHANIE	Summarized transactions: 1	15.00
468	TOKAY SOFTWARE	Summarized transactions: 1	13.00
469	FREUND ROBERT T	Summarized transactions: 1	12.88
470	SHERWIN WILLIAMS CO	Summarized transactions: 1	11.75
471	ROCH AREA BUILDERS INC	Summarized transactions: 1	10.00
472	GLOBAL EQUIPMENT COMPANY	Summarized transactions: 1	8.54
473			
474		Price Range Total:	190,850.67
475			
476		Grand Total:	14,542,187.13

Attachment: A/p Board listing [Revision 1] (4643 : A/P Board Listing)

FOR BOARD ACTION

Agenda Item # (ID # 4642)

Meeting Date: 10/27/2015

SUBJECT: Preliminary 2016 Electric and Water Budgets

PREPARED BY: Peter Hogan

ITEM DESCRIPTION:

Provided under separate cover is a copy of the preliminary 2016 electric and water capital and operating budgets. A separate presentation of these budgets was given to the Board's finance committee on October 20th. Comments from that meeting have been included in the full Board presentation. Management will be reviewing two electric budget scenarios that take into consideration starting construction of the West Side Energy Station in 2016 with an in-service date of 2018, The Board will be asked for final approval of the budgets at the November 10th meeting and forward on to the City Council for their approval at the November 16th meeting.

In the electric utility, management is presenting a baseline budget in keeping with the cost of service projections adopted by the Board in 2014 and uses cash reserves along with debt financing until rates are adjusted in 2018. The second scenario shows rates being adjusted in 2016, 2017 and 2018 to reduce the reliance on cash reserves, increase the debit coverage ratio and reduce the 2018 rate adjustment. The significant business drivers are:

- Increased debt service payments for the West Side Energy Station and completing the CAPX 2020 project.
- Electric rates have been approved for 2015 @ 3.5%; 2016 @ 1.7% and 2017 @ 1.7%
- Wholesale rates from SMMPA for 2016 will increase by 6%
- Proposed change in reserves based on the 3 year cost of service study recommendations;
- Continuation of investments into our system for growth and reliability;
- Investments in IT systems
- Need to meet financial targets:
 - o Change in Net Assets (Net Income)
 - o Debt Service Coverage Ratio
 - o Equity Percent

FOR BOARD ACTION

Agenda Item # (ID # 4642)

Meeting Date: 10/27/2015

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- o Minimum cash reserves per Board policy

In the water utility, management is presenting a budget in keeping with the cost of service projections adopted by the Board. Based on the Board's direction from last month we are recommending the following three year revenue adjustments for 2016 @ 6.0%, 2017 @ 6.0% and 2018 @ 6.0%. This rate track was posted for public comment in the paper of record along with our website. The main drivers for the water budget are:

- Continued water conservation programs and education;
- New Water Tower - St Bridget SE;
- Larger capital expenditures for water main replacements associated with City planned street reconstructions;
- Water Tower Painting & Cleaning

In addition to the budget approval schedule referenced above the Board will also be asked for final approval of the water rate adjustments at the November 10th Board meeting which will also be forwarded on the City Council for their approval in conjunction with the water budget at the November 16th meeting.

UTILITY BOARD ACTION REQUESTED:

No action required.

FOR BOARD ACTION

Agenda Item # (ID # 4640)

Meeting Date: 10/27/2015

SUBJECT: West Side Energy Station Project

PREPARED BY: Wally Schlink

ITEM DESCRIPTION:

In January of 2015 the process of updating the RPU Infrastructure Plan was initiated using Burns & McDonnell as the planning engineering firm to assist in the planning process. Typically the Plan is updated every 3 years or as significant change in the utility industry might demand.

At the June 30, 2015 meeting the RPU Board was presented the results of the 2015 Update to the RPU Infrastructure Plan which the Board accepted and placed on file. The results of the plan indicated a need for additional accredited capacity and the need to take action to reduce risk related to vintage units that are no longer supported by the OEM. The recommendation of Burns & McDonnell was to develop and install a peaking resource to meet the RPU power supply requirements.

At the July 28, 2015 Board meeting approval to conduct a Preliminary Engineering Study, as well as the initiation of the application for a MISO Generation Interconnection Agreement and the permitting process was approved.

At the August 28, 2015 meeting the results of the Engineering Study were presented and RPU Board gave approval to proceed on project development as well as executing a professional services agreement with Burns & McDonnell for procurement and evaluation of bids for the reciprocating engine generating sets. The outcome of the study indicated the selection of a peaking unit to comply with the Infrastructure Plan and presented a schedule, budget and scope for the project.

As a result of the Board's direction a bid specification was developed and issued which included the technical specification and terms & conditions for the procurement of reciprocating engine generator sets totaling an output of approximately 49.9 megawatts and responses from 4 vendors were received. A team made up of RPU staff and Burns & McDonnell engineers evaluated the bid packages and the results of that process are being presented to the Board at the October meeting.

The low life cycle bidder was Wartsila North America for 5 each 20V34SG spark ignited natural gas reciprocating engines. These units are compliant with the targets set in the 2015 Infrastructure Plan and with the recently announce focus on sustainable opportunities for the future Rochester power supply. There are some final details to be

FOR BOARD ACTION

Agenda Item # (ID # 4640)

Meeting Date: 10/27/2015

resolved in the final agreement to the satisfaction of the Rochester City Attorney and General Manager hence the request for the Board's approval to be contingent on the successful resolution of those issues.

Representatives from Burns & McDonnell and RPU staff are available to respond to any questions.

UTILITY BOARD ACTION REQUESTED:

Staff requests approval by the RPU Utility Board and to recommend approval by the Rochester Common Council to proceed with the purchase of the reciprocating engine generator sets from Wartsila North America contingent on the approval of the RPU General Manager and the Rochester City Attorney for an amount not to exceed \$22,500,000 and the execution of a final agreement defining the terms of the purchase.

EXHIBIT 1 – GUARANTEED DATES

ITEM	No Earlier Than*	No Later Than**
Auxiliary Equipment		
Control system	10 months from NTP	11 month from NTP
SCR & catalyst	10 months from NTP	11 months from NTP
Remaining auxiliaries	8 months from NTP	9 months from NTP
Engine Generator Set 1	8 months from NTP	10 months from NTP
Engine Generator Set 2	8 months from NTP	10 months from NTP
Engine Generator Set 3	8 months from NTP	10 months from NTP
Engine Generator Set 4 (if supplied)	8 months from NTP	10 months from NTP
Engine Generator Set 5 (if supplied)	8 months from NTP	10 months from NTP
Engine Generator Set 6 (if supplied)	TBD	
Substantial Completion***	N/A	N/A

* Vendor may not deliver the Equipment, and Owner will not be obligated to accept delivery of the Equipment before these dates.

** Wartsila comment – later delivery is possible if desired.

*** Wartsila comment – see Clarifications and Exceptions

*/** Wartsila comment – if option A4 (dual fuel for base bid, 5x20V34DF) or if Option A7 (3x18V50DF) is taken, the ‘No Earlier Than’ and ‘No Later Than’ dates will be approximately an additional two months.

Attachment: RPU EXHIBIT 1 delivery dates -Wartsila (4640 : West Side Energy Station Project)

SECTION 013301 – APPENDIX A
SUBMITTAL SCHEDULE

LEGEND: E = Electronic Copy; P(x) = Paper Copy (no. of copies); ARO = After ~~Receipt of Order~~ or Notice to Proceed

ID	Description	Subject To LD's	Preliminary	Final (conformed including Owner's and Engineer's comments)*
1	Notice of Shipment			E – 30 Days prior to shipment
2	Recommended Installation & Commissioning Spare Parts			
3	Recommended Spare Parts			
4	Preliminary Work Progress Schedule			E – 15 Days ARO
5	Schedule of Submittals		E – 45-30 Days ARO	
6	Detailed Manufacturing Schedule with milestones for each piece of Major Equipment			E – 30 Days ARO
7	Detailed drawing list with submittal dates			E – 30 Days ARO
8	Detailed commissioning work Progress Schedule			E – 10 Days prior to delivery
9	Preliminary Heavy Haul and delivery execution plan		E – 90-120 Days ARO	E – 60 Days prior to delivery
10	Preliminary O&M Manuals		E – 60-30 Days prior to earliest Guaranteed Delivery Date	
11	Installation Manuals		E – 60 Days prior to earliest Guaranteed Delivery Date	P (4), E – 30 Days prior to earliest Guaranteed Delivery Date
12	Final O&M Manuals			P (4), E – 60 Days after earliest Guaranteed Delivery Date
13	Packing Lists			P (1) – With each shipment
14	Bills of Materials		E – 180 Days ARO with notice of shipment	
15	Unloading, Handling & Storage Requirements and Procedures			P (1), E – With Notice of Shipment
16	Material Safety Data Sheets (if applicable)			P (4), E – With Notice of Shipment and with each Shipment
17	Engine data		E – 45 Days ARO	E – 90 Days ARO
18	Generator data including all impedances and time constants		E – 30 Days ARO (for Preliminary)	E – 90 Days ARO
19	Engine Genset and Auxiliary equipment outline drawings with dimensions and weights (<u>SCR dimensional drawings not included – 70 Days ARO</u>)	Y	E – Preliminary 45 Days ARO	E – 120 Days ARO

Attachment: RPU Submittal schedule rev Wartsila (4640 : West Side Energy Station Project)

SECTION 013301 – APPENDIX A
SUBMITTAL SCHEDULE

LEGEND: E = Electronic Copy; P(x) = Paper Copy (no. of copies); ARO = After ~~Receipt of Order or~~ Notice to Proceed

20	Recommended engine hall General Arrangement Drawing with spacing between engine Gensets and Electrical Equipment Layout		E – 45 Days ARO	
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Attachment: RPU Submittal schedule rev Wartsila (4640 : West Side Energy Station Project)

SECTION 013301 – APPENDIX A
SUBMITTAL SCHEDULE

5.1.b

LEGEND: E = Electronic Copy; P(x) = Paper Copy (no. of copies); ARO = After Receipt of Order or Notice to Proceed

ID	Description	Subject To LD's	Preliminary	Final (conformed including Owner's and Engineer's comments)*
21	P&IDs	Y	E – 90 Days ARO	E – 120 Days ARO
22	Equipment Installation Details	Y	E – 90 Days ARO	E – 120 Days ARO
23	Piping Information	Y	E – 90 Days ARO	E – 120 Days ARO
24	System Descriptions		E – 90 Days ARO	E – 120 Days ARO
25	System I/O List	Y	E – 90 Days ARO	E – 120 <u>150</u> Days ARO
26	Equipment Electrical Schematics		E – 90 Days ARO	E – 120 Days ARO
27	Control Panel Outline Drawings and Front Views with dimensions, weights and cable entry locations	Y	E – 60 Days ARO	E – 120 Days ARO
28	Control panel Internal Wiring Drawings		E – 120 Days ARO	E – 150 Days ARO
29	Control panel external Interconnection Wiring Diagrams and Lists		E – 90 Days ARO	E – 120 <u>150</u> Days ARO
30	Interconnection cable tabulation		E – 90 Days ARO	E – 120 <u>150</u> Days ARO
31	Electrical Load List	Y	E – 60 Days ARO	E – 90 Days ARO
33	Protective relay, synchronizer, voltage regulator, power system stabilizer settings and files		E – 120 Days ARO	E – 150 Days ARO
33	Steel Member Shop Drawings and Erection Drawings	Y	E – 120 Days ARO	E – 150 Days ARO (Certified)
34	Exhaust Ductwork Shop Drawings (from Engines to SCR)	Y	E – 120 Days ARO	E – 150 Days ARO
35	All Other Drawings		E – 60 <u>90</u> Days ARO	E – 120 Days ARO
36	Factory Test Schedule			E – 30 Days prior to test
37	Factory Test Procedure			E – 21 Days prior to test
38	Factory Test Report			E – 30 Days after test

* Final drawings shall be due no earlier than 15 days after receipt of last comments, irrespective of days after NTP.

Attachment: RPU Submittal schedule rev Wartsila (4640 : West Side Energy Station Project)

GENERAL TERMS & CONDITIONS

Reciprocating Engines

1. Work. Vendor shall perform the Work (the "Work") in accordance with the solicitation documents, collectively, the "Contract". Any deviations from this Contract shall be executed via written and agreed change order. Changes to Work and contract price shall be communicated and accepted in writing prior to execution of affected work.

2. Insurance. Contractor and all subcontractors shall obtain, as a minimum, the following described types and limits of insurance coverage. All policies called for herein shall become effective before Contractor or subcontractors undertake any work under this Contract and shall remain in full force and effect for a minimum of one year after closing of this Contract. Further, Contractor and all subcontractors shall furnish City with an insurance certificate or certificates at the time the Contract is consummated between the parties, evidencing such insurance coverage prior to work commencing on said project. Each of said certificates shall provide the following:
 - a. A 30-day notice of cancellation and/or non-renewal.
 - b. Workers' Compensation. Contractors shall obtain and maintain workers' compensation insurance policy with limits meeting the statutory requirements for Minnesota.
 - c. Liability Insurance. Contractors shall obtain and maintain a commercial liability insurance policy with limits of at least \$1,000,000 each occurrence/\$2,000,000 aggregate for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of the Contractor, its officers, employees or agents during the term of the Contract. Products and completed operations coverage is to be included within the required limits.
 - d. Excess Umbrella Liability. Contractors shall obtain and maintain an umbrella policy with limits of at least \$1,000,000 to cover the excess above the underlying policies requested in this insurance section.
 - e. Auto Insurance. All Contractors shall obtain and maintain commercial auto insurance policy with limits of at least \$1,000,000 each occurrence for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of the Contractor, its officers, employees or agents, including hired and non-owned vehicles, during the Contract. **If such insurance contains a general aggregate limit, the general aggregate limit shall not be less than \$2,000,000.**
 - f. The liability insurance policies shall name the City of Rochester as an additional insured for claims from work conducted pursuant to this Contract. Contractor's liability insurance shall be primary to any insurance held by the City of Rochester.
 - g. Certificate holder shall be listed as:
 - City of Rochester
 - Acting Through Its Public Utility Board
 - 4000 East River Road NE
 - Rochester MN 55906-2813

3. Compensation. City agrees to pay Vendor in accordance with the accepted Vendor's quotation, bid, or proposal on file.

4. Guarantee and Warranty. Vendor warrants and guarantees to City that all equipment will be in accordance with the contract documents and will not be defective. Vendor warrants the equipment and components furnished under these contract documents shall be fit and suitable for the specific purpose intended.

5. Liability. Vendor shall defend, indemnify and hold harmless the City, its officials, officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Vendor or its, agents, or employees under this Contract. Vendor shall defend and pay all costs in defending these claims, including attorney's fees.

Vendor shall also defend, indemnify, and hold harmless the City and its officials, officers, agents, and employees from all claims brought by the employees or agents of Vendor, arising out of or as a result of any act, or failure to act, whether or not negligent, in connection with the purchase of material pursuant to this contract by Vendor, its employees and agents. Vendor shall defend and pay all costs in defending these claims, including attorney's fees.

6. Dispute Resolution. Vendor and City shall attempt to resolve conflicts or disputes under this Contract in a fair and reasonable manner and agree that if resolution cannot be made to attempt to mediate the conflict by a professional mediator. If mediation does not settle any dispute or action which arises under this Contract or which relates in any way to this Contract or the subject matter of this Contract, it shall be subject to legal proceedings as either party deems appropriate. The venue of any legal proceeding shall be in Olmsted County, Minnesota.

7. Governing Law. This Contract shall be governed by the laws of the State of Minnesota.

8. Familiarity with Work, Measurements, and Local Conditions. Prior to bidding, the Vendor shall be informed as to the nature of the work; the character, quality, and quantity of the materials required; the conditions under which the work is to be performed, the conditions for work with existing features, conditions of the grounds, and other relevant matters which will affect the work. No extras shall be allowed as a result of the Vendor's misunderstanding of the extent of scope of the work, or as a result of failure to inspect the sites and conduct his own investigation.

The accuracy of all measurements associated with the work covered by this contract is entirely the Vendor's responsibility. No allowance will be made for any expenditure due to inaccurate measurements.

9. Confidentiality. Each party agrees to keep the other party's Confidential Information, as defined below, strictly confidential, and not to appropriate the other party's Confidential Information for its own use or disclose the other party's Confidential Information to anyone other than its employees on a need-to-know basis, and only then if such persons agree to maintain its confidentiality. Upon termination of this Agreement, each party will return to the other party all of the other party's Confidential Information which it has in its possession, including all reports, plans, drawings, specifications, electronic files and other data compilations developed or created as a result of services performed. "Confidential Information" means information not generally known to outside persons, which is proprietary to the party, including trade secret information about processes, methods, products, systems, pricing, technology, prototypes, plans, drawings, designs, configurations, models, samples, blue prints, know-how, business plans, financing, agents, suppliers and customers. All such information about a party will be presumed to be Confidential Information, regardless of whether it is so marked or identified. Notwithstanding the foregoing, the following will not be considered Confidential Information for purposes of this Agreement: (a) any information that a party can demonstrate was in its legitimate possession prior to the time of disclosure by the other party; (b) any information that was in the public domain prior to disclosure by a party to the other party, or that comes into the public domain through no fault of the other party; (c) any information which is disclosed to a party by a third party who has legitimate possession thereof and the right to

make such disclosure; and (d) any information that a party is required to disclose by a court, government body or state law. Contractor also agrees to comply with the Minnesota Government Data Practices Act in performing the work covered by this Agreement.

10. Determination of Award. In the event of a tie bid or proposal, the City shall award the contract to the proposer that, in the City's sole discretion, provides the best value to the City. In making that determination the City may consider the proposer's ready availability to provide both skilled labor and materials.
11. Independent Contractor. Contractor is deemed an independent Contractor for purposes of this Contract and any and all persons employed by Contractor in the performance of any work or services required or provided for in this Contract shall not be considered employees of City for any purpose whatsoever, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit, and any and all such claims shall be the sole obligation and responsibility of Contractor.
12. Assignability. Contractor shall not assign this Contract, or any part thereof, to a subcontractor or third party without the prior written consent of City. The Contractor shall submit the names of subcontractors proposed for the principal parts of the work, and for such other as the City may direct, and shall not employ any that the City may, within a reasonable time, object to as incompetent or unfit.
13. Changes in Work. The City may order changes in the work, the contract sum being adjusted accordingly. All such orders and adjustments shall be in writing and no claim for an addition to the contract sum shall be valid unless so ordered.
14. Force Majeure. City and Vendor shall not be liable for failure to perform or delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of governmental authority or of the City, riot, embargo, fuel or energy shortage, car shortage, accidents or delays in transportation, or due to any other cause beyond the City's or Vendor's reasonable control. Should the progress of the work be or seem to be delayed at any time by such causes, the Vendor shall at once notify the City in writing of the occurrence, in order that a record of same may be made and in order that the City may decide whether the delay was unavoidable. Should the Vendor fail or neglect to notify the City as above provided, such omission shall be construed as a waiver of all claims and rights to an extension of time for the completion of the work on account of such delays. In the event of delay in performance due to any such cause, the date of delivery or time for completion may be extended by a period of time mutually agreed as reasonable and necessary to overcome the effect of such delay.
15. Minnesota State Sales and Use Tax. The Minnesota Sales and Use Tax applies to the purchase of tangible personal property by political subdivisions of the state of Minnesota.
16. Correlation and Intent of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflict or discrepancies among the Contract Documents, the interpretations will be based on the following priorities: (a) The Agreement (the Contract) including any approved change orders; (b) Addenda, with those of later date having precedence over those of earlier dates; (c) The General Conditions of the Contract as modified by the City; (d) The Special Terms and Conditions of the Contract; (e) Specifications; (f) Drawings, larger scale over small scale drawings (i.e. 1/2" scale drawings take precedence over 1/4" scale drawings). In the event of any conflict between State and City requirements the stricter of the two control. In the event of patent inconsistencies within or between parts of the Contract Documents, or between the Contract

Documents and applicable standards, codes, or ordinances, the Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirements.

17. Termination for Cause. The City may terminate this Contract for cause, in whole or in part, by written notice to Vendor if Vendor: fails to deliver the equipment and materials or to perform the Work within the time specified in this Contract; fails to tender conforming equipment and materials; fails to obtain proper licenses, permits and registrations; fails to obtain and maintain required insurance coverage; fails to make progress so as to endanger timely performance of this Contract; fails to comply with the site safety requirements; violates any applicable laws; or fails to provide adequate assurances of performance. If, after termination, it is determined that Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the Contract had been terminated for the convenience of the City.
18. Termination for Convenience. Upon at least three (3) days written notice to Vendor specifying the extent to which the Contract is terminated, the City shall have the right to terminate this Contract or any portion thereof with respect to equipment and materials not yet shipped or Work not yet performed, without liability and in addition to its other rights and remedies, at any time and for any reason.
19. Survival. The obligations of the parties hereunder which by their nature should survive the termination of this Contract or the completion of the Work hereunder, including, without limitation, those provisions of this Contract which provide for the protection against liability, shall survive and inure to the benefit of the parties.
20. Limitations. In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise shall the City be liable for consequential, special or indirect damages, including, without limitation, damages or losses in the nature of business interruption, loss of reputation, loss of or increased costs related to third party financing, loss of anticipated profits or anticipated revenue, or cost of capital.
21. Severability of Provisions. If any term, condition or provision of this Contract or the application thereof to any party hereto be invalid or unenforceable at law, the offending word(s), sentence(s) or paragraph(s) shall be considered as stricken from this Contract and the remainder of this Contract, shall not be affected thereby, and each remaining term, condition and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.
22. No Waiver. Failure by the City to enforce any provision hereof, the City's failure or delay in exercising rights or remedies provided herein or by law, the City's approval of, acceptance of, or payment for the Work, or any part or combination thereof, shall neither relieve nor release Vendor from any of its obligations under this Contract, shall not be deemed a waiver of any rights of the City to insist upon strict performance hereof or of any of the City's rights or remedies under this Contract or by law, and shall not operate as a waiver of any of the provisions hereof.
23. Prior Dealings. No course of prior dealing or performance between the City and Vendor or usage of trade shall be relevant to supplement, explain, interpret, or modify any term, condition, or instruction used in this Contract.
24. Other Remedies. The City may set off or recoup any amount owed to the City by Vendor against any amount owed to Vendor by the City. Also, the City may withhold payment to Vendor, in whole or in part, to the extent reasonably necessary to protect the City from loss on account of any Contract breach by Vendor. When the grounds for withholding payments are removed, payment of such withheld amounts shall be made. No interest shall be due or payable by the City on amounts withheld

in good faith. And the City may, at its sole discretion, back-charge and invoice to Vendor all costs the City incurs arising from or related to Vendor's breach of this Contract. Acceptance of all or part of the Work shall not deprive the City of the right to revoke acceptance and return any of the equipment and materials or the right to make a claim for damages because of any non-conforming Work or later-discovered defects. No remedy conferred upon or reserved to the City herein is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract or existing at law or in equity.

25. Claims. Except where expressly stated otherwise in this Contract, no claim for extra compensation or for additional time for performance of the Work shall be valid unless Vendor shall first have provided written notice of such claim to the City within three (3) Days of the start of the event giving rise to the claim. Such notice is a material consideration of this Contract and if Vendor fails to provide the City such notice within such time frame, Vendor's claim shall be deemed waived.

SPECIAL TERMS & CONDITIONS

Reciprocating Engines

1. **Delivery.** Engine generator sets and accessories shall be delivered by Vendor DDP Incoterms® 2010 to the project site. The Contract sum shall include cost to deliver, including packing per good practice suitable for sea shipment, and transport insurance. Delivery of the engines and generators shall be by Vendor to final foundation location at the project site. Delivery of the auxiliaries shall be by truck to the project site. Risk of loss shall pass to the City upon delivery, and title shall pass to the City upon acceptance. Engine generator sets and accessories shall not be manufactured or delivered without prior approval of the required shop drawings, product data, and samples (the “Submittals”—See Specifications Section 013301).
2. **Warranty Period.** Warranty coverage shall last for 12 months after Substantial Completion, or for 24 months from the last generator set delivery, whichever period ends first. (By “Substantial Completion” it is meant the event when (i) erection or installation of the equipment and materials furnished under the Contract has been completed by the installing contractor and required field services have been furnished, (ii) the equipment and materials are operating safely for the purpose of commissioning and startup, (iii) all testing of the Work has been completed and all test data properly evaluated, (iv) the performance guarantees have been met, and (v) Vendor has delivered to City all operating instructions, maintenance manuals, and warranties.) The Owner shall have the right to discover and report a warranty claim within six (6) months following the warranty period as long as the City can provide evidence that the failure occurred during the warranty period.
3. **Liquidated Damages.** If Vendor fails to deliver the Submittals noted as “subject to LDs” in the Submittal Schedule within the time therein specified, or fails to meet the Guaranteed Dates (see Exhibit 1 below), or if the generator sets fail to meet the Performance Guarantees (see Exhibit 2 below), the parties agree that the City would be damaged. The parties agree that the precise amount of damage in this situation cannot be determined or measured by ordinary rules. For the purpose of liquidating the amount of damages, and not as a penalty, Vendor agrees to pay “Liquidated Damages” in the amounts and with the caps listed in the table herein in lieu of actual damages, and not as a penalty. The payment of Liquidated Damages shall be the sole and exclusive remedy for the City for the specific performance failure to which the Liquidated Damages applies, except that the City shall have the right to terminate the Contract for cause if Vendor reaches the aggregate Liquidated Damages cap of 15% of the Contract sum.

Requirement	Liquidated Damages	Cap (as % of Contract sum)
Late Delivery – Submittals	\$500/Day per Submittal	1%
Late Delivery – Auxiliary Equipment	\$10,000/Day	5%
Late Delivery – Engine Generator Sets	\$10,000/Day	15%
Late Substantial Completion	\$10,000/Day	15%
Guaranteed Unit Electrical Output	\$6,500/kW	15%
Guaranteed Unit Heat Rate	\$4,000/Btu/kw-hr	15%

Vendor shall have a remedy period of sixty (60) days after completion of the initial performance testing (see Specifications Section 485996) to make modifications, repairs and/or replacements and carry out further performance testing to demonstrate that the Performance Guarantees are met, prior to the payment of any performance Liquidated Damages. All Performance Guarantees not listed in the table above (the “Must Make Guarantees”) are not subject to buy-down via Liquidated Damages and shall not be capped or limited by any other provision of this Contract. Vendor shall do all things necessary and appropriate to achieve such Performance Guarantees, including exercising each and every repair or replacement alternative.

4. **Inspection and Testing.** The City reserves the right to review Vendor’s quality assurance and quality control procedures and to inspect and witness all Vendor’s operations and tests. Vendor shall notify the

City at least thirty (30) days in advance when portions of the Work are ready for inspection or testing in accordance with the Vendor's inspection and test plan as approved by the City. Failure to inspect and accept or reject the Work shall not relieve the Vendor from responsibility for compliance with the Contract requirements nor impose liability on the City. The City reserves the right to reject Work that is unsatisfactory, faulty, or defective or does not conform to the requirements of the Contract. Vendor shall carry out factory tests of the engine generator sets in accordance with Vendor's procedures for such tests. City representatives it designates shall have the right to witness such factory tests. Date and time of such tests shall be communicated to City no later than thirty (30) days in advance of the planned start of the test. Vendor shall bear the cost of such tests, but City shall bear the cost for its representatives to attend them. Vendor shall carry out the site performance testing per Specifications Section 485996.

5. Payment. The City may require as a condition of any payment that the Vendor submit evidence satisfactory to the Owner that any and all claims of subcontractors, suppliers or other third parties that have performed services or provided supplies in connection with the Work included in any invoice have been paid or satisfactorily secured prior to making a final payment, including but not limited to a Partial Waiver of Lien and Release of Claims as set forth in Exhibit 3 from Supplier and all Sub-Suppliers for whose work payment is sought waiving any lien rights for the amounts requested. Payment shall be made within forty-five (45) Days following receipt of a properly documented invoice; however, in no case shall payment be due prior to the date indicated in the agreed milestone payment schedule. In particular, final payment shall be no sooner than the first date by which all of the following have occurred: (a) Vendor has delivered all equipment and materials included in the Work and paid all Liquidated Damages due to late delivery; (b) City has accepted all equipment and materials; (c) Vendor has met the Performance Guarantees or has fully paid all related Liquidated Damages; and (d) Supplier has met the Must Make Guarantees.
6. Safety. Contractor shall be fully and solely responsible for all necessary safety measures required for the work including that of any and all subcontractors. Work performed on City premises must be conducted in manner that is compliant with all applicable safety rules and regulations. Contractor shall be required to comply with the contents of the attached Contractor Safety Acknowledgement.

The Safety Manager and/or Project Manager may conduct on-site inspections to audit the Contractor's safety practices and to demand correction of any equipment or methods determined to be inadequate. Any City employee may stop or suspend a Contractor's work at any time to prevent or correct a Contractor activity that may pose a danger to the public, personnel, property, or equipment.

7. Performance Obligations. When performing Work at the site, Vendor shall comply with safety measures and procedures required by the City and shall comply with all applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property. Vendor acknowledges that the technical documents and information provided in the Contract including, without limitation, all drawings and specifications are sufficient for their intended purpose. No substitution or modification of any Goods or related component parts, materials, or manufacturing locations may be made without prior written consent of the City. Review and approval of shop drawings, samples, design and fabrication drawings, catalog data or other Submittals from Vendor is for the purpose of determining general compliance with the Contract only and the City is not reviewing such documents to evaluate the means or methods of design or fabrication. Such review shall not transfer any liability to the City or others for the proper design, fabrication and installation of the Work and shall not release Vendor of its sole liability for the Work. All design drawings custom prepared specifically for this Work shall be sealed/stamped by a licensed professional engineer in accordance with the laws of the state of Minnesota. Said sealing/stamping is the responsibility of the vendor. Drawings of products, materials, and equipment that are of standard structural designs by its manufacturer or fabricator need not contain the seal/stamp of a licensed professional engineer.

EXHIBIT 1 – GUARANTEED DATES

ITEM	No Earlier Than*	No Later Than
Auxiliary Equipment	TBD	
Engine Generator Set 1	TBD	
Engine Generator Set 2	TBD	
Engine Generator Set 3	TBD	
Engine Generator Set 4 (if supplied)	TBD	
Engine Generator Set 5 (if supplied)	TBD	
Engine Generator Set 6 (if supplied)	TBD	
Substantial Completion	N/A	

* Vendor may not deliver the Equipment, and Owner will not be obligated to accept delivery of the Equipment before these dates.

Attachment: Special Terms and Conditions- Reciprocating Engines (4640 : West Side Energy Station Project)

EXHIBIT 2 –PERFORMANCE GUARANTEES

NOTE: See Specifications Section 485966 for definitions of performance parameters and general requirements for their testing procedures.

PERFORMANCE PARAMETER	UNIT	VALUE*
1. Performance Guarantees		
Unit Electrical Output (UEO)	kW	
Unit Heat Rate (UHR)	BTU/kWh (HHV)	
2. Absolute Performance Guarantees		
Genset Minimum Load Electrical Output / % of Genset Maximum Load Electrical Output	kW / %	
Minimum Unit Electrical Output	kW	95% of UEO
Maximum Unit Heat Rate	BTU/kWh (HHV)	105% of UHR
Maximum Urea Consumption	lb/hr	
Maximum Lube Oil Consumption	US gal/hr	
3. Reliability Guarantee		
Reliability Factor	%	100%
4. Noise Guarantee**		
Maximum Genset Noise	dB(A)	
5. Maximum Emissions Guarantees** (from Genset Minimum Load Electrical Output to Genset Maximum Load Electrical Output)		
NOx (as NO ₂)	lb/hr / ppm ^{***}	/
CO	lb/hr / ppm	/
VOC (as NMNECH)	lb/hr / ppm	/
PM/PM ₁₀ /PM _{2.5} (total filterable plus condensable)	lb/hr / ppm	/
Ammonia Slip (NH ₃)	lb/hr / ppm	/
6. Maximum Startup and Shutdown Emissions Guarantees**		
NOx (as NO ₂)	lbs	
CO	lbs	
PM/PM ₁₀ /PM _{2.5} (total filterable plus condensable)	lbs	

* Missing values to be provided by bidder

** Must be met as a precondition for any other Performance Guarantees to be met.

*** All emissions stated in ppm are corrected to 15% O₂, dry.

All performance to be based on the following reference site conditions:

Altitude: 1063 ft AMSL

Ambient air temperature at engine inlet: 95 °F

Ambient relative humidity at engine inlet: 60 %

Power factor, lagging: 0.85

Fuel gas Higher Heating Value: 1041.3 BTU/ft³ (at 60°F & 14.7 psia)

Fuel gas composition equal to the average values in SECTION 485043 Appendix FG

Service water quality per SECTION 485043 Appendix SW

EXHIBIT 3 – PARTIAL WAIVER OF LIEN AND RELEASE OF CLAIMS

To the City of Rochester, Minnesota (the “City”) and others, to the extent others have interests secured by the property of the City as identified below.

Vendor name:

The Project:

PO Number:

Partial Payment Requested: \$

Vendor, contingent upon the issuance, final clearance and payment of a valuable consideration of \$ _____, which is currently due and payable states that:

1. The payment amount set forth above constitutes payment in full for Vendor’s work through the date of the last work covered by the progress payment application for which payment is sought (“Payment Date”) on the Project excepting those claims previously made in writing to Owner and remaining unsettled as of the date of this Partial Waiver of Lien and Release of Claims.
2. Vendor represents that payment has been made to the extent of prior progress payments on the Project to all of the undersigned’s sub-subcontractors, equipment providers, materialmen and laborers in connection with the performance of the Project. Supplier shall make further progress payments to its sub-subcontractors, equipment providers, materialmen and laborers out of this progress payment.

Partial Waiver and Release of Claims

NOW, THEREFORE, effective as of receipt of the payment referenced in this progress payment application, Supplier releases and waives, upon receipt of the progress payment, all claims for payment through the Payment Date, except those claims previously made in writing to Owner and remaining unsettled at the time of payment including any and all mechanic’s lien rights against the Project.

Vendor: _____

By: _____

Title: _____

Date: _____

Attachment: Special Terms and Conditions- Reciprocating Engines (4640 : West Side Energy Station Project)



Proposal

October 8, 2015

Mr. Donald Coldiron, Materials Manager
 Rochester Public Utilities
 4000 East River Road NE
 Rochester, MN 55906-2813

Subject: IFB #2015-24 Reciprocating Engines

Dear Mr. Coldiron:

Wartsila is pleased to offer power generation equipment and services for a natural gas or dual fuel power plant for the City of Rochester, Rochester Public Utilities. As can be noted in the bid forms, three different configurations have been offered for consideration as follows:

Configuration	Nominal Output
5 x 20V34SG (natural gas)	46.85 MW
5 x 20V34DF (dual fuel)	46.85 MW
3 x 18V50DF (dual fuel)	51.2 MW

Price

The total base price (Item 5 on Bid Form) for equipment according to the scope of supply outlined in documents below is as follows:

Configuration	Price (USD)
5 x 20V34SG (natural gas)	\$22,353,000
5 x 20V34DF (dual fuel)	\$24,414,000
3 x 18V50DF (dual fuel)	\$30,187,000

Details of the prices for each configuration are outlined in the in bid forms which are a part of this proposal.

Attachment: Cover Letter RPU Wartsila (4640 : West Side Energy Station Project)

This information is confidential and proprietary to Wärtsilä. No distribution or duplication in any form of any material contained herein is permitted without the prior approval of Wärtsilä.



Project name: Rochester Public Utilities
 Quotation number: PQ2015-01771
 Document creation date: October 8, 2015

Price conditions

Pricing is firm for the equipment as offered, including the clarifications and exceptions provided, and is dependent on negotiating a mutually acceptable sales Contract. The price does include customs duty, but does not include taxes or any other charges outside the country of origin. The price is tied to the Euro to United States Dollar exchange rate, currently at 1.1266 USD per Euro, as shown on the European Central Bank web site here:

<http://www.ecb.int/stats/exchange/eurofxref/html/index.en.html>

These prices will be held firm for 90 days (January 8, 2016). After that date, prices will be adjusted to reflect the current USD/EUR exchange rate.

Delivery terms

DDP Site, Rochester, Minnesota, according to Incoterms 2010.

Delivery time

Delivery time will be conditional to available production capacity. The equipment will be ready for shipment from our factory 8 months after the date of receipt of advance payment provided that Wärtsilä has received the Letter of Credit in accordance with the agreed schedule.

General

For your evaluation, the following documents shall form an integral part of this offer.

- Bid Forms
- Authorization of Signature Form
- Bid Security
- References and Supplemental Information Form
- Stated Exceptions
- Other Required Data

Warranty period

The warranty period with respect to the Equipment begins at the Delivery and ends twelve (12) months from the date of the performance test certificate or eighteen (18) months from the date of the Delivery, whichever first occurs.

We trust our offer meets with your approval and look forward to further discussion. Should you require further information, please do not hesitate to contact us.

Sincerely,

Gary L. Groninger
 Senior Business Development Manager
 WÄRTSILÄ NORTH AMERICA



RPU 5x20V34SG

Annex A - Scope of supply list

Section	Description	QTY	By Wärtsilä	By Owner
A	POWER GENERATION EQUIPMENT			
A1	GENERATING SET			
A1.1	ENGINE			
	Wärtsilä 20V34SG engine	5	x	
A1.2	GENERATOR			
	Generator: 13,800 Volt; 60 Hz (F/B)	5	x	
	Flexible coupling	5	x	
	Generator pre-lube pump	5	x	
A1.3	BASE FRAME FOR ENGINE AND GENERATOR			
	Common base frame for engine and generator	5	x	
	Steel springs (set)	5	x	
	Fastening equipment (set)	5	x	
A1.4	CONNECTIONS			
	Flexible connections between engine and external piping	5	x	
	- Flexible hoses and gaskets (set)	1	x	
	- Cooling water bellows (set)	1	x	
	- Exhaust gas bellows	2	x	
	- Charge air bellows compensator	2	x	
A1.5	ENGINE PLATFORMS			
	Engine maintenance platform prefabricated	5	x	
A2	MECHANICAL AUXILIARY SYSTEMS			
A2.1	AUXILIARY MODULES			
	Engine auxiliary module	5	x	
	- Pre heating unit	1	x	
	- Thermostatic valve high temperature water system	1	x	
	- Thermostatic valve low temperature water system	1	x	
	- Pressure increasing pump	1	x	
	- Piping	1	x	
	- Valves and gauges	1	x	
	- Module control panel	1	x	
	Exhaust gas module	5	x	
	- Low temperature expansion tank	1	x	
	- Charge air silencer	2	x	
	- Exhaust gas branch pipe	1	x	

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Project name: RPU
 Project number: DRAFT
 Quotation number: DRAFT
 Created by: mfi005
 Document Id:
 Document creation date: 168 October 2015

Section	Description	QTY	By Wärtsilä	By Owner
	- Purge fan unit	1	x	
	- Safety vent piping	1	x	
	- Piping	1	x	
	- Oil mist separator	1	x	
	Auxiliary module platform, <u>ladders and railings</u>	5	x	
	<u>Auxiliary module support steel</u>	<u>5</u>	<u>x</u>	
A2.2	FUEL SYSTEM			
A2.2.6	GAS SYSTEM			
	Gas filtering station (if required)	1		x
	Main gas shut off valve	1		x
	Engine wise shut off valves (if needed)	5		x
	Gas heater, regulating station and conditioning skid	1		x
	Main gas flow measuring unit	1		x
	- Flow meter	1		x
	- Closing valves	2		x
	- By-pass valve	1		x
	Compact gas ramp (without flow meter)	5	x	
	Gas fuel flow meter	5		x
	Piping and valves fuel gas system inside engine hall	1		x
	Piping and valves fuel gas system outside engine hall	1		x
A2.3	LUBRICATING OIL SYSTEM			
	Lubricating oil unloading pump unit: fresh oil	1		x
	Lubricating oil storage tank for fresh oil (internal epoxy coated)	1		x
	Equipment for lubricating oil storage tank: fresh oil	1		x
	Lubricating oil service tank (internal epoxy coated)	1		x
	Lubricating oil service tank equipment (internal epoxy coated)	1		x
	Lubricating oil storage tank for used oil	1		x
	Lubricating oil transfer pump unit (mobile)	2	x	
	Lubricating oil transfer pump unit (stationary) - double	1	x	
	Piping and valves lubricating oil system inside engine hall	1		x
	Piping and valves lubricating oil system outside engine hall	1		x
	Lubricating oil system pipe insulation outside engine hall	1		x

Attachment: RPU 5x34SG scope of supply rev1 (4640 : West Side Energy Station Project)



Project name: RPU
 Project number: DRAFT
 Quotation number: DRAFT
 Created by: mfi005
 Document Id:
 Document creation date: 168 October 2015

Section	Description	QTY	By Wärtsilä	By Owner
A2.4	COMPRESSED AIR SYSTEM			
	Starting air bottle (internal epoxy coated)	2		X
	Starting air compressor unit - double	1		X
	Instrument air compressor unit	1		X
	Instrument air bottle (internal epoxy coated)	2		X
	Piping and valves compressed air system (set)	1		X
A2.5	COOLING SYSTEM			
	Cooling radiator – standard noise	5	X	
	Cooling radiator ladder and railings	5	X	
	Maintenance water tank unit (glycol / water) (internal epoxy coated)	1		X
	Piping and valves maintenance water system (set)	1		X
	Piping and valves cooling system inside engine hall	1		X
	Cooling system pipe insulation inside engine hall	1		X
	Piping and valves cooling system outside engine hall	1		X
	Cooling system pipe insulation outside engine hall	1		X
A2.6	CHARGE AIR SYSTEM			
	Charge air filter	5	X	
	Weather hood	5	X	
	Ducting charge air system (set) (internal epoxy coated)	5		X
A2.7	EXHAUST SYSTEM			
	Exhaust gas silencer – 35dBA	5	X	
	Bellows for exhaust gas silencer	5		X
	Exhaust gas ducting	5		X
	Bellows for exhaust gas ducting	5		X
	Safety vent counter flanges including rupture disk (for exhaust gas ducting)	10	X	
	Exhaust gas stack	5		X
A2.9	WATER TREATMENT SYSTEM			
	Water booster unit	2		X
	Piping and valves treated water system (set)	1		X
A2.10	FIRE PROTECTION SYSTEM			
A2.10.1	FIRE PROTECTION, COMMON			
	Fire water system container	1		X
	Fire water tank	1		X

Attachment: RPU 5x34SG scope of supply rev1 (4640 : West Side Energy Station Project)



Project name: RPU
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 Document Id:
 Document creation date: 168 October 2015

Section	Description	QTY	By Wärtsilä	By Owner
	Fire water tank equipment	1		X
	Outdoor hydrant	9		X
	Outdoor hose cabinet	9		X
	Portable fire extinguisher (dry powder type)	9		X
	Piping and valves fire water system inside engine hall	1		X
	Underground piping and valves fire water system outside engine hall	1		X
A2.10.2	FIRE PROTECTION, ENGINE HALL			
	Hydrant valve pairs	9		X
	Standpipe hose cabinet	9		X
	Portable fire extinguisher (dry powder type)	19		X
	Mobile foam unit	2		X
A2.10.4	FIRE PROTECTION, ELECTRICAL BUILDING			
	Portable fire extinguisher (CO2 type)	9		X
	Portable fire extinguisher (dry powder type)	1		X
A2.10.8	FIRE PROTECTION, FIRE FIGHTING PUMP HOUSE / CONTAINER			
	Wet pipe sprinkler system	1		X
	Portable fire extinguisher (dry powder type)	1		X
A2.11	PIPE SUPPORTS AND CROSSOVERS			
	Pipe secondary supports	5		X
	Day tank containment area concrete wall crossover	1		X
	Pipe crossover at site area	3		X
A5	EMISSION CONTROL SYSTEMS			
A5.2	NOx AND CO CONTROL SYSTEM			
	Selective catalytic reduction system with oxidation catalyst	5	X	
	- Mixing duct and mixers	5	X	
	- Reactor housing	5	X	
	- Catalyst elements (set)	5	X	
	- Oxidation catalyst element (set)	5	X	
	- Reducing agent injection system	5	X	
	- Reducing agent dosing system	5	X	
	- Control and automation system	5	X	
	- NOx feedback control system	5	X	

Attachment: RPU 5x34SG scope of supply rev1 (4640 : West Side Energy Station Project)



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 Quotation number: DRAFT
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Section	Description	QTY	By Wärtsilä	By Owner
	Insulation and cladding selective catalytic reduction system	5		x
	Urea forwarding pump unit	1	x	
	Bellows for selective catalytic reduction system	10	x	
	Safety vent counter flanges including rupture disk (for selective catalytic reduction system ducting)	5	x	
	Urea storage tank	1		x
	Piping and valves selective catalytic reduction system (set)	1		x
A7	AUTOMATION SYSTEM			
A7.1	OPERATOR'S STATION			
	WOIS workstation	3	x	
	WISE workstation	1	x	
	Engineering workstation	1	x	
	Uninterrupted power supply (UPS)	1	x	
A7.2	CONTROL PANELS			
	Central common control panel (CFA)	2	x	
	Central generating set control panel (CFC)	5	x	
	PSS modules (integral to AVR)	5	x	
	Auxiliary module panel (BJA)	5	x	
A7.5	CABLES AND ACCESSORIES			
	Control and instrumentation cables	1		x
A8	ELECTRICAL SYSTEMS			
A8.1	MAIN SWITCHGEAR (MV SYSTEM)			
	Main busbar	1		x
	Generator cubicle	5		x
	Neutral point panel	5	x	
	Neutral grounding resistors	5	x	
	Outgoing feeder cubicle	1		x
	Station auxiliary transformer feeder cubicle	1		x
	Generator cubicle cable (set)	5		x
	Generator neutral point cable (set)	5		x
	Outgoing feeder cubicle cable (set)	1		x
	Cable terminations and cable fittings	1		x
A8.2	STATION SERVICE SYSTEM (LV SYSTEM)			

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Section	Description	QTY	By Wärtsilä	By Owner
	Station auxiliary transformer	1		X
	Black start unit	1		X
	Low voltage switchgear	1		X
	Radiator panels	5	X	
	Frequency converter (for cooling radiator)	5	X	
	Station auxiliary transformer medium voltage cables (set)	1		X
	Station auxiliary transformer low voltage cables (set)	1		X
	Low voltage cables (set)	1		X
	Cable ladders	5		X
	Cable terminations and cable fittings	1		X
A8.3	DC SYSTEM			
	DC system - 24 VDC (grounded)	1	X	
	DC system - 125 VDC (floating)	1		X
	DC system switchyard control	1		X
A8.4	HIGH VOLTAGE SYSTEM (HV SYSTEM)			
A8.4.1	OUTDOOR SWITCHYARD			
	Power transformer	1		X
	Common equipment	1		X
	Transformer bay	1		X
	Transmission line bay	1		X
	Single feeder	1		X
	Remote terminal unit (RTU)	1		X
	Power line carrier (PLC)	1		X
A8.4.2	CONNECTION WITH UTILITY			
	Overhead distribution line	1		X
	Physical connection with the grid	1		X
	Tariff metering system	1		X
A8.5	PLANT ELECTRIFICATION AND EARTHING			
	Safety earthing system (above ground)	1		X
	Lighting and building electrification	1		X
	- Electrification engine hall, material	1		X
	--- Electrification electrical building, material	1		X
	--- Electrification fire fighting pump house, material	1		X
	--- Electrification lubricating oil unloading station, material	1		X
	Lightning protection system	1		X

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Section	Description	QTY	By Wärtsilä	By Owner
	Fire detection system	1		X
	- Fire detection engine hall, material	1		X
	- Fire detection electrical building, material	1		X
	- Fire detection fire fighting pump house, material	1		X
	Gas detection system	1		X
	- Gas detection engine hall, material	1		X
A9	TOOLS			
	Engine maintenance tools (set)	1	X	
	Engine hand tools (set)	1	X	
	Tools for turbocharger (set)	1	X	
	General tools workshop	1		X
	Tools for electrical equipment (set)	1		X
	Oil quality test equipment	1		X
B	CIVIL AND STRUCTURAL			
B1	ENGINE HALL			
	Substructures engine hall	1		X
	- Foundations engine	1		X
	- Foundations engine hall	1		X
	- Concrete slabs and ramps	1		X
	- Plumbing and sanitary installations below 0-level	1		X
	Superstructures engine hall, material	1		X
	- Steel frame charge air / exhaust gas pipe module support	1		X
	Superstructures engine hall, installation	1		X
	Process ventilation engine and auxiliary hall, material	1		X
	Process ventilation engine and auxiliary hall, installation	1		X
	Cranes engine hall, material	1		X
	Cranes engine hall, installation	1		X
B3	ELECTRICAL / CONTROL BUILDING			
	Substructures electrical / control building	1		X
	- Foundations	1		X
	- Concrete slabs and ramps	1		X
	- Plumbing and sanitary installations below 0-level	1		X
	Superstructures electrical / control building, material	1		X
	- Steel frame	1		X

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Section	Description	QTY	By Wärtsilä	By Owner
	- Foundation bolts	1		X
	- External walls	1		X
	- Internall walls	1		X
	- Roof	1		X
	- Doors	1		X
	- Windows	1		X
	- Finishing	1		X
	- Plumbing and sanitary installations above 0-level	1		X
	- Comfort ventilation and air conditioning	1		X
	Superstructures electrical / control building, installation	1		X
B5	OTHER POWER PLANT BUILDINGS			
B5.3	FIRE FIGHTING PUMP HOUSE / CONTAINER			
	Substructures fire fighting pump house	1		X
	Superstructures fire fighting pump house, material	1		X
	Superstructures fire fighting pump house, installation	1		X
B11	OIL STORAGE AND CONTAINMENT AREAS			
B11.1	DAY TANK CONTAINMENT AREA			
	Substructures day tank containment area	1		X
	- Substructures for fresh lubricating oil storage tank	1		X
	- Substructures for lubricating oil service tank	1		X
	Day tank containment area slab and wall	1		X
B11.6	LUBRICATING OIL HANDLING FACILITIES			
	Substructures lubricating oil unloading station	1		X
B12	AUXILIARY STRUCTURES			
B12.1	COOLING SYSTEM STRUCTURES			
	Substructures cooling system	1		X
	Superstructures cooling system, material	5		X
	Superstructures cooling system, installation	1		X
B12.2	SUPPORTING STRUCTURES			
	Substructures exhaust gas stack	1		X
	Superstructures exhaust gas stack, installation	1		X
	Substructures exhaust gas pipes	1		X
	Superstructures exhaust gas pipes, installation	1		X
	Substructures pipe bridge	1		X

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Section	Description	QTY	By Wärtsilä	By Owner
	Substructures pipe stair	1		X
	Substructures pipe supports	1		X
	Superstructures exhaust gas module support	5		X
	Superstructures charge air filter and ventilation unit platform, installation	1		X
	Superstructures exhaust gas stack, material	1		X
	Superstructures exhaust gas pipes, material	1		X
	Superstructures charge air filter and ventilation unit platform, material	1		X
B12.3	EXHAUST EMISSION CONTROL STRUCTURES			
	Substructures NOx and CO control system	1		X
	Superstructures, ladders and platforms NOx and CO control system, materials	1		X
	Superstructures NOx and CO control system, installation	1		X
B12.5	WATER TREATMENT STRUCTURES			
	Superstructures water treatment structures, material	1		X
	Superstructures water treatment structures, installation	1		X
B13	POWER TRANSMISSION AREAS			
B13.1	AUXILIARY TRANSFORMER AREAS			
	Substructures black start unit (container)	1		X
	Superstructures black start unit (container), material	1		X
	Superstructures black start unit (container), installation	1		X
	Substructures auxiliary transformer	1		X
	Conduits in auxiliary transformer area, material and work	1		X
	Fence auxiliary transformer area, material and work	1		X
B13.2	POWER TRANSFORMER AREAS			
	Surface finishing power transformer area, material and work	1		X
	Fence power transformer area, material and work	1		X
	Substructures power transformer	1		X
	Substructures block transformer	1		X
	Trenches in power transformer area, material and work	1		X
	Conduits in power transformer area, material and work	1		X
B13.3	SWITCHYARD AREA			
	Surface finishing switchyard area, material and work	1		X

Attachment: RPU 5x34SG scope of supply rev1 (4640 : West Side Energy Station Project)



Project name: RPU
 Project number: DRAFT
 Quotation number: DRAFT
 Created by: mfi005
 Document Id:
 Document creation date: 168 October 2015

Section	Description	QTY	By Wärtsilä	By Owner
	Fence switchyard area, material and work	1		X
	Substructures for electrical equipment in switchyard area	1		X
	Other substructures in switchyard area, material and work	1		X
	Trenches in switchyard area, material and work	1		X
	Conduits in switchyard area, material and work	1		X
B14	SITE WORKS			
B14.1	EXISTING STRUCTURES AND DEMOLITION			
	Demolition of existing structures	1		X
	Removal / relocation of existing cables and pipes	1		X
B14.2	SITE PREPARATION			
	Site clearing	1		X
	Removal of contamination	1		X
	Top soil removal	1		X
	Site levelling (cutting and filling)	1		X
	Site excavation	1		X
	Site blasting	1		X
	Site filling, material and work	1		X
	Soil improvement, material and work	1		X
B14.3	UNDERGROUND NETWORK			
	Gas pipe to plant	1		X
	Water pipe to plant	1		X
	Sewage pipe to plant	1		X
	Drainage system, material and work	1		X
	Underground piping, material and work	1		X
	- Sewage	1		X
	- Oily water sewage	1		X
	- Water	1		X
	- Gas	1		X
	Sewage treatment and pump stations, material	1		X
	Sewage treatment and pump stations, installation	1		X
	Underground conduits, cables and lighting pole foundations, material and work	1		X
	Earthing network, material	1		X
	Earthing network, installation	1		X
B14.4	LANDSCAPING			

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Section	Description	QTY	By Wärtsilä	By Owner
	Landscaping, material and work	1		X
	- Lawns	1		X
B14.5	PAVING AND SURFACING			
	Access road, material and work	1		X
	Roads and parking areas, material and work	1		X
	Gravel areas, material and work	1		X
	Curb stones, material and work	1		X
B14.6	SITE ACCESSORIES			
	Fence, material	1		X
	Fence, installation	1		X
B14.7	SHELTERS AND OTHER STRUCTURES			
	Substructures shelters and other structures	1		X
	Superstructures shelters and other structures, material	1		X
	Superstructures shelters and other structures, installation	1		X
C	SURVEYS, ENGINEERING AND DOCUMENTATION			
C1	SURVEYS AND INVESTIGATIONS			
	Soil investigation	1		X
	Topographical site survey	1		X
	Seismic survey	1		X
C2	ENGINEERING			
C2.1	ENGINEERING MANAGEMENT			
	Engineering management of engineering activities supplied by Wärtsilä	1	X	
	- Constructability review / design review for Items and work under the responsibility of Wärtsilä	1	X	
	- Prepare and maintain engineering schedule	1	X	
	Engineering management of engineering activities supplied by Owner	1		X
C2.2	PROCESS ENGINEERING			
	Process engineering of items supplied by Wärtsilä	1	X	
	Process engineering of items supplied by Owner	1		X
C2.3	MECHANICAL ENGINEERING			
	Mechanical engineering of items supplied by Wärtsilä	1	X	
	Mechanical engineering of items supplied by Owner	1		X

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Section	Description	QTY	By Wärtsilä	By Owner
C2.4	ELECTRICAL ENGINEERING			
	Electrical engineering of items supplied by Wärtsilä	1	x	
	Electrical engineering of items supplied by Owner	1		x
C2.5	CIVIL AND STRUCTURAL ENGINEERING			
	Civil engineering of items supplied by Wärtsilä	1	x	
	Civil engineering of items supplied by Owner	1		x
C3	DOCUMENTATION			
C3.1	CONCEPTUAL DESIGN DOCUMENTS			
	Site layout drawing	1	x	
	Power house plan and section drawings	1	x	
	Color program	1	x	
	Process main flow diagrams	1	x	
	Main single line diagram	1	x	
C3.2	BASIC DESIGN DOCUMENTS			
	Site layout drawing	1	x	
	Power house plan and section drawings	1	x	
	Process main flow diagrams and device lists (detailed)	1	x	
	Main single line diagram (detailed)	1		x
	Front layout of main electrical cabinets	1	x	
	Dimensional drawings of major equipment	1	x	
	Generating set drawing	1	x	
	Dimensional drawing of generating set foundation	1	x	
	Off-site inspection and test plan (quality plan)	1	x	
C3.3	DETAILED DESIGN DOCUMENTS			
	As per detailed engineering scope of supply list	1	x	
C3.4	CONSTRUCTION AND COMMISSIONING DOCUMENTS			
	Final design documents	1	x	
	Site quality plan	1	x	
C3.5	ENGINEERING APPROVAL DOCUMENTS			
	PE stamping of detailed structural engineering	1	x	
C3.6	COMMERCIAL OPERATION DOCUMENTS			
	Station manuals in English (set)			
	- As hard copy	4	x	
	- On digital media	8	x	

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Section	Description	QTY	By Wärtsilä	By Owner
D	TRANSPORTATION (DDP, Site)			
D1	TRANSPORTATION OF ITEMS SUPPLIED BY Wärtsilä			
D1.1	MATERIAL AND SERVICES FOR LOGISTICS			
	Packing and marking of equipment	1	x	
	Arranging of export license or other export authorisation (if needed)	1	x	
	Notification to buyer of time and place of delivery of equipment	1	x	
D1.2	COLLECTION TRANSPORT			
	Loading of equipment at place of manufacturing	1	x	
	Transportation of equipment from place of manufacturing to place of shipment	1	x	
	Transport insurance from place of manufacturing to place of shipment	1	x	
	Unloading equipment at place of shipment	1	x	
	Warehousing in country of shipment (up to 8 month from notice to proceed)	1	x	
	Containerizing of loose cargo at place of shipment	1	x	
	Pre shipment inspection	1		x
	Pre shipment inspection assistance	1	x	
	Loading of equipment on Ship at port / place of shipment	1	x	
	Fixing cargo on Ship	1	x	
D1.3	MAIN TRANSPORT			
	Engaging and instructing freight forwarder	1	x	
	Arranging of bill of lading	1	x	
	Preparation of origin country documents required for destination customs clearance	1	x	
	Transportation of equipment from port / place of shipment to port / place of destination	1	x	
	Main transport / freight insurance	1	x	
	Unloading of equipment at port / place of destination	1	x	
	Arrange import license or import permit (if required)	1		x
	Import taxes and duties (if required)	1	x	
D1.4	SITE TRANSPORT			
	Transport route preparation (if required)	1		x
	- Bridge reinforcements	1		x

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Section	Description	QTY	By Wärtsilä	By Owner
	- Pavements for existing roads	1		X
	- Removal of obstacles	1		X
	Loading of equipment on train/truck at port/warehouse	1	X	
	Transportation of equipment from port/warehouse to project site	1	X	
	Transport insurance from port/warehouse to project site	1	X	
	Unloading of gensets at final destination	1	X	
	Unloading of equipment (other than gensets) at final destination	1		X
	Destination inspection (if required)	1		X
	Destination inspection assistance	1	X	
E	TAXES / DUTIES / PERMITS / INSURANCE			
E1	TAXES / DUTIES			
	Sales / VAT tax and local taxes	1		X
	Construction labor tax	1		X
	Other taxes / duties (if required)	1		X
E2	PERMITS			
	Local business permit	1		X
	Construction permitting, approvals, stamps, etcetera	1		X
	Building permit	1		X
	Water permit	1		X
	Environmental permit	1		X
	Permitting procedures	1		X
	Local fees for doing construction	1		X
	Other permits (if required)	1		X
E3	INSURANCE			
	General commercial liability insurance	1		X
	Workers compensation and employers liability insurance	1	X	X
	Property and liability coverage	1		X
	Other insurances (if required)	1		X
F	PROJECT MANAGEMENT			
F1	PROJECT MANAGEMENT AT WÄRTSILÄ			
	Project management [Items and work under the responsibility of Wärtsilä]	1	X	
	Maintain project schedule [Items and work under the	1	X	

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Section	Description	QTY	By Wärtsilä	By Owner
	responsibility of Wärtsilä]			
G	CONSTRUCTION MANAGEMENT			
G2	TECHNICAL ASSISTANCE DURING INSTALLATION			
	Mechanical advisor (man days)	90	x	
	Mechanical advisor (man days)	60	x	
	Electrical advisor (man days)	90	x	
	Civil advisor (man days)	60	x	
	Controls advisor (man days)	30	x	
H	TEMPORARY INSTALLATIONS AND ARRANGEMENTS			
H1	ROADS AND WORKING AREAS			
	Temporary access road to site	1		x
	Temporary roads at site	1		x
	Preparation for engine intake	1		x
	Preparing of working areas	1		x
	Lay down area [provide]	1		x
	Lay down area [preparation]	1		x
H2	SITE OFFICE AND STAFF ARRANGEMENTS			
	Site office for Wärtsilä personnel including air conditioning, heating and social facilities	1		x
	Site office for Owner	1		x
	Furniture for Wärtsilä site office	1	x	
	Computers, phones and other office furnishings for Wärtsilä site office	1	x	
H3	UTILITIES			
	Telephone, telefax and internet connection to site	1		x
	Electricity source and hook up, main electrical panel	1		x
	Electricity consumption during construction	1	x	
	Water source and hook up	1		x
	Water consumption during construction	1		x
H4	WASTE MANAGEMENT DURING CONSTRUCTION			
	Dust control	1		x
	Sewage collection and treatment	1		x
	Waste disposal Wärtsilä generated	1		x
	Hazardous waste disposal Wärtsilä generated	1		x
H5	SECURITY			

This information is confidential and proprietary to Wärtsilä.

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Section	Description	QTY	By Wärtsilä	By Owner
	Temporary fencing	1		X
	General security and site access control	1		X
	Security of Wärtsilä supplied equipment	1		X
H6	SAFETY			
	General safety and fire protection	1		X
	Safety for Wärtsilä personnel and Wärtsilä contractors	1	X	
H7	DEMOBILIZATION			
	Restoring of areas used by Wärtsilä	1		X
I	INSTALLATION			
I1	MECHANICAL INSTALLATION			
I1.1	MECHANICAL INSTALLATION OF ITEMS SUPPLIED BY Wärtsilä			
	Process tanks	1		X
	Fuel and water storage tanks	1		X
	Piping and ducting	1		X
	Engine generating sets, units and mechanical systems	1		X
I1.3	MECHANICAL INSTALLATION OF ITEMS SUPPLIED BY Owner			
	Process tanks	1		X
	Fuel and water storage tanks	1		X
	Piping and ducting	1		X
	Engine generating sets, units and mechanical systems	1		X
I2	ELECTRICAL INSTALLATION			
	Installation of control and low voltage cables	1		X
	Installation of control, DC and auxiliary panels	1		X
	Installation of low voltage switchgears	1		X
	Installation of medium voltage cubicles	1		X
	Installation of medium voltage cables	1		X
	Installation of station auxiliary transformers	1		X
	Installation of power transformers	1		X
	Installation of high voltage switchyard	1		X
	Installation of transmission line	1		X
	Installation of cable raceways	1		X
	Installation of safety earthing system	1		X
	Installation of lighting and building electrification	1		X

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Section	Description	QTY	By Wärtsilä	By Owner
	Installation of lightning protection system	1		X
	Installation of fire detection system	1		X
	Installation of gas detection system	1		X
J	COMMISSIONING AND START-UP			
J1	INITIAL FILLINGS, INCLUDING CONSUMED FLUIDS AND CHEMICALS DURING START-UP AND COMMISSIONING			
	Initial fillings of lubricating oil	1		X
	Lubricating oil consumed during start-up and commissioning	1		X
	Initial fillings fresh engine water	1		X
	Engine cooling water/glycol consumed during start-up and commissioning	1		X
	Initial fill urea	1		X
	Urea used during start-up and commissioning	1		X
J2	TECHNICAL ASSISTANCE DURING TESTING AND COMMISSIONING			
	Commissioning manager (man days)	30	X	
	Mechanical advisor (man days)	20	X	
	Operational advisor (man days)	10	X	
	Electrical advisor (man days)	30	X	
	PLC programmer (man days)	30	X	
	Engine automation and instrumentation tuning (man days)	20	X	
J3	TESTING PROCEDURES			
J3.1	WORKSHOP TESTS			
	Engine test according to standard program	5	X	
	Third party inspectors (if required)	1		X
J3.2	CUSTOMER WITNESS WORKSHOP TEST			
	Allowance (number of persons)	1		X
	Travel (number of persons)	1		X
	Board and lodging (number of days)	7		X
	Local transportation (number of days)	7		X
J3.3	TESTS AND COMPLETION AT SITE			
	Site test program (according to Agreement)	1	X	
	Third party inspectors (if required)	1		X

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Section	Description	QTY	By Wärtsilä	By Owner
	Third party emissions testing	1		x
	Fuel used during start-up, commissioning and testing	1		x
	Lubricating oil used during start-up, commissioning and testing	1		x
J4	TRAINING			
J4.1	TRAINING AT WÄRTSILÄ FACILITY			
	Basic engine training course	1	x	
	Advanced engine training course	1	x	
	Power plant introduction course	1	x	
	Power plant electrification course	1	x	
J4.2	TRAINING AT SITE			
	Operation and maintenance training (number of days)	10	x	
	Electrical training (number of days)	10	x	
	Travel (number of persons)	2	x	
	Board and lodging training instructor (number of days)	28	x	
	Local transportation training instructor (number of days)	28	x	
	Training material (per person)	5	x	

Attachment: RPU 5x34SG scope of supply rev1 (4640 : West Side Energy Station Project)

City of Rochester, Rochester Public Utilities Clarification and Exceptions of Wärtsilä North America, Inc.

Section	RFP Language	Wärtsilä Positions
GENERAL TERMS AND CONDITIONS		
1	Work	‘Contract’ – Wärtsilä will work with RPU to agree upon a set of documents which shall constitute the Contract, including Terms and Conditions, Scopes of Supply, Technical Specifications, performance guarantees and test procedures, among other items. Revise the last sentence as follows: Changes to Work and contract price shall be communicated and accepted in writing prior to execution of affected work.
2	Insurance	Wärtsilä can accept the insurance parameters as detailed. The Parties to discuss insurance coverages to be carried by each Party.
4	Guarantee and Warranty	Mark out “fit and suitable for the specific purpose intended” and insert “according to the technical specifications and scope of the supply.”
5	Liability	Indemnification provisions to be bilateral. The Parties to discuss what is meant by “whether or not negligent” in the last sentence.
6	Dispute Resolution	Wärtsilä cannot accept litigation in Olmsted County, Minnesota, and instead proposes a neutral venue, such as arbitration in New York City or another forum that does not favor either Party.
7	Governing Law	A law neutral to both Parties is requested. Wärtsilä suggests New York law.
8	Familiarity with Work, Measurements, and Local Conditions	Parties to discuss site requirements and scope of supply. Site inspections and investigations require that Wärtsilä have open access for inspections if extras are not allowed. The timing of the RFP and Bid dates have not allowed for site inspections.
9	Confidentiality	All confidential documents must be marked as confidential. Intangible information that is intended to be confidential must be reduced to writing within ten (10) days by the disclosing party.
12	Assignability	Neither Party shall assign the Contract without prior written consent from the other Party. Wärtsilä must be allowed to elect and manage their own subcontractors.
13	Changes in Work	Changes to the work to be submitted by change order, with agreement by both Parties as to the changes in scope, contract price, and/or delivery dates.
14	Force Majeure	Notification is to be made within fifteen (15) days once an event of Force Majeure occurrence is detected. In the event of a Force Majeure event, Wärtsilä shall be entitled to a proportionate adjustment of days and/or reasonable, direct costs.
15	Minnesota States Sales and Use Tax	Not sure what this means, in regards to MN tax form ST3 (copy included), which excludes power generation equipment from taxes. No sales or use taxes have been included in the proposal.
17	Termination	Responsibility to obtain proper licenses, permits and registrations is a duty of the owner, not of Wärtsilä, but the Parties to

The following analysis is being provided for clarification purposes only and is not indicative of the complete terms of an equipment supply agreement.

	for Cause	discuss what is necessary. Any deficiencies must have a cure period before default.
18	Termination for Convenience	Wärtsilä cannot accept termination for convenience.
20	Limitations	The exclusion of consequential, special or indirect damages to be bilateral. The liability of each of the Parties must be limited to 100% of the Contract Price.
22	No Waiver	This provision to be bilateral.
23	Prior Dealings	This provision to be bilateral.
24	Other Remedies	Wärtsilä cannot accept unilateral set off, recoup, backcharges or payment withholding. The Parties to discuss acceptable remedies in the event of disputes. Payments made beyond the due dates set out in an agreed payment schedule will accrue interest at the delayed payment rate to be agreed to by the Parties. Any issues with the Equipment to be resolved as set out under the Contract or under the terms of the warranty period. Remedy provisions to be bilateral to both Parties.
25	Claims	Claims for additional compensation or time to perform shall be done via a change order procedures to be agreed to by the Parties. Notices under the change order provisions to be given within fifteen (15) days of the start of the event giving rise to the claim.
SPECIAL TERMS AND CONDITIONS		
1	Delivery	Edit fifth sentence to read: Risk of loss shall pass to the City upon delivery, and title shall pass to the City upon acceptance and full payment. The Parties to discuss the necessary approvals required by the City.
2	Warranty Period	The meaning of the phrase: “all test data properly evaluated” is not clear. The Parties to discuss. The warranty period covers claims made during the warranty period. If a failure occurs, it would be evident well before six months have elapsed. The Parties to discuss Wärtsilä’s warranty provisions and when the warranty period begins (e.g., after 12 months after acceptance date/commercial operation or 18 months after arrival of gensets in the United States).
3	Liquidated Damages	The Parties to discuss how Auxiliary Equipment is defined. As written, Wärtsilä cannot accept LDs on Substantial Completion, as Item 2 includes services and scope (installing contractor) beyond Wärtsilä’s control. Liquidated damages and must-fix provisions (“Vendor shall do all things necessary and appropriate to achieve such Performance Guarantees, including exercising each and every repair or replacement alternative.”) are mutually-exclusive remedies, and cannot both be utilized. Comments to LD rates provided in separate document. Wärtsilä cannot accept termination for reaching the LD cap. The Parties to discuss.

Attachment: City of Rochester Legal Commercial Exceptions (4640 : West Side Energy Station Project)

The following analysis is being provided for clarification purposes only and is not indicative of the complete terms of an equipment supply agreement.

City of Rochester, Rochester Public Utilities Clarification and Exceptions of Wärtsilä North America, Inc.

5	Payment	Payments to be made within thirty (30) days of receipt of invoice. Parties to discuss mutually-acceptable payment milestones and mutually-satisfactory subcontractor lien waivers.
6	Safety	Each Party is responsible for the safety of its own employees and subcontractors, and as set out in its scope of work. However, Wärtsilä will follow Owner’s safety rules. The Parties to discuss which city employees (related or unrelated to this project) are entitled to stop or suspend the Contractor’s work. Payment due dates may be adjusted as necessary if delivery is delayed by Owner.
7	Performance Obligations	Edit the second sentence as follows: “Vendor acknowledges that the technical documents and information provided in the Contract including, without limitation, all drawings and specifications are consistent with the technical specifications and scope of supply.” With regards to air, sound or other emissions, Wärtsilä will meet the applicable performance guarantees. Shop drawings, samples, design and fabrication data, catalog data and other submittals may not necessarily be submitted to Owner for review approval. The Parties to discuss.
Instructions to Bidders		
6.3	Bonds	A bid bond has been included as requested in the Instructions. However, the requirements for performance bonds were not clear. Wartsila has the capacity to provide a performance bond as stated in 6.3, however as none were specifically stated to be included, they have not been.

Attachment: City of Rochester Legal Commercial Exceptions (4640 : West Side Energy Station Project)

The following analysis is being provided for clarification purposes only and is not indicative of the complete terms of an equipment supply agreement.



PRICE SUMMARY
PROJECT NO.:87367
West Side Peaking Unit
5.1210-Reciprocating Engine Generator Sets

	G1	G2	G3	G4	G5
	Caterpillar (5xNG)	GE Jenbacher (11xNG)	Wärtsilä (5xNG-V34SG)	Fairbanks Morse (5xNG)	Wärtsilä (3xNG-V50SG)
Base Requirements Specified					
1-Engine Generator Sets and Auxiliary Equipment	\$ 20,719,578	\$ 19,900,000	\$ 20,666,000	\$ 21,000,000	\$ 29,680,000
2-Technical assistance	\$ 1,130,172	Included except for warranty	\$ 1,534,000	\$ 432,353	Included
3-Training	\$ 100,250	\$ 100,000	\$ 153,000	\$ 58,824	Included
4-State Sales Tax	\$ -	Not included	N/A	Not included	N/A
TOTAL	\$ 21,950,000	\$ 20,000,000	\$ 22,353,000	\$ 21,491,177	\$ 29,680,000
Alternates Selected					
A1-Recommended Spare Parts	\$ 450,000	\$ 145,174	\$ 22,647	Included	\$ 34,531
-					
TOTAL	\$ 450,000	\$ 145,174	\$ 22,647	\$ -	\$ 34,531
Supplier Provided Options Selected					
SO1- Add SCR				\$ 1,375,000	
SO2- Delete 125 VDC battery system				(46,200)	
SO3- Delete all DC battery systems			\$ (37,400)	(61,600)	
TOTAL	\$ -	\$ -	\$ (37,400)	\$ 1,267,200	\$ -
CONTRACT PRICING SUMMARY					
Total Contract Amount	\$ 22,400,000	\$ 20,145,174	\$ 22,338,247	\$ 22,758,377	\$ 29,714,531
EVALUATED COST					
Commercial Adjustments					
CA1- NONE	\$ -	\$ -	\$ -	\$ -	\$ -
Technical Adjustments					
TA1- Impact on BOP costs (except fuel oil)	\$2,277,413	\$4,295,415	\$0	\$3,021,758	\$371,621
Operating Cost Adjustments					
EF1- Revenue NPV Decrease	\$ 580,045	\$ 695,624	\$ 602,144	\$ 333,531	\$ -
EF2- Fuel Cost NPV Increase	\$ 393,816	\$ -	\$ 128,838	\$ 1,058,538	\$ 691,910
EF3- O&M Cost NPV Increase	\$ 1,865,858	\$ 399,287	\$ 173,561	\$ -	\$ 166,515
Total Evaluated Amount (Contract Amount + Adjustments)	\$ 27,517,132	\$ 25,535,500	\$ 23,242,789	\$ 27,172,203	\$ 30,944,578
Ranking by Total Evaluated Cost	4	2	1	3	5
\$/ Net kW	\$583	\$547	\$509	\$561	\$621
Ranking by Specific Cost	4	2	1	3	5



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, and to recommend approval by the Rochester Common Council to approve an agreement with Wartsila North America and authorize the Mayor and the City Clerk to execute the agreement for:

West Side Energy Station Project

Approval to proceed with purchase of Reciprocating Engine Generator Sets

The amount of the agreement, contingent on the approval of the RPU General Manager and the Rochester City Attorney for an amount not to exceed, TWENTY TWO MILLION, FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$22,500,000) and the execution of a final agreement defining the terms of the purchase.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of October, 2015.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 4583)

Meeting Date: 10/27/2015

SUBJECT: Epic - Amendment to Escrow and Disbursement Agreement

PREPARED BY: Randy Anderton

ITEM DESCRIPTION:

At the September 24, 2015 RPU Board Meeting, the Board approved an item titled, "Professional Services Agreement - Substation Engineering". This approval by the Board was contingent upon, "final approval of an escrow agreement by the RPU General Manager and City Attorney". This referenced escrow agreement was officially executed on October 5th, 2015.

Exhibit A of this Escrow Agreement describes the stages of service. Since the signing of this agreement, there have been some proposed modifications to Exhibit A which provide additional detail and explanations. The proposed amendment does not change anything else in the agreement, including the amount of the payment or the fact that the amount escrowed will cover the expenses incurred. Instead, the proposed amendment will simply provide for staged implementation.

The City Attorney has reviewed this proposed change to Exhibit A.

RPU management and staff requests that the Board approve the amendment of the Escrow and Disbursement Agreement to reflect the added changes to Exhibit A.

UTILITY BOARD ACTION REQUESTED:

RPU management and staff requests that the Board approve the amendment of the Escrow and Disbursement Agreement to reflect the added changes to Exhibit A.

EXHIBIT A
STAGES OF SERVICES

Douglas Trail Sub Preliminary Schedule

Stage	Start**	Finish	Duration	Minimum Required Earnest Money Deposit***
Develop General Arrangement	9/14/2015	10/12/2015	2 weeks	\$30,000
Engineering Review *	10/12/2015	10/19/2015	1 week	
Ulteig Engineers incorporate review comments	10/19/2015	10/26/2015	1 week	
Engineering Review *	10/26/2015	11/2/2015	1 week	
Ulteig Engineers incorporate review comments	11/2/2015	11/9/2015	1 week	
Engineering Review *	11/9/2015	11/16/2015	1 week	
Develop Grading Plan drawings & specifications	11/16/2015	12/7/2015	3 weeks	
Engineering Review *	12/7/2015	12/14/2015	1 week	
Ulteig Engineers incorporate review comments	12/14/2015	1/5/2016	3.2 weeks	
Grading contractor bid process	1/5/2016	2/2/2016	4 weeks	
Evaluate grading bids	2/2/2016	2/9/2016	1 week	
Recommendation Review *	2/9/2016	2/23/2016	2 weeks	
RPU Board Approval, Signatures	2/23/2016	3/8/2016	2 weeks	
Contractor documentation	3/8/2016	3/22/2016	2 weeks	
MnDOT Spring Road Restrictions removed (typical)	5/9/2016	5/9/2016		
Grading - earthwork only.	5/9/2016	6/13/2016	5 weeks	

* Review processes to include RPU and Epic staff as mutually agreeable.

** The parties to the Escrow and Disbursement Agreement agree the start dates in this Exhibit will be updated to reflect the effective date of this Escrow Agreement

***The parties agree the work described above will done in stages and will work together to determine a minimum required deposit of a portion of the Earnest Money based on the estimated cost, scope and duration of the work included in each upcoming stage.

EXHIBIT A
STAGES OF SERVICES

Douglas Trail Sub Preliminary Schedule

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Engineering Review *	11/9/2015	11/16/2015	1 week	
Develop Grading Plan drawings & specifications	11/16/2015	12/7/2015	3 weeks	
Engineering Review *	12/7/2015	12/14/2015	1 week	
Ulteig Engineers incorporate review comments	12/14/2015	1/5/2016	3.2 weeks	
Grading contractor bid process	1/5/2016	2/2/2016	4 weeks	
Evaluate grading bids	2/2/2016	2/9/2016	1 week	
Recommendation Review *	2/9/2016	2/23/2016	2 weeks	
RPU Board Approval, Signatures	2/23/2016	3/8/2016	2 weeks	
Contractor documentation	3/8/2016	3/22/2016	2 weeks	
MnDOT Spring Road Restrictions removed (typical)	5/9/2016	5/9/2016		
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***The parties agree the work described above will done in stages and will work together to determine a minimum required deposit of a portion of the Earnest Money based on the estimated cost, scope and duration of the work included in each upcoming stage.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve an amendment of the Escrow and Disbursement Agreement for:

Professional Services Agreement - Substation Engineering

to reflect the changes to Exhibit A.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of October, 2015.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 4582)

Meeting Date: 10/27/2015

SUBJECT: Epic Memorandum of Understanding (MOU)

PREPARED BY: Randy Anderton

ITEM DESCRIPTION:

Epic, LLC has requested RPU to construct a dedicated substation (Douglas Trail Substation) with redundant facilities to serve the electrical load of the Mayo Data Center located at 4710 West Circle Dr along with the anticipated future load increases of the data center.

The MOU outlines the following:

- Provide an historical basis and pertinent background issues relative to service at Epic's location
 - o Review of current and applicable RPU procedures
- Documentation of requested substation size and capability dedicated for Epic's use
 - o Confirmation of reserved future facility capability dedicated for RPU purposes
- Documentation of Epic's contribution in aide
 - o Calculation of contribution in aide
 - o Documentation of rebate conditions for contribution in aide
 - o Ownership of equipment clarification
- Line of credit, or fiscal facility drawdown requirements
 - o Mutual agreement provisions
 - o Provisions in case, project must be curtailed prior to completion.
- Easement and/or land sale considerations
- Transmission planning impacts with MISO and regional transmission planner as might be required.

FOR BOARD ACTION

Agenda Item # (ID # 4582)

Meeting Date: 10/27/2015

-
- Project timeline and anticipated completion schedule

RPU's preliminary estimate of the project cost is \$6,111,600. Epic will be responsible for funding their portion of the construction of this substation with the provision that RPU could potentially refund a portion of this amount dependant upon how quickly the electrical load grows at this location. According to RPU's Electrical Rules & Regulations, Epic will be responsible for 100% of the cost of the redundant facilities, and these costs will not be eligible for a refund. The final costs that Epic will fund will be based upon actual project costs and not upon the project preliminary estimate.

As part of this MOU, RPU will have the responsibility to develop, design, and construct the electrical facilities and substation dedicated to Epic's use. RPU will own, maintain and retain all ownership rights to the substation and associated equipment within the substation. Funding provided by Epic will be considered as 'Contribution in Aide'.

The target date for the substation to be complete and operational is April 1, 2017.

RPU intends to exercise the option described in the MOU to make provisions within the substation for a 3rd transformer that would serve non-Epic loads. RPU will be responsible to fund the incremental cost of these provisions within the substation. RPU intends to include these funds within its 2016 budget.

The City Attorney has reviewed this MOU.

UTILITY BOARD ACTION REQUESTED:

RPU management and staff requests the Board to approve the "Memorandum of Understanding (MOU) between the City of Rochester, a Minnesota municipal corporation, acting by and through its Public Utility Board and Epic Hosting, LLC."

**MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester and Epic Hosting, LLC**

I. PURPOSE & SCOPE:

The purpose of this MOU is to document tentative agreement(s) between City of Rochester, a Minnesota municipal corporation, acting by and through its Public Utility Board (“RPU”) and Epic Hosting, LLC (“Epic”), a Wisconsin limited liability company wholly owned subsidiary of Epic Systems Corporation, a Wisconsin Corporation.

Epic’s request for redundant power supply and incremental substation capacity is honored by RPU, in compliance with RPU’s responsibility to serve commitment.

Specifically, this MOU will outline the following:

- Provide an historical basis and pertinent background issues relative to service at Epic’s location
 - Review of current and applicable RPU procedures
- Documentation of requested substation size and capability dedicated for Epic’s use
 - Confirmation of reserved future facility capability dedicated for RPU purposes
- Documentation of Epic’s contribution in aide
 - Calculation of contribution in aide
 - Documentation of rebate conditions for contribution in aide
 - Ownership of equipment clarification
- Line of credit, or fiscal facility drawdown requirements
 - Mutual agreement provisions
 - Provisions in case, project must be curtailed prior to completion.
- Easement and/or land sale considerations
- Transmission planning impacts with MISO and regional transmission planner as might be required.
- Project timeline and anticipated completion schedule

II. BACKGROUND:

The Mayo Data Center (MDC) is a legacy load on the RPU system. Consequently, RPU has invested considerable resources, from both a distribution and transmission perspective in support of MDC's load. Support to include infrastructure and fiscal investment needed to accommodate projected MDC load growth over time.

Due to the planned transfer of selected MDC assets to Epic, Epic requests incremental electrical capability and capacity, needed to accommodate projected business growth in forward years, as well as adding additional power supply diversity and redundancy.

Existing RPU Electric Rules and Regulations, section 503 – Redundant Facilities (see attachment 1); provides the guidance needed to consider this request from a primary electrical facility and redundant electrical facility perspective. Specifically, as detailed in section 503, the Customer will be required to reimburse RPU for the entire cost of additional/redundant facilities excluding however, those costs associated with any third (future) transformer.

III. RPU's RESPONSIBILITIES UNDER THIS MOU:

RPU will have responsibility to develop, design, and construct the electrical facilities and substation dedicated to Epic's use and shown on Attachment 2, being sure to work collaboratively with Epic during the process. The system will include minimum 15 MVA redundant 13,800 volt feeds with full capacity cross connect on the 13,800 volt side, with a minimum of three individual breakers on each side of the redundancy for the existing building and two expansions; in each case dedicated to Epic's use and shown on Attachment 2.

RPU will enter into applicable contracts with consultants, and/or contractors as may be necessary to augment internal RPU technical capabilities.

RPU will install applicable meter(ing) as needed, consistent with RPU electrical policies and procedures.

RPU will follow existing RPU electrical policies and procedures as they might apply generically to this project.

RPU will coordinate with Epic to approve drawdown of funds to support ongoing construction and implementation work.

RPU will maintain and share with Epic fiscal project details, needed to accurately reconcile project costs.

RPU will coordinate with applicable regional transmission planning organizations that might be necessary, procuring applicable approval(s) from those organizations as well as municipalities and other local, state and federal regulatory authorities that may be required (if any) with any related costs for such approvals be included as project costs to be part of a cost sharing contribution agreement between the parties.

It is contemplated that the City of Rochester, Minnesota, for the benefit of RPU, will acquire from Epic the fee title to the real estate where the substation and related infrastructure will be located (the "Substation Property"), at an agreed upon value with payment in cash or in kind (for example, as a credit to Epic's contribution in aid, maintenance services from RPU). In the event the City of Rochester does not acquire fee title to the Substation Property, the parties shall enter into a legal agreement that will memorialize the business terms (i.e. term, reimbursement) of RPU's use of Epic's Substation Property. Any such Agreement shall be memorialized and be recorded in the Substation Property chain of title.

IV. Epic's RESPONSIBILITIES UNDER THIS MOU:

Epic will have responsibility to work cooperatively with RPU, including providing timely review and commentary when requested.

Epic will place in escrow proceeds with Escrow Agent, pursuant to the attached Escrow Agreement for payment for professional engineering fees along with Epic providing RPU a letter from its lender setting forth Epic's financial ability to pay for the total cost (excluding costs associated with the third transformer) of this project. The procedure for drawdown of the Escrow Proceeds to support the design, construction and implementation is set forth in the attached Escrow Agreement.

Epic will have responsibility to address, administer and resolve issues that might arise due to the substation real-estate footprint currently being owned by other parties, and the possibility to begin construction prior to the transfer of ownership to Epic. Epic is expected to take title of the property nominally in December 2015, with site grading to begin in spring 2016. RPU will provide Epic with an updated construction schedule including an expected start date for site grading work in 2016.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

This MOU is intended to outline the overall intent of the parties. Epic and RPU intend to enter into a Land Purchase Agreement for the Substation Property and enter into an Electrical Service Agreement setting forth, among other items: the project cost sharing.

VI. FUNDING, REBATES & PROJECT ESTIMATES:

The overall 'budgetary' project estimate is nominally \$6.1M. This is a preliminary budget estimate based upon similar work historically performed by RPU, and a breakdown of the budget estimate is included as Attachment 3. Further refined designs and quotes shall be obtained by RPU and shared to Epic prior to such final design and quotes are presented to the RPU Board of Directors for final approval. RPU and Epic shall collaborate in finalizing the design and cost of the project. For example, a design review project collaboration shall occur when the project staff has been assigned.

Moreover, RPU will bill Epic for actual cost of implementation using an agreed upon process, being sure to exercise prudence in the administration of the project. Funding provided by Epic will be considered as 'Contribution in aide'.

- Cost Allocation:

An important consideration within this project is the matter of cost allocation, and simultaneous consistency with RPU rules and regulations. Specifically, working to assure that Epic's 'Contribution in Aide' allocation is transparent.

Consistent with previous discussions, RPU reserves the option of installing at RPU's expense a third (future) transformer within the proposed facility/substation, to address future RPU infrastructure needs. This third transformer is shown on attachment 2.

Unique to this request, is 5MVA of substation capacity currently dedicated to supporting the existing MDC campus that is contractual allocated under various agreements between other parties.

As a result, RPU will include the following in determining Epic's cost allocation and/or Epic's 'contribution in aide':

- a) RPU will work to re-purpose the existing 5MVA allocated to the MDC campus, to other load obligations within the campus, that might comply with existing agreements. Based upon historical conversations with applicable personnel, the original projections were for the campus load to grow over time.
- b) As a result of the anticipated ability to re-purpose the above mentioned 5MVA capacity service, RPU will provide Epic a base 5MVA service contribution (i.e. one set of primary cables and associated transformer) at RPU's expense.

In summary, Epic's contribution-in-aide will be the estimated cost of the proposed \$6.1M redundant ring-bus service/substation design shown on Attachment 2, minus the cost of base 5MVA service, to be trued up due to actual cost.

c) Additionally, RPU would incur the cost assignment associated with that portion of the ring-bus configuration needed to isolate the future RPU transformer.

Specifically:

1. Two (2) manual disconnects
2. One circuit breaker (device code 52)
3. Miscellaneous bus hardware needed to support the above devices.
4. Given the initial plan to pursue easement provisions, no RPU contribution at this time will be made for potential land use.

Note: It has been preliminary discussed that in the future RPU may be given the opportunity of purchasing the substation footprint. It is RPU's preference to own the substation footprint.

- Epic Rebate Considerations – Contribution in Aide:

As discussed previously, RPU proposes a methodology by which Epic may be eligible to receive a proportional rebate of their Contribution in Aide – subject to sustained demand and energy thresholds.

The below graphic demonstrates a proposed 10 year rebate window. A time window in which Epic will have opportunity to apply for applicable rebates based upon achieved load targets (energy & demand) demonstrated over a calendar year.

The rebate formula or methodology is based upon the following inputs or metrics:

- a) Estimated total construction cost = \$6.1M
- b) Less redundancy requested by Epic = \$3.05M
Proxy value of nominally ½ of \$6.1M (redundancy is 100% customer responsibility – no rebate can be associated with redundant facilities)
- c) Less 5MVA RPU contribution = \$1.016M
Proxy value – nominally 1/3rd of \$3.05M
- d) Maximum potential rebate = \$2.03M

Epic acknowledges that the RPU rebate amounts are tied to existing RPU demand rates. The rebate amounts shall not exceed the actual contribution in aide amounts. For example, rebate based upon 10MVA demand (i.e. an incremental 10MVA above the baseline 5MVA) within first year is equal to:

- a. 5MVA - Large General Service demand rate of \$17.75/Kw (demand charge)
- b. 5MVA – Large Industrial Service rate of \$18.85/kw (demand charge).
- c. Rebate calculation $(5MVA * 17.75 * 1000 * 12) + (5MVA * 18.85 * 1000 * 12) = \$2.2M$

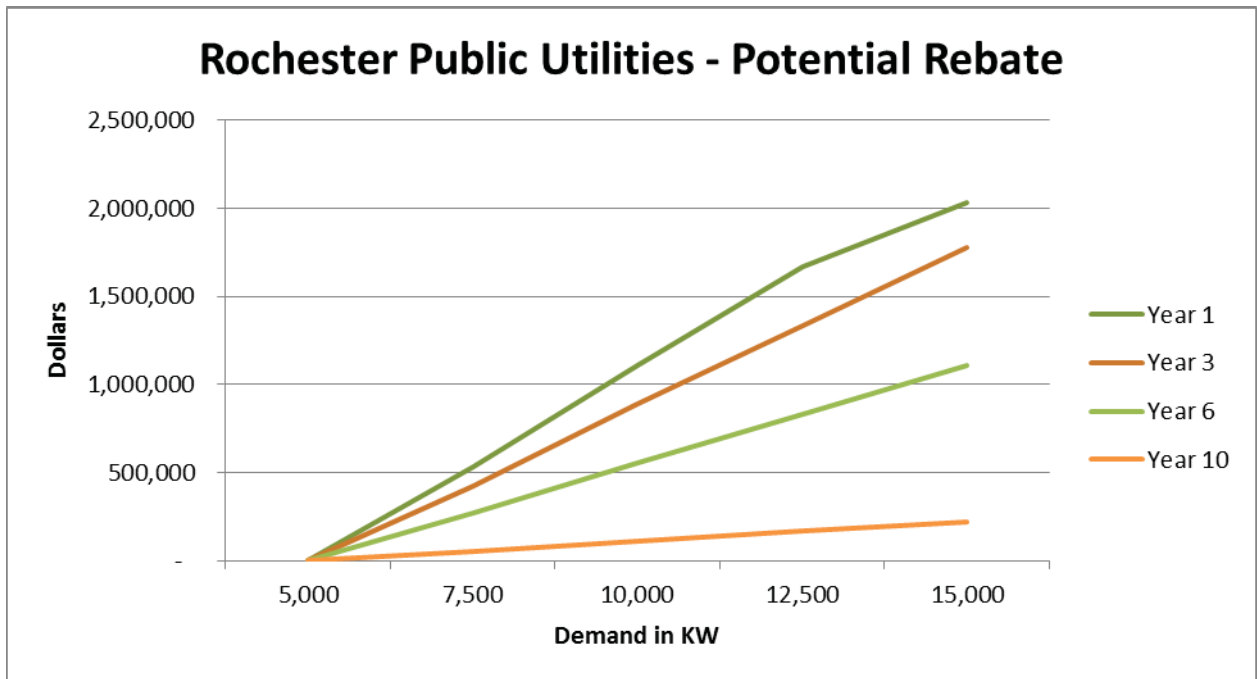
The below graphic arbitrarily displays years 1, 3, 6 & 10 to demonstrate a projected rebate based upon achieved demand and energy. Eligibility for rebate would be applicable for each year, through year 10; based upon the increases in demand in excess of previously rebated peak demand.

Rebate of 'contribution in aide' is based upon the increase in demand charges in excess of 5MW. For instance, if 15,000kw demand was achieved in year 1, over 12 consecutive months; the applicable rebate would nominally be \$2.03M, which is approximately the yearly aggregate demand charge Epic would have paid through rates; minus the demand charge equivalent associated with RPU's contribution. Rebates at thresholds below 15,000kw demand are calculated similarly.

- Note: there is a 10% reduction associated with each subsequent year. If it takes 10 years to reach the target 15,000Kw demand; year 10 rebate would nominally be 10% of the maximum eligible rebate.

Both demand and energy thresholds are required for rebate eligibility.

- The demand requirement is based upon a 12 month average demand.
- An energy equivalent of an 80% load factor also must be achieved over the same 12 month period.



VII. OTHER CONSIDERATIONS:

Consistent with RPU practices. RPU will own, maintain and retain all ownership rights to the proposed facility/substation and associated equipment within the proposed facility/substation. When applicable, the O&M cost sharing details shall still apply. RPU shall have no maintenance responsibility for Epic electrical infrastructure outside of the substation. Epic shall be responsible for maintenance of their transformers (i.e., transformer oil, maintenance to extend the life of the transformers) while RPU shall be responsible for all capital costs of the substation, i.e., replace transformer or replace a switch gear. RPU's responsibility for "capital costs", to include replacement costs.

RPU will coordinate, with regulatory and regional reliability agencies such as MISO for required grid authorizations (if applicable). The cost to coordinate with regulatory and regional reliabilities organizations is part of the overall cost estimate, and the cost sharing agreement.

Project timelines are ultimately dependent upon inputs such as available labor, lead time for materials etc. Excavation on the substation is scheduled to start spring 2016 and the substation will be operational and complete prior to April 1, 2017. It has been noted during conversations that lead time for proposed electrical transformers can be nominally a year or twelve (12) months. Additionally, expediting material can also result in incremental costs.

Epic has communicated the desire for a March 1, 2017 project completion, and prudent expediting costs will be looked upon favorably in support of that project schedule.

In case of project cancellation, the party causing the cancellation shall be responsible for incurred costs as well as unavoidable contractual commitments related to the project that are incurred. Notwithstanding the foregoing, Epic shall not be responsible for any costs associated with the third transformer and costs related to RPU's 5 MVA service contribution, unless Epic cancels subsequent to March 1, 2016.

Epic does not have the authority to reassign their obligation or benefits under this MOU to third parties, or successors, other than to Epic Systems Corporation or its affiliated companies.

This MOU is contingent upon approval by internal RPU governance such as RPU Board, City Attorney and General Manager and to be followed by an Electric Service Agreement between the parties.

RPU reserves the right to request Epic to permit redeployment of the facility assets, if Epic fails to reach acceptable load targets after 20 years.

RPU will allow Mayo to allocate energy used by the Epic system until such time as the new Epic electrical facilities are operational. This allocation will allow Mayo to pass-through to Epic the power services Mayo receives from RPU.

Per RPU policy, customer in the Large General service class and Large Industrial service class are eligible for discount if metered at 13.8kV.

Consistent with RPU Rate Schedules, Large General service and/or Large Industrial service may be applicable depending upon demand levels. Reference RPU tariff schedules for rate structure specifics.

VII. EFFECTIVE DATE AND SIGNATURE

Parties indicate agreement with this MOU by their signatures as of this 28th day of September, 2015.

Signatures and dates

City of Rochester

By: _____
Ardell Brede, Mayor

Attest: _____
Aaron Reeves, City Clerk

Approved
as to form: _____
Terry Adkins, City Attorney

Rochester Public Utilities
By: _____
Mark Kotschevar, General Manager

Epic Hosting LLC

By: Stirling Martin

Name: Stirling Martin

Its: President

Attachment: Epic - RPU - Memorandum of Understanding - 2015-09-28 (Epic signed) (4582 : Epic Memorandum of Understanding (MOU))

ROCHESTER PUBLIC UTILITIES

ELECTRIC SERVICE RULES AND REGULATIONS

Revised August 2011

INTRODUCTION

Rochester Public Utilities (hereafter referred to as RPU) has assembled this booklet to assist its customers and their architects, engineers, or electrical contractors to plan for and obtain prompt and satisfactory electric service. Reviews will be made every other year with publication of revisions, if required, scheduled for April.

The information presented here is intended to supplement the requirements of the National Electrical Code and all other applicable federal, or state, and municipal codes, regulations, laws and ordinances. It is always necessary to refer to and comply with such other codes, regulations, laws, and ordinances when planning, designing, and installing a new electrical service. Specific requirements of RPU do not intentionally conflict with any other requirements known to be in effect as of the publication date of this booklet. Any apparent conflicts of this nature should be brought to the attention of RPU for interpretation.

RPU wishes to serve its customers promptly and satisfactorily. It will endeavor to cooperate with customers and their authorized representatives to the fullest extent in completing service connections with as little delay and inconvenience as possible, and will gladly give special attention to any particularly difficult situation confronting a customer.

RPU will be happy to confer with those customers desiring information concerning rates, services, etc., upon request by telephone or otherwise. Such requests should be directed to RPU's Customer Service Representative (located in RPU's Service Center at 4000 East River Road NE, phone 507.280.1500, 1.800.778.3421 or fax 507.280.1642 or online fax 507.280.1643).

These rules and regulations are available on the RPU web site www.rpu.org. Contact RPU for more details.

ATTACHMENT 1
PAGE 1 OF 2

502 Services for Unusual Load Characteristics

The operation of Customer equipment having a relatively high load of short or intermittent duration, such as welders, compressor motors, elevators, and X-ray equipment, may cause serious fluctuations of voltage and interfere with the service being provided by RPU to other customers. If such a load is anticipated, the Customer must consult with RPU and agree to install such protective devices as may be required so as not to cause damage to any of RPU's equipment or in any way inhibit service to other customers. In addition, special compensation may be required by RPU from the Customer in those cases where it is necessary for RPU to install special or larger facilities than would normally be required to provide satisfactory service. (Refer to Section 700 for additional details.)

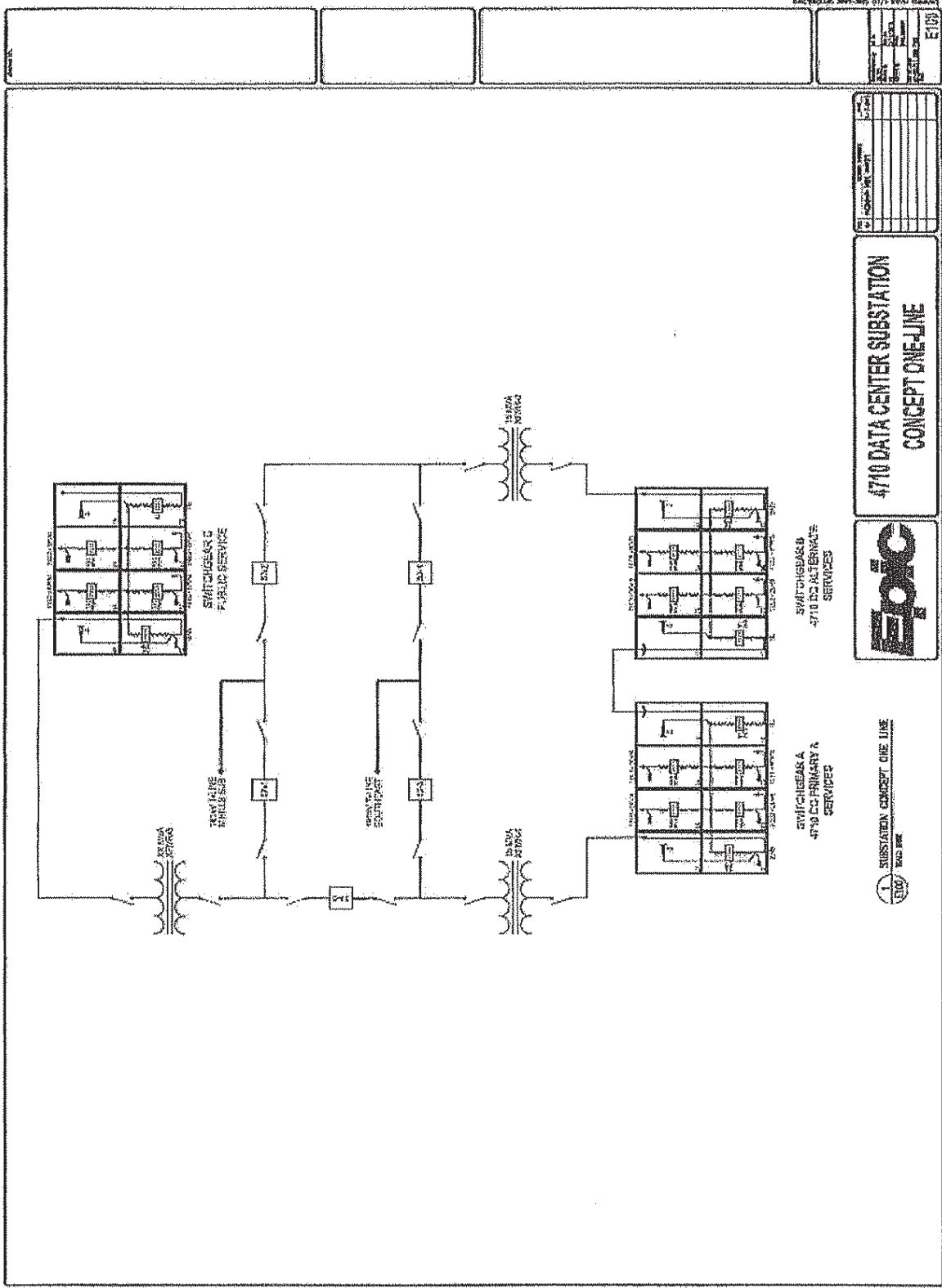
503 Redundant Facilities

RPU will normally provide one set of facilities (such as a set of primary cables and a transformer) to one point of service for each Customer. If a Customer requires redundant facilities (more than one set of facilities to the same point of service), RPU must be advised as soon as possible so the feasibility of such service can be determined. If RPU determines that redundant facilities can and will be provided, the Customer will be required to reimburse RPU for the entire cost of additional facilities, including all labor, materials, vehicle charges, and overheads. An agreement between the Customer and RPU may also be executed.

504 Relocation or Protection of RPU Facilities

It is the responsibility of the Customer to arrange for the relocation and/or protection of RPU's facilities whenever such action is appropriate. Any intended relocation or protection of RPU facilities must be reviewed with and approved by RPU in advance. The cost of any change or relocation of RPU's facilities for the benefit only of the Customer, and which has been initiated by the Customer, shall be borne solely by the Customer. A deposit by the Customer may also be required before the changes are made. RPU will bear costs to the extent that a change or relocation benefit RPU. The Customer shall not be required to pay for changes necessitated through public improvements by the City, County or State.

ATTACHMENT # 1
PAGE 2 OF 2



ATTACHMENT 2

SUBSTATION CONSTR. & COMMISSIONING
Transmission and Substation Capital & Services & Internal Expenses
Attachment 3

Substation Phase 1, Preliminary Engineering and Land Acquisition

Schedule: 2016 3rd Quarter			
Description: Conduct preliminary engineering, site assessment, environmental assessment, etc., Complete land purchase and survey.			
Purchases:	land	\$125,000	\$125,000
Services:	survey & soil bore initial site engineering	\$40,000 \$50,000	
RPU labor & overheads - Eng:		\$21,000	= 2 month, 1 man, \$80/hr., Eng.
Total:			\$236,000

Substation Phase 2, GS Line Tap

Schedule: 2016 4th Quarter			
Description: Convert existing tower line to accommodate a single steel pole supporting two circuits, making 2 spans of GS4 ACBR double circuit to sub. Engineering & labor by contractor.			
Purchases:	steel pole line materials	\$45,000 \$15,000	\$60,000
Services:	site & civil engineering line engineering construction labor steel pole foundation	\$50,000 \$30,000 \$35,000 \$145,000	
RPU labor & overheads - Eng:		\$10,500	= 0.75 month, 1 man, \$60/hr., Eng.
Total:			\$215,500

Substation Phase 3, 161 kV Equipment and Transmission

Schedule: 2016 1st & 2nd Quarters			
Description: Install new 161 kV bus, breakers, switches, transmission deadend and control house. Principle engineering by consultant. Construction by contractor. RPU performs project management and installation engineering.			
Purchases:	breakers (4) disc, switches (10) insulators bus steel structures line deadend structure aluminum bus & exits CCVT's 161 kV arresters building misc. material	\$240,000 \$120,000 \$10,800 \$85,000 \$50,000 \$50,000 \$84,000 \$12,000 \$200,000 \$80,000	\$911,800
Services:	electrical engineering ordina & fencing M&C, site & visit transformer foundation misc foundations construction labor	\$300,000 \$237,500 \$80,000 \$80,000 \$75,000 \$350,000	\$1,122,500
RPU labor & overheads - Eng:		\$120,000	= 6 months, 1.5 men, \$80/hr., Eng.
RPU labor & overheads - Tech Services:		\$292,000	= 6 months, 4 men, \$60/hr., Electricians & Techs
Total:			\$2,412,300

Substation Phase 4, Relaying, Transformers, and 16 kV Switchgear

Schedule: 2016 2nd & 4th Quarters			
Description: New transformers and switchgear. Principle engineering by consultant. Construction by RPU with specific support. RPU performs project management and commissioning.			
Purchases:	transformer (2) switchgear 4 feeders, 2 mains, 1 bus tie reactor reactors (2) 161 kV relay panels (4) breaker switch distribution system SCADA RTU misc. material	\$2,000,000 \$400,000 \$18,000 \$140,000 \$18,000 \$15,000 \$30,000 \$78,000	\$2,694,000
Services:	crane & major material handling service: electrical engineering construction labor housing for transformers & Svgr.	\$25,000 \$75,000 \$50,000 \$75,000	\$225,000
RPU labor & overheads - Eng:		\$120,000	= 6 months, 1.5 men, \$80/hr., Eng.
RPU labor & overheads - Tech Services:		\$128,000	= 3 months, 4 men, \$60/hr., Electricians & Techs
RPU labor & overheads - M&C:		\$27,000	= 2 months, 4 men, \$55/hr., Inocow
Total:			\$3,248,000

Summary					
2016 Substation Phase 1, Preliminary Engineering and Land Acquisition	Internal Expenses	Purchases	Services	Total	Sub-total Phase 1
	\$21,000	\$125,000	\$90,000	\$236,000	\$236,000
2016 Substation Phase 2, GS Line Tap	Internal Expenses	Purchases	Services	Total	Sub-total Phase 2
	\$10,500	\$60,000	\$205,000	\$215,500	\$215,500
2016 Substation Phase 3, 161 kV Equipment and Transmission	Internal Expenses	Purchases	Services	Total	Sub-total Phase 3
	\$378,000	\$911,800	\$1,122,500	\$2,012,300	\$2,412,300
2016 Substation Phase 4, Relaying, Transformers, and 16 kV Switchgear	Internal Expenses	Purchases	Services	Total	Sub-total Phase 4
	\$329,000	\$2,694,000	\$225,000	\$2,918,000	\$3,248,000
Total Project	Internal Expenses	Purchases	Services		
	\$738,500	\$3,790,800	\$1,692,500	\$5,270,300	\$6,111,600
				\$/MVA capacity =	\$109,130

Attachment: Epic - RPU - Memorandum of Understanding - 2015-09-28 (Epic signed) (4582 : Epic Memorandum of Understanding (MOU))



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a Memorandum of Understanding (MOU) between the City of Rochester, a Minnesota municipal corporation, acting by and through its Public Utility Board and Epic Hosting LLC and authorize the Mayor and the City Clerk to execute the agreement for:

Epic MOU: Douglas Trail Substation

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of October, 2015.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 4581)

Meeting Date: 10/27/2015

SUBJECT: CapX - Self Performance Agreement

PREPARED BY: Randy Anderton

ITEM DESCRIPTION:

The new CapX Chester 161kV transmission line that is currently under construction will be crossing RPU's existing Q6 161kV transmission line that runs along 48th St NE. RPU is being required to modify its Q6 line to allow the new CapX line to have the proper clearances at the crossing point.

RPU will be paying for the cost to adjust 2 structures on our existing Q6 transmission line. This "City of Rochester Relocated Owner TL Self-Performance Agreement" will allow RPU to be reimbursed for the cost of this project by CapX.

The template for this agreement was included within the original set of the CapX documents that the Board approved in December of 2012.

This agreement has been reviewed by the City Attorney.

RPU management and staff requests the Board approve the "City of Rochester Relocated Owners TL Self-Performance Agreement".

UTILITY BOARD ACTION REQUESTED:

RPU management and staff requests the Board approve the "City of Rochester Relocated Owners TL Self-Performance Agreement".

CAPX 2020

**SOUTHEAST TWIN CITIES – ROCHESTER – LA CROSSE
TRANSMISSION PROJECT
(MINNESOTA)**

**CITY OF ROCHESTER
RELOCATED OWNER TL SELF-PERFORMANCE AGREEMENT**

DATE: _____, 2015__

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

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RELOCATED OWNER TL SELF-PERFORMANCE AGREEMENT

THIS RELOCATED OWNER TL SELF-PERFORMANCE AGREEMENT is entered into and effective as of 12:01 a.m. Central Time on the [Date of Execution], by and between **Northern States Power Company**, a Minnesota corporation (“NSP, MN”), as agent for **Dairyland Power Cooperative**, a cooperative association incorporated under the laws of the State of Wisconsin, the **City of Rochester**, a Minnesota municipal corporation acting through its Public Utility Board, **Southern Minnesota Municipal Power Agency**, a municipal corporation and political subdivision of the State of Minnesota, and **NSP, MN** (collectively referred to herein as the “**Owners**”) and **City of Rochester**, a Minnesota municipal corporation acting through its Public Utility Board, in its capacity as contractor hereunder (“**Contractor**”) (the Owners and Contractor are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”).

RECITALS

A. The Owners have determined that the Minnesota Project and the Wisconsin Project are necessary to (i) enhance service reliability for electric customers in Minnesota, Wisconsin and the surrounding region; (ii) strengthen the transmission network to meet additional demands for electric power; and (iii) enhance transmission system capacity to support the installation of renewable energy resources.

B. The Minnesota Project will entail the construction of transmission assets and improvements in Minnesota, some of which will be owned by Owners individually and some of which will be owned by the Owners as tenants-in-common. The Wisconsin Project will entail the construction of transmission assets and improvements in Wisconsin, some of which will be owned by Wisconsin Owners individually and some of which will be owned by the Wisconsin Owners as tenants-in-common. The completion of the Coordinated Projects is anticipated in order to deliver the benefits contemplated by the Owners and the Wisconsin Owners.

C. As of the Effective Time, the Owners have entered into (i) the Minnesota Project Participation Agreement; (ii) the Minnesota Construction Management Agreement; (iii) the Transmission Capacity Exchange Agreement; (iv) the Minnesota Operation and Maintenance Agreement; and (v) such other agreements as the Owners have deemed necessary.

D. As of the Effective Time, the Owners have also entered into the Joint Cooperation Agreement for the purpose of coordinating the development, construction, integration and decision-making associated with the Coordinated Projects.

E. Contractor is also an Owner and has agreed, solely in its independent capacity as Contractor, to (i) Remove (as defined herein) the approximately 0.15 miles of existing Transmission lines located in the Phase 4, North Rochester to Chester Segment and set forth on **Schedule A** (the “**Existing Transmission Lines**”) and (ii) plan, design, coordinate, construct, modify, improve, complete and energize, as applicable, the relocated Existing Transmission Lines set forth on **Schedule A** (the “**Relocated Project Owner Tls**”) as more specifically described in this Agreement. The Removal of the Existing Transmission Lines is required to complete and fully energize the Facilities in Phase 4.

F. This Agreement establishes the basis upon which Contractor will perform the Work with respect to the Existing Transmission Lines and the Relocated Project Owner TLs, and supplements the requirements imposed on Contractor, as an Owner, as set forth in the Minnesota Project Participation Agreement, the Minnesota Construction Management Agreement and the Transmission Capacity Exchange Agreement.

G. Contractor is the owner of the Existing Transmission Lines and will be the owner of the Relocated Project Owner TLs.

H. The Construction Manager will act as agent and representative of the Owners in all matters arising from, in connection with or incident to this Agreement and has full authority of the Owners as between the Owners and Contractor.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. Capitalized words, phrases and other expressions used herein that are not otherwise defined in this **Section 1.1** are as defined elsewhere in this Agreement. The capitalized words, phrases or other expressions used herein shall have the following meanings:

“**Acceptance**” shall have the meaning set forth in **Section 15.3.1**.

“**Acceptance Date**” shall have the meaning set forth in **Section 15.1**.

“**Affiliate**” means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an Owner.

“**Agreement**” means this Relocated Owner TL Self-Performance Agreement between the Parties, including the Contract Documents.

“**Applicable Energy Regulations**” means the rules, Orders, regulations, practices, procedures and protocols established in compliance with Applicable Law by applicable Transmission Providers (such as the Midwest Independent Transmission System Operator, Inc.), electric reliability organizations (such as the North American Electric Reliability Corporation and the Midwest Reliability Organization) and comparable Persons that are applicable to the Relocated TL Project or the performance of the obligations of the Parties hereunder.

“**Applicable Law**” means (i) any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, treaties, rules, codes, standards, Governmental Approvals, requirements and Orders that: (a) have been adopted, enacted,

implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body having jurisdiction over a specified Person (or the properties or assets of such Person) and (b) are applicable to the Relocated TL Project or the performance of the obligations of the Parties hereunder and (ii) Applicable Energy Regulations.

“**Asset Ownership Percentage**” shall have the meaning set forth in **Section 3.1.3.1.2** of the Minnesota Project Participation Agreement.

“**Associated Assets**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Associated Owner Asset Owners**” means Owners of Associated Owner Assets which consist of the Discretely Owned Substation Owners, the Remote Credited USI Owners, the Underbuild Project Owners, the Co-located Line Owners, the Relocated Project TL Owners and the Relocated Project DL Owners.

“**Associated Owner Assets**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Business Day**” means any day other than a Saturday, Sunday or federal holiday.

“**Capital Improvements**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Care, Custody and Control Transfer Date**” shall have the meaning set forth in **Section 15.1**.

“**Certificate of Acceptance**” shall have the meaning set forth in **Section 15.3.3**.

“**Change in Law**” means any change in, or enactment of, any Applicable Law or official published policy regarding the interpretation or enforcement of any Applicable Law by a Governmental Body that takes place after the date and time hereof and affects or relates to the Relocated TL Project or the performance of the obligations of the Parties under this Agreement, including the imposition of any new Governmental Approval requirements; **provided, however**, a change in Applicable Law affecting only a tax payable or any other cost of performance hereunder will not constitute a Change in Law.

“**Change Order**” means a document issued by the Construction Manager and agreed to in writing by Contractor pursuant to **Article 10** to amend this Agreement and/or a Purchase Order/Work Order.

“**Co-located Line Owner**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Co-located Owner Agreement**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Commissioning**” (or any derivation thereof) means the process of verifying the safety, reliability and performance (including testing) of the Relocated TL Project or the Minnesota Project, as applicable, in accordance with the applicable Minnesota Construction Agreements and Good Utility Practice.

“**Construction Manager**” means NSP, MN, or any successor as is provided in the Minnesota Construction Management Agreement, in each case, in its capacity as the Person who is responsible, in accordance with the terms of the Minnesota Construction Management Agreement, for performance of the Services (as such term is defined in the Minnesota Construction Management Agreement). Reference to the Construction Manager excludes any reference to the Construction Manager in any other capacity.

“**Construction Period Payment Default**” for purposes of this Agreement only, shall have the meaning set forth in **Section 18.1(ii)**.

“**Contract Documents**” shall have the meaning set forth in **Section 2.1**.

“**Contractor**” shall have the meaning set forth in the preamble to this Agreement. Reference to Contractor excludes any reference to Contractor in any other capacity.

“**Coordinated Owners**” means collectively, the Owners and the Wisconsin Owners.

“**Coordinated Projects**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**CP Insolvency Default**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**CPP Default Cure Period**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Damages**” means any loss, charge, deficiency, tax, fine, interest, assessment, judgment, award, demand, liability, penalty or costs and expenses, including amounts paid in settlement, reasonable attorneys and other professional fees and reasonable costs of investigation.

“**Discretely Owned Existing Substation**” shall have the meaning set forth in **clause (ii)** of the definition of Discretely Owned Substation Assets.

“**Discretely Owned New Substation**” shall have the meaning set forth in **clause (i)** of the definition of Discretely Owned Substation Assets.

“**Discretely Owned Substation Assets**” means: (i) a new substation to be constructed in accordance with the Minnesota Project Plan (a “**Discretely Owned New Substation**”); (ii) improvements to be constructed in accordance with the Minnesota Project Plan to an existing substation (a “**Discretely Owned Existing Substation**”); (iii) improvements to be made to the underlying electric system of an Owner at or in close proximity to its Discretely Owned New Substation or Discretely Owned Existing Substation; (iv) all Property interests that arise from the work performed under any Minnesota Project Construction Contract in connection with **clauses**

(i), (ii) or (iii) above and (v) all Real Property Agreements providing for the acquisition of real property interests in connection with **clauses (i), (ii) or (iii)** above. In all cases, the Discretely Owned Substation Costs will be paid or credited as provided in the Minnesota Project Participation Agreement and title to each Discretely Owned Substation Asset will be held by the Discretely Owned Substation Owner. Discretely Owned Substation Assets will not constitute part of the Facilities.

“**Discretely Owned Substation Costs**” has the meaning given in the Minnesota Project Participation Agreement.

“**Discretely Owned Substation Owner**” means an Owner that owns a Discretely Owned Substation Asset. Reference to a Discretely Owned Substation Owner excludes any reference to a Discretely Owned Substation Owner in any other capacity.

“**Documents**” shall have the meaning set forth in **Section 5.2**.

“**Drawings**” means all (i) drawings or supplementary drawings furnished by the Construction Manager as a basis for soliciting proposals, (ii) drawings, if any, submitted by Contractor with its proposal which are included in this Agreement, (iii) drawings furnished by the Construction Manager to Contractor during the progress of the Work, and (iv) engineering data and drawings submitted by Contractor, if any, during the progress of the Work, provided such engineering data and drawings are acceptable to the Construction Manager.

“**Effective Time**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Existing Transmission Lines**” shall have the meaning set forth in **Recital F** to this Agreement.

“**Facilities**” means: (i) as more particularly identified in **Appendix A** to the **Minnesota Construction Management Agreement**, as it may be updated with respect to each Phase upon its Phase In-Service Date, all of the Equipment (as defined in the Minnesota Project Participation Agreement) and Materials (as defined in the Minnesota Project Participation Agreement), installations and facilities, including associated site improvements, appurtenances and structures procured, installed or constructed as part of the Minnesota Project that are located on Minnesota Project Real Property (other than real property interests that are owned separately by (a) an Owner in a capacity other than as an Owner or (b) a Third Party); (ii) Capital Improvements; and (iii) all other Property interests that arise in connection with the Minnesota Project from any Minnesota Project Agreement or related to any of the foregoing, in each case, in which all of the Owners have Asset Ownership Percentages. The Facilities do not include the Associated Assets, Non-Credited USIs and Upgrades.

“**Final Completion**” means the achievement of the following conditions with respect to the Work, including the Relocated TL Work and the Removal Work related to each Phase: (i) Substantial Completion of the Relocated Project Owner TLs has occurred and a Certificate of Acceptance with respect to Removal of the Existing Transmission Lines has been delivered by the Owners; (ii) the Work has been completed, including Punch List items, in accordance with

this Agreement; (iii) delivery of (a) a final Lien Waiver substantially in the form set forth in **Schedule F-2** from Contractor with respect to any Work performed on real property interests that do not belong to Contractor; (b) all final Lien Waivers required of Subcontractors, substantially in the form set forth in **Schedule F-4**; and (c) the information described in the definition of “Minnesota Project Design Book” as set forth in the Minnesota Construction Management Agreement with respect to the Work and the other documents required to have been delivered to the Construction Manager under this Agreement.

“**Final Order**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Final Relocation Completion**” means that (i) the Relocated TL Work has been completed, including Punch List items in accordance with this Agreement; (ii) delivery of (a) a final Lien Waiver in accordance with the Minnesota Construction Management Agreement with respect to the Relocated Project Owner TLs and (b) any other documents required to have been delivered by Contractor with respect to the Relocated Project Owner TLs under this Agreement.

“**Financial Summary Report**” means the report referred to in **Section 9.2(vi)**.

“**Force Majeure**” means the occurrence of an event or series of events that is beyond the reasonable control of the Person affected that hinders the performance under contract of such Person and does not result from the fault, negligence, intentional misconduct or willful misconduct of the affected Person or such Person’s failure to comply with Applicable Law or Good Utility Practice; and such event or series of events could not have been avoided by the affected Person through the exercise of reasonable diligence, including the expenditure of reasonable monies and/or taking reasonable precautionary measures, including (to the extent that such events satisfy the foregoing criteria), the following:

- (i) acts of God or the public enemy;
- (ii) expropriation or confiscation;
- (iii) war, terrorism, rebellion, sabotage, civil unrest or riot;
- (iv) fires, explosions, hurricanes, floods, tornadoes, microbursts, other abnormally severe weather events or other natural catastrophes;
- (v) actions or inaction of a Governmental Body affecting performance required in connection with the Work or the obligations of the Parties under this Agreement;
- (vi) a Change in Law;
- (vii) conditions at, on or affecting the Relocated TL Real Property that could not have been reasonably anticipated, including the existence of Hazardous Substances or archeological materials;

- (viii) operating conditions on the Transmission Grid that restrict outages, testing, Commissioning or access; and
- (ix) strikes and other labor disturbances (except as otherwise provided below).

Under no circumstance will an event of Force Majeure excuse any obligations of a Party to make payments as required by this Agreement, unless such Force Majeure event results in a failure of the Federal Reserve wire system or other failure of the banking system that deprives the Party of access to otherwise available funds. Furthermore, delays caused by unfavorable weather (that is not abnormal for the season and geographic area), unsuitable ground conditions, inadequate construction forces, strikes or labor disturbances involving the personnel of Contractor or any of its Subcontractors on the Relocated TL Project, market conditions, or the failure of a Party to place orders for equipment or materials sufficiently in advance to ensure delivery when needed by such Party shall not be considered an event of Force Majeure.

“**Good Utility Practice**” means any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in the region during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition in a manner that: (i) is consistent with Applicable Law, (ii) makes due consideration for reliability, safety and protection of the Relocated TL Project or any portion thereof, including equipment and materials, and its interconnection with the applicable distribution system, as applicable, and (iii) is consistent with manufacturer’s recommendations and warranties. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts generally accepted in the region.

“**Governmental Approvals**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Governmental Body**” means any:

- (i) nation, state, county, city, town, village, district or other jurisdiction of any nature;
- (ii) federal, state, local, municipal, foreign or other government; or
- (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court), in any such case exercising, or entitled to exercise, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature over this Agreement, the performance of the Work or the Parties.

“**Hazardous Substance**” means petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all other substances which now are or in the future may be defined by Applicable Law as “hazardous

substances,” “hazardous wastes,” “extremely hazardous wastes,” “toxic substances,” “infectious wastes,” “biohazardous wastes,” “medical wastes,” “radioactive wastes” or which are otherwise listed, defined or regulated in any manner pursuant to any Applicable Law that pertains to the protection of human health and safety or the environment.

“**Indemnified Person(s)**” shall have the meaning set forth in **Section 21.1.5**.

“**Indemnifying Person(s)**” shall have the meaning set forth in **Section 21.1.5**.

“**Independent Accountants**” shall have the meaning set forth in the Minnesota Construction Management Agreement.

“**Joint Cooperation Agreement**” means that certain Joint Cooperation Agreement, dated as of the Effective Time, by and among the Owners, the Wisconsin Owners and NSP, MN, as construction manager for the Minnesota Project and the Wisconsin Project.

“**Lien**” means any lien (including mechanic’s liens, materialmen’s liens and supplier’s liens), security interest, option, easement, restriction on transferability, defect of title or other claim, demand, charge or encumbrance of any nature whatsoever, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“**Lien Waiver**” means a waiver of Liens substantially in the applicable form as set forth in **Schedule F**.

“**Maintenance Provider**” means, with respect to a Segment, the Person designated as the “Maintenance Provider” for such Segment in the Minnesota Operation and Maintenance Agreement. Reference to a Maintenance Provider excludes any reference to a Maintenance Provider in any other capacity.

“**Management Committee**” means the Management Committee established pursuant to the Joint Cooperation Agreement.

“**Material Adverse Events**” shall have the meaning set forth in **Section 9.2(vi)**.

“**Minnesota Construction Agreements**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Minnesota Construction Management Agreement**” means that certain Minnesota Construction Management Agreement, effective as of the Effective Time, by and among the Owners and the Construction Manager.

“**Minnesota Operation and Maintenance Agreement**” means that certain Minnesota Operation and Maintenance Agreement, effective as of the Effective Time, by and among the Owners and the Maintenance Providers and Control Center Authorities.

“**Minnesota Project**” means collectively, the Facilities; the Discretely Owned Substation Assets; the entirety of the “Work” to be performed under the Relocated TL Agreements, the Underbuild Agreements, the Co-located Owner Agreements, the Relocated DL Agreements and

the Remote USI Agreements; the Non-Credited USI Work; the Minnesota Project Real Property; and all other Property related to or associated therewith in which any Owner has any right, title or interest, including the Governmental Approvals, the Minnesota Project Agreements, the Procured Materials, the Minnesota Construction Agreements, and the Real Property Agreements.

“**Minnesota Project Agreements**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Minnesota Project Construction Contract**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Minnesota Project Participation Agreement**” means that certain Minnesota Project Participation Agreement, effective as of the Effective Time, by and among all of the Owners.

“**Minnesota Project Plan**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Minnesota Project Real Property**” means: (i) the fee interests, licenses, rights-of-way, easements, access rights, and other real property interests acquired or to be acquired in accordance with the Minnesota Real Property Plan and (ii) the rights granted to the Owners pursuant to the Transmission Easement Agreement. For the avoidance of doubt, NSP, MN will not have any real property rights in the State of Wisconsin.

“**Minnesota Real Property Plan**” shall have the meaning set forth in the Minnesota Construction Management Agreement.

“**Non-Credited USI Work**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Non-Credited USIs**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Notice of Acceptance**” shall have the meaning set forth in **Section 15.3.2**.

“**Notice of Final Relocation Completion**” shall have the meaning set forth in **Section 14.8**.

“**Notice of Substantial Completion**” shall have the meaning set forth in **Section 14.6**.

“**NSP, MN**” shall have the meaning set forth in the preamble to this Agreement.

“**Order**” means any judgment, award, decision, directive, consent decree, injunction (whether temporary, preliminary or permanent), ruling, writ or order adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Body or arbitrator (but as to an arbitrator, with respect to injunctive and other equitable relief, only to the extent permitted by this Agreement) that is binding on any Person or its Property under Applicable Law.

“**Owner**” shall have the meaning set forth in the preamble to this Agreement and excludes reference to any other capacity of such Person in connection with the Minnesota Project.

“**Party**” or “**Parties**” shall have the meaning set forth in the preamble to this Agreement.

“**Permitted Transfer**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Person**” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, Governmental Body or other entity with legal constitution under Applicable Law.

“**Phase**” means Phase 1, Phase 2 (Minnesota), Phase 3, or Phase 4, as applicable.

“**Phase 1**” means the Segments and the Associated Assets from the Northern Hills substation to the North Rochester substation (including, without duplication and as appropriate the associated rights to Minnesota Project Real Property appurtenant thereto), all as more particularly described in the Minnesota Project Plan.

“**Phase 2 (Minnesota)**” means that portion of the Segment and the Associated Assets from the North Rochester substation to the Briggs Road substation (including, without duplication and as appropriate the associated rights to Minnesota Project Real Property appurtenant thereto) that are or will be located in the State of Minnesota, all as more particularly described in the Minnesota Project Plan.

“**Phase 3**” means the Segments and the Associated Assets from the Hampton substation to the North Rochester substation (including, without duplication and as appropriate the associated rights to Minnesota Project Real Property appurtenant thereto), all as more particularly described in the Minnesota Project Plan.

“**Phase 4**” means the Segment and the Associated Assets from the North Rochester substation to the Chester substation (including, without duplication and as appropriate the associated rights to Minnesota Project Real Property appurtenant thereto), all as particularly described in the Minnesota Project Plan.

“**Phase In-Service Date**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Procured Materials**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Property**” means any kind of property or asset, whether real, personal, mixed, tangible or intangible.

“**Punch List**” shall have the meaning set forth in **Section 14.7**.

“**Purchase Order/Work Order**” means a specific authorizing document associated with performing Work, including all documents attached thereto or referenced therein.

“**Real Property Agreements**” means contracts, agreements, instruments or arrangements providing for the acquisition or disposition of Minnesota Project Real Property described in **clause (i)** of the definition thereof.

“**Records**” shall have the meaning set forth in **Section 16.1(xi)**.

“**Relocated DL Agreements**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Relocated TL Budget**” means the budgets for the Work that are attached as **Schedules C-1** and **C-2** as they may be amended pursuant to this Agreement with the consent of the Construction Manager.

“**Relocated TL Insurance**” means the insurance coverages required to be obtained in accordance with **Schedule E**.

“**Relocated TL Project**” means the Work identified in **Schedule A**, inclusive of **Schedules A-1** and **A-2** to be performed by Contractor under this Agreement.

“**Relocated TL Project Costs**” shall have the meaning set forth in **Section 3.4.1**.

“**Relocated TL Real Property**” means the fee interests, licenses, rights-of-way, easements and other real property interests on which the Relocated Project Owner TLs are located, including any licenses, rights-of-way, easements and other real property interests necessary for access to the Relocated TL Project.

“**Relocated TL Schedule**” shall have the meaning set forth in **Section 8.2**.

“**Relocated TL Work**” means the Work identified in **Schedule A-1** with respect to the Relocated Project Owner TLs.

“**Relocated Project DL Owner**” means an Owner that owns the Existing Distribution Lines and will own the Relocated Project Owner DLs when constructed. Reference to a Relocated Project DL Owner excludes any reference to a Relocated Project DL Owner in any other capacity.

“**Relocated Project Owner TL**” shall have the meaning set forth in **Recital F** to this Agreement.

“**Relocated Project TL Owner**” means an Owner that owns the Existing Transmission Lines and will own the Relocated Project Owner TLs when constructed. Reference to a Relocated Project TL Owner excludes any reference to a Relocated Project TL Owner in any other capacity.

“**Relocated TL Agreements**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Remote Credited USI Owner**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Remote USI Agreements**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Removal**” (or derivations thereof) means, without limitation, the deconstruction, storage, transport, treatment, recovery, disposal, reclamation or reprocessing of the Existing Transmission Lines and the restoration of the real property upon which the Existing Transmission Lines were situated.

“**Removal Punch-List**” shall have the meaning set forth in **Section 15.2**.

“**Removal Work**” means the Work identified in **Schedule A-2** with respect to the Existing Transmission Lines.

“**Removal Work Site**” means the real property described in the Scope and Specifications of the Work (Removal), as set forth in **Schedule A**, including real property interests of the Relocated Project TL Owner in the land upon which the Existing Transmission Lines are situated, the Relocated TL Real Property, and any real property interests acquired with respect to the Removal Work.

“**Segment**” means a line segment that is a portion of the Facilities, and is specified in **Appendix A** to the **Minnesota Operation and Maintenance Agreement** (including, without duplication and as appropriate, the corresponding Minnesota Project Real Property appurtenant thereto).

“**Subcontractor**” means any Person, firm or corporation that performs work for or provides labor, equipment, supplies and/or goods to Contractor in connection with the Work.

“**Substantial Completion**” means the achievement of the following conditions as to each Relocated Project Owner TL: (i) completion of the Work to the extent required for the safe, reliable and continuous operation consistent with Good Utility Practice and Applicable Law; (ii) completion of Commissioning; (iii) vendor and construction documentation (including start-up procedures and copies of such documentation for design) and any special tools necessary to support continuous, safe and reliable operation have been delivered to or are in the possession of the applicable Maintenance Provider or Associated Owner Asset Owner; (iv) such Relocated Project Owner TL has been energized and placed in service; and (v) unless waived by the Construction Manager as to any Lien or indemnity agreement (such waiver only to be effective as to establishing the existence of Substantial Completion and for no other purpose), the Construction Manager has received duly executed Lien Waivers from (a) Contractor, if it is performing Work on real property interests that do not belong to Contractor and (b) each Subcontractor under a subcontract with a contract value equal to or greater than One Hundred Thousand Dollars (\$100,000), unless, in either case, Contractor or Subcontractor is precluded by Applicable Law from filing a Lien.

“**Third Party**” means any Person that is neither a Party nor an Affiliate of a Party.

“**Third Party Claim**” means any claim asserted by a Third Party, other than a Third Party Environmental Claim, and resulting Damages, including claims arising from: (i) personal injury to Persons, including death; (ii) theft or loss of or damage to Property; or (iii) violations of Applicable Law.

“**Third Party Environmental Claim**” means any claim asserted by a Third Party and resulting Damages, arising from: (i) the spill, discharge or other release of a Hazardous Substance into the environment or (ii) conditions related to Hazardous Substances that give rise to strict or vicarious liability, in each case, that give rise to personal injury to individuals, including death, loss of or damage to Property, or other liability under Applicable Law.

“**Transfer**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Transmission Capacity Exchange Agreement**” means that certain Transmission Capacity Exchange Agreement, effective as of the Effective Time, by and among the Owners and the Wisconsin Owners.

“**Transmission Easement Agreement**” means that certain Transmission Easement Agreement, effective as of the Effective Time, by and among the Coordinated Owners, the Discretely Owned Substation Owners, the “Discretely Owned Substation Owners” (as defined in the Wisconsin Project Participation Agreement), the Remote Credited USI Owners and the “Remote Credited USI Owners” (as defined in the Wisconsin Project Participation Agreement).

“**Transmission Grid**” means the electric transmission system of which the Minnesota Project, including the Relocated Project Owner TLs, will become a part.

“**Transmission Provider**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Underbuild Agreements**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Underbuild Project Owner**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Upgrade**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Wisconsin Construction Management Agreement**” means that certain Wisconsin Construction Management Agreement, effective as of the Effective Time, by and among the Wisconsin Owners and the Wisconsin Construction Manager.

“**Wisconsin Construction Manager**” means the construction manager for the Wisconsin Project pursuant to the Wisconsin Construction Management Agreement.

“**Wisconsin Owners**” shall have the meaning set forth in the Minnesota Project Participation Agreement.

“**Wisconsin Project**” means collectively, as such terms are defined in the Wisconsin Project Participation Agreement, the Facilities; the Discretely Owned Substation Assets; the entirety of the “Work” to be performed under the Relocated TL Agreements, the Underbuild Agreements, the Co-located Owner Agreements, the Relocated DL Agreements and the Remote USI Agreements; the Non-Credited USI Work; the Wisconsin Project Real Property; and all other Property related to or associated therewith in which any Owner has any right, title or interest, including the Governmental Approvals, the Wisconsin Project Agreements, the Procured Materials, the Wisconsin Construction Agreements, and the Real Property Agreements.

“**Wisconsin Project Participation Agreement**” means that certain Wisconsin Project Participation Agreement, effective as of the Effective Time, by and among all of the Wisconsin Owners.

“**Work**” means the work or services Contractor has agreed to furnish pursuant to and in accordance with this Agreement, including **Schedule A**, which work or services include the design services, labor, equipment, supplies, goods, (including raw materials, components, intermediate assemblies and end products) and related work to be furnished under this Agreement. The Work also includes all activities that are necessary, desirable or incidental to placing the Relocated TL Project in service, and achieving Final Completion, in accordance with Good Utility Practice and the terms of this Agreement and the Minnesota Project Agreements, other than the obligations of the Owners and Construction Manager under this Agreement.

1.2 Rules of Construction. The Parties agree that the following rules of construction shall apply in the interpretation of this Agreement:

- (i) Whenever in this Agreement the reference to the “Owners” specifies a directive of the Owners, the Construction Manager shall be the Person that issues the directive. The Construction Manager and its other designated representative(s) will direct and coordinate all Minnesota Project contracts, including all contracts relating to the Relocated TL Project, except those activities specified elsewhere in the Contract Documents to be directed and coordinated by a representative designated by the Owners. The Construction Manager or such designated representative(s) at all times shall have reasonable access to the Work of Contractor for inspection of the Work or any part thereof. Except as otherwise specified in the Contract Documents, such representative shall make all explanations and directions which shall be necessary to the performance of the Work required, including interpretation of the Contract Documents; **provided, however**, Contractor’s right of dispute resolution shall apply to all decisions and directions of such representative.
- (ii) The words “approved,” “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory” or similar words, unless otherwise particularly specified in this Agreement, shall mean approved, reasonable, suitable, acceptable,

proper or satisfactory in the reasonable judgment of the Construction Manager.

- (iii) Whenever the expression “it is understood and agreed” or a similar expression is used in this Agreement, such expression shall mean the mutual agreement of the Parties.
- (iv) Reference in this Agreement or any exhibit or Purchase Order/Work Order to the standards of any technical society, organization or association, or to any national, state or local codes or standards (including those of any Governmental Body), shall mean the latest standard or code adopted, as amended from time to time, unless specifically stated otherwise.
- (v) The specifications, codes and standards referenced in this Agreement (including addenda and amendments) shall govern in all cases where references thereto are made. In case of conflict between the referenced specifications, codes, or standards and this Agreement, the most stringent requirements shall apply to the extent of such differences except in the case where this Agreement acknowledges an exception to a referenced specification, code or standard. In all but the latter cases, Contractor shall notify the Construction Manager of conflicts between referenced specifications, codes, or standards and this Agreement.
- (vi) The Owners and Contractor have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The terms and phrases used in this Agreement, unless the context otherwise requires, are to be interpreted as follows: (a) the words “including,” “include” or “includes” mean including without limitation; (b) reference to any agreement (including this Agreement), appendix, schedule, exhibit, instrument or coverage policy means as such is amended, modified, supplemented or restated, including by Change Order, waiver or consent; (c) reference to any Applicable Law or Applicable Energy Regulations means such Applicable Law or Applicable Energy Regulations as amended, modified, codified or reenacted, in whole or part, and in effect from time to time; (d) reference to any Owner includes such Owner’s successors and assigns, to the extent that such successors and assigns are permitted by this Agreement; (e) pronouns in masculine, feminine and neuter genders are to be construed to state and include any other gender; (f) the words “will” and “shall” have the same meaning; and (g) unless the context otherwise requires, all defined terms in this Agreement include the singular and the plural.
- (vii) In the event of any conflict between this Agreement, including the Contract Documents, the Minnesota Project Participation Agreement, the

Joint Cooperation Agreement, the Minnesota Construction Management Agreement and/or the Transmission Capacity Exchange Agreement, the provisions of the Minnesota Project Participation Agreement, the Joint Cooperation Agreement, the Minnesota Construction Management Agreement and/or the Transmission Capacity Exchange Agreement will prevail.

- (viii) In the event of a conflict between the body of this Agreement and the Contract Documents, the body of this Agreement shall govern. Any Change Orders or amendments to this Agreement or to a Contract Document will rank higher than the documents they revise or change to the extent they conflict or are inconsistent with the original documents.

ARTICLE 2

AGREEMENT DOCUMENTS

2.1 Contract Documents. This Agreement includes the following documents (“**Contract Documents**”) and all exhibits and attachments thereto, each of which are incorporated by reference to constitute a part hereof:

- (i) Scope and Specifications of the Work, as set forth in Schedule A (inclusive of Schedules A-1 and A-2);
- (ii) Relocated TL Schedule, as set forth in Schedule B;
- (iii) Relocated TL Budget, as set forth in Schedules C-1 and C-2;
- (iv) Costs for Services, as set forth in Schedule D;
- (v) Insurance Requirements, as set forth in Schedule E;
- (vi) Forms of Lien Waiver, as set forth in Schedule F;
- (vii) Form of Financial Summary Report, as set forth in Schedule G; and
- (viii) Form of Progress Report, as set forth in Schedule H.

2.2 Original and Electronic Documents. The Construction Manager may scan, and preserve electronically, this Agreement, the Contract Documents and the Documents. Once scanned, and electronically preserved, the Construction Manager may destroy the paper originals of these documents. All such documents scanned and electronically preserved by the Construction Manager may be treated as original documents for all purposes, at the discretion of the Owners.

ARTICLE 3

CONTRACTOR COVENANTS

- 3.1 Legal Capacity of Contractor.** Contractor acknowledges that pursuant to this Agreement it is and will continue to be the owner (or an owner) and title holder of the Existing Transmission Lines, the Relocated Project Owner TLs and the Relocated TL Project, and agrees to perform the obligations imposed on it under this Agreement in its capacity as Contractor.
- 3.2 Covenant of Cooperation.** Contractor shall cooperate, schedule and coordinate performance of its Work with the work of any other contractors, suppliers and consultants so as not to delay or interfere with their work, or with the timely completion of the Relocated TL Project and the Minnesota Project.
- 3.3 Contractor General Obligations as a Relocated Project TL Owner.** In connection with the rights and other consideration provided to Contractor in connection with the Minnesota Project Participation Agreement and the Minnesota Construction Management Agreement, the receipt and sufficiency of which are hereby acknowledged, Contractor agrees to design and construct (or, if the Owners exercise any right the Owners may have to do so, permit the Owners, through the Construction Manager or other representative, to design and construct or arrange for the construction of) the Relocated TL Project in accordance with this Agreement and the Minnesota Project Agreements.
- 3.4 Costs.**
- 3.4.1 Relocated TL Project Costs.** Relocated TL Project Costs means costs (including costs that qualify as “Costs for Services” as defined in **Schedule D**): (i) incurred by Contractor and approved by the Owners, through the Construction Manager or their other representatives, for the engineering, procurement, construction or Commissioning and Acceptance of the Relocated TL Project or (ii) paid by Contractor at the direction, or with the concurrence, of the Construction Manager related to the acquisition of the Relocated TL Real Property (including costs incurred by Contractor in connection with condemnation proceedings undertaken to obtain the Relocated TL Real Property) and associated costs necessary for the Relocated TL Project. To the extent that proceeds of insurance that is required to be procured or maintained pursuant to this Agreement or that is procured or maintained by the Owners are paid or recovered in respect of Relocated TL Project Costs, such proceeds will be deducted or offset against the Relocated TL Project Costs incurred therefor. The following do not constitute Relocated TL Project Costs:
- (i) costs of studies conducted by Contractor to determine for Contractor the usefulness, economics, legality and/or feasibility of participating in the Minnesota Project;

- (ii) costs of Contractor associated with the preparation or negotiation of (a) Minnesota Project Agreements or amendments thereto or (b) the commercial terms and conditions of this Agreement or a subcontract with an Affiliate and amendments or Change Orders thereto;
- (iii) costs incurred by Contractor in performing functions of the Management Committee or any other committees established pursuant to the other Minnesota Project Agreements, and expenses of its personnel while performing such functions;
- (iv) costs of insurance (including premiums, deductibles and self-insured retentions) purchased or incurred by Persons other than Contractor or its Subcontractors as required by Schedule E;
- (v) costs incurred by Contractor in connection with its indemnification obligations under this Agreement;
- (vi) the cost of complying with conditions specified in any Governmental Approval granted or issued by Final Order that are not generally applicable to the Owners collectively, but are imposed on Contractor individually as an Owner;
- (vii) without duplication of the costs described in **Section 3.4.1(v)** above, costs that arise from Contractor's failure to perform its obligations in accordance with this Agreement, which failure is the result of Contractor's (a) gross negligence (in an aggregate amount equal to or less than the limit of liability set forth in this Agreement) or (b) willful misconduct or intentional misconduct; and
- (viii) costs that are excluded as Relocated TL Project Costs by the express terms of this Agreement, the Minnesota Construction Management Agreement or the Minnesota Project Participation Agreement.

3.4.2 Reimbursement of Relocated TL Project Costs. Relocated TL Project Costs incurred by Contractor for Work under this Agreement will be reimbursed to Contractor. Costs incurred by Contractor consistent with **Schedule C**, as in effect consistent with the terms of this Agreement at the time of incurrence, will be deemed for purposes of this **Section 3.4.2** to be approved by the Owners and the Construction Manager.

3.5 Project Design Book Information. Contractor agrees to provide to the Construction Manager the information described in the definition of "Minnesota Project Design Book" as set forth in the Minnesota Construction Management Agreement with respect to the Work so that the Construction Manager can fulfill its obligations to the Associated Owner Asset Owners under the Minnesota Construction Management Agreement relating to the delivery of such "Minnesota Project Design Book."

ARTICLE 4

APPLICABLE LAW

- 4.1 Compliance with Applicable Law.** Contractor and its Subcontractors, and their employees, agents and representatives, shall at all times perform the Work in a safe and professional manner and comply with Applicable Laws and other legal requirements, as such are amended from time to time. Contractor shall be responsible for the acts and omissions of its Subcontractors in connection with this Agreement.
- 4.2 Contractor Responsibility.** Contractor and its Subcontractors agree to ensure that their employees, agents and representatives perform the Work in accordance with Contractor's code of conduct, or applicable standard, as in effect from time to time.
- 4.3 Notice of Violations to Contractor.** If the Construction Manager determines that Contractor is failing to comply with any Applicable Law or observes unsafe work practices and/or conditions on the part of Contractor or Contractor's or Subcontractors' employees or agents, the Construction Manager may advise Contractor of such and direct Contractor to stop the Work, and Contractor shall cause all such Work to stop. Unless the stoppage of Work arose from the gross negligence, intentional misconduct or willful misconduct of Contractor, the additional costs of such Work stoppage shall be treated as Relocated TL Project Costs subject to **Section 3.4** and the Construction Manager shall afford Contractor a reasonable extension in the Relocated TL Schedule for completion of the Work; **provided**, that no such extension may cause a delay in the date on which the Facilities or any portion of the Minnesota Project will be placed in service in accordance with the Minnesota Project Plan, except as permitted by **Section 5.3.2** of the **Minnesota Construction Management Agreement**.
- 4.4 Anti-Benefit Covenant.** Contractor warrants that neither it nor any of its Subcontractors have transferred, nor will it or they, transfer anything of value to any employee, agent or other representative of the Owners, where such was or is made with the intent and/or understanding of obtaining favorable treatment with respect to this Agreement and/or the Work.
- 4.5 Changes.** Any material changes in Applicable Law or the Owners' standard specifications after the date and time hereof, which have more than a *de minimis* effect on the cost or schedule of Contractor's Work, may be the subject of a request for a Change Order, subject to **Article 10**.

ARTICLE 5

OWNERSHIP OF RELOCATED TL PROJECT; OWNERSHIP/LICENSING OF WORK DOCUMENTS; AND REAL PROPERTY INTERESTS

- 5.1 Work and Title.** Contractor will be solely responsible for all Work and payments related to the Work; **provided, however**, that Contractor shall be entitled to reimbursement of all such payments in accordance with **Section 3.4** of this Agreement.

In accordance with **Sections 3.1.1.2.6** and **4.6.2** of the **Minnesota Project Participation Agreement**, as between the Owners and Contractor, Contractor (as an Owner) will retain or obtain, as applicable, sole title to the Existing Transmission Lines, the Relocated Project Owner TLs and the Relocated TL Project.

- 5.2 Title to Documents.** All Drawings, designs, estimates, data, summaries, materials, information, plans, specifications, calculations, reports and other documents related solely to the Work, whether in hard copy or electronic media, prepared by Contractor pursuant to this Agreement (“**Documents**”) will be the sole and exclusive property of Contractor and title thereto shall remain with Contractor.
- 5.3 License.** Contractor is responsible for obtaining necessary permission and releases with respect to any Third Party ownership and/or licenses with respect to the Documents for and on behalf of Contractor. Contractor hereby provides to the Construction Manager and the Owners an irrevocable, prepaid, royalty free, perpetual license to inspect, copy and use the Documents in connection with the Relocated TL Project and also as required for Owners’ to exercise their rights under **Section 18.2** upon the default by Contractor under this Agreement.
- 5.4 Further Assurances.** The Owners shall, and shall cause the Owners’ respective employees, representatives, agents and subcontractors to execute and deliver any and all forms and instruments necessary or desirable to confirm that the Owners have no rights in the Documents such that Contractor shall have of record all of its, as applicable, rights, interests, title and ownership in and to the Documents, free and clear of all Third Party encumbrances and interests; **provided, however**, the license provided to the Owners pursuant to **Section 5.3** above does not constitute a Third Party encumbrance or interest.
- 5.5 Maintenance of Documents.** Contractor shall maintain, at its principal office or at another location for which notice is provided to the Construction Manager, up-to-date versions of all Documents and supplementary data, as well as the Contract Documents, complete with latest revisions thereto.
- 5.6 Relocated TL Project Real Property Interests.** The real property interests of the Relocated Project TL Owner with respect to the Existing Transmission Lines shall be retained by the Relocated Project TL Owner, unless one or more of the Existing Transmission Lines is decommissioned prior to or concurrently with the construction of the applicable Facilities of the Minnesota Project due to the substantially similar routing of such Facilities and the Existing Transmission Lines. By way of clarification, the foregoing means that the Existing Transmission Lines must be moved in order to construct the applicable Facilities (but not to construct the Relocated Project Owner TLs). In this situation it is anticipated that perpetual rights and interests for the Relocated TL Real Property must be acquired by the Minnesota Project to construct the applicable Facilities and the Relocated Project Owner TLs. Upon such acquisition, title to the real property interests associated with the Existing Transmission Lines will become, pursuant to the acquisition of such interests, Minnesota Project Real Property (which does not necessarily involve or require the conveyance of the fee interest in such real property). The Owners and the Relocated Project TL Owner will cooperate in the acquisition and/or

transfer, at the expense of the Owners, of Minnesota Project Real Property and real property associated with the Existing Transmission Lines and the Relocated TL Real Property, including such fee interests, licenses, rights-of-way, easements, access rights and other real property rights and interests, that are necessary or desirable for the Relocated TL Project, such that the real property interests associated with the Existing Transmission Lines become Minnesota Project Real Property.

ARTICLE 6

CONTRACTOR'S RESPONSIBILITIES

- 6.1 Notice to Governmental Bodies; Access.** Contractor shall give all notices related to the Work to applicable Governmental Bodies and obtain and pay for all licenses, permits and inspections required for the Work, except to the extent that any such notice is required to be made by the Owners (and in which case the Owners shall give such notices). The Owners may obtain any easements and rights-of-way associated exclusively with the Work in accordance with **Section 4.6.3** of the **Minnesota Construction Management Agreement**. The Construction Manager and Contractor, as applicable, shall have the right to obtain copies of all written licenses, permits or approvals, issued by any Governmental Body that are applicable to the performance of this Agreement. The Construction Manager shall have access to the Relocated TL Project at all times.
- 6.2 Safety Precautions.** Contractor shall be responsible for all safety precautions in connection with the Work and shall take all reasonable precautions for the safety of Contractor and Subcontractor's employees performing the Work and all other Persons on or around the Relocated TL Real Property and Removal Work Site in connection with the Relocated TL Project. Contractor shall promptly take all reasonable and prudent actions to prevent and/or mitigate any damage, injury and/or loss, regardless of the source of fault, particularly in the event of an emergency.
- 6.3 Risk of Loss.** Subject to the provisions of **Schedule E**, Contractor shall be responsible for and shall bear any and all risk of loss or damage to the Work in progress and to all materials delivered to the Relocated TL Real Property or other location specified by Contractor. Contractor shall also at all times conduct the Work in a manner to avoid risk of loss, theft or damage to the Relocated TL Project by vandalism, sabotage or other means (and, to the extent the manner of Contractor's performance of the Work could affect risk of loss, theft or damage to the Minnesota Project, so as to avoid risk of loss, theft or damage to the Minnesota Project by vandalism, sabotage or other means).
- 6.4 Reports of Incidents.** Notwithstanding any contrary provision of this Agreement, in the event Contractor damages any part of the Relocated TL Project or the Minnesota Project, Contractor (i) shall promptly notify the Construction Manager and (ii) shall be responsible for the repair of the Relocated TL Project or the Minnesota Project, as applicable. Contractor shall immediately report any release or possible release of potentially hazardous or known Hazardous Substances. Releases shall include spilling, leaking, emptying, or other discharge into the environment. Contractor shall act to

contain any such release in accordance with Applicable Law and the provisions of this Agreement.

ARTICLE 7

COOPERATION AND COORDINATION WITH CONSTRUCTION MANAGER

- 7.1 Relocated TL Project and Project Planning.** Contractor shall plan its Work so as to perform in accordance with commercially reasonable standards and the Minnesota Project Plan.
- 7.2 Contractor Management and Supervisory Personnel.** Contractor shall furnish adequate management, supervisory, and technical personnel, including on the Relocated TL Real Property, to ensure expeditious and competent handling of the Work.

ARTICLE 8

SCHEDULING

- 8.1 Time is Important.** Contractor agrees that time is important, including Contractor's agreement to adhere to the Relocated TL Schedule.
- 8.2 Relocated TL Schedule.** The Construction Manager and Contractor have agreed on a schedule of the Work (the "**Relocated TL Schedule**") which is attached hereto as **Schedule B** and indicates the dates for the start and completion of the various stages of the Work, including the specific schedules for performance of the Relocated TL Work and the Removal Work. Contractor shall strictly adhere to the Relocated TL Schedule. If requested by the Construction Manager, Contractor shall participate in the Relocated TL Schedule update meetings.
- 8.3 Lost Pace and Recovery Plan.** If at any time during the performance of the Work, Contractor's progress does not keep pace with the requirements of the Relocated TL Schedule, the Construction Manager may order Contractor to take steps to improve its progress; **provided, however**, that Contractor shall have five (5) days to develop and implement its recovery plan for the Relocated TL Schedule (in consultation with the Construction Manager) from and after the date notified by the Construction Manager and the costs of such steps to improve progress shall be treated as Relocated TL Project Costs to the extent eligible pursuant to **Section 3.4**. Contractor's recovery plan will be diligently and continuously pursued by Contractor. Neither such notice by the Construction Manager, nor the Construction Manager's failure to issue such notice, shall relieve Contractor of its obligation to perform in accordance with this Agreement, including completion of quality Work in the timeframe required by the Relocated TL Schedule. Failure of Contractor to comply with the notice of the Construction Manager may be grounds for determination by the Construction Manager that Contractor is not pursuing the Work with such diligence as shall assure completion within the times specified.

- 8.4 Adjustment to Relocated TL Schedule.** Should the actions of the Construction Manager cause a significant delay of the Work, Contractor shall notify the Construction Manager in writing within five (5) Business Days from the beginning of such delay. If the Construction Manager and Contractor determine the facts justify an extension of time and/or additional compensation and no remaining float time exists in the Relocated TL Schedule, this Agreement will be modified in writing as appropriate. The Construction Manager may, in its sole discretion and in lieu of granting an extension of time, require Contractor to regain the Relocated TL Schedule, and any required additional charges shall be treated as Relocated TL Project Costs in accordance with **Section 3.4**.

ARTICLE 9

PAYMENTS, REIMBURSEMENT AND OTHER ASSOCIATED OBLIGATIONS

- 9.1 Payments.** Contractor will make all payments on obligations incurred in connection with the Work on a timely basis, including all payments to Subcontractors. Contractor shall invoice the Owners for all payments on obligations incurred by Contractor in connection with the Work in accordance with the documentation requirements of **Section 9.2**. The Owners, through the Construction Manager, will make all payments to Contractor on obligations incurred by Contractor in connection with the Work on a timely basis, to the extent such required payments qualify as Relocated TL Project Costs under this Agreement.
- 9.2 Contractor Information and Documentation.** Contractor must provide information and documentation on a monthly basis supporting the Relocated TL Project Costs incurred in the performance of the Work as provided herein as well as a detailed comparison of actual costs to the Relocated TL Budget for such Work and a summary of significant issues that have been or are expected to arise, including matters relating to the cost, schedule or performance of the Work. Contractor shall provide to the Construction Manager and the Owners on the fifteenth (15th) day after the end of each month the following:
- (i) a monthly progress report as required pursuant to **Section 9.3**;
 - (ii) a partial Lien Waiver substantially in the applicable form set forth in Schedule F executed by (a) Contractor if performing Work on real property that Contractor does not own in fee simple and (b) each Subcontractor as required by Owners in accordance with **Section 20.1**.
 - (iii) summary of payroll information for the Work performed, identifying, at a minimum, total costs for all labor, identified by billing category and specifying hours and employee labor classification, allocated, as applicable, as provided in **Section 3.4**.
 - (iv) a statement describing any undischarged Subcontractor Liens that have been filed or threatened in writing of which Contractor is aware;

- (v) a statement of (a) Relocated TL Project Costs incurred by Contractor in respect of the Work on the Relocated TL Project for the prior month and in the aggregate and (b) amounts of Relocated TL Project Costs, individually and in the aggregate; paid directly by Contractor at the request of the Construction Manager in the prior month and in the aggregate in respect of real property exclusively and directly associated with the Relocated TL Project;
- (vi) a Financial Summary Report substantially in the form set forth in **Schedule G**, as such form may be modified in accordance with the Minnesota Construction Management Agreement. This Financial Summary Report must contain the initial Relocated TL Budget (for the Work associated with each Phase) and the current estimated Relocated TL Budget updated and revised. Each such Financial Summary Report must include, at a minimum: (a) a summary of Relocated TL Project Costs incurred to date; (b) a cash flow forecast, by month, of Relocated TL Project Costs projected to be incurred through Final Completion of the Relocated TL Project; (c) variance reports, including comparisons of Relocated TL Project Costs to the then current Relocated TL Budget and forecasted Relocated TL Project Costs to the then-current Relocated TL Budget; and (d) the amount of and explanation for any funds received from Third Parties, including Damages. Variances should be individually identified and explained. To the extent applicable, such reports must be prepared in accordance with GAAP; **provided, however**, interim internal financial reports may be presented to the Construction Manager subject to year-end adjustments and may lack footnotes and other required GAAP presentation items. If an event of Force Majeure, an emergency, or a Third Party Claim or Third Party Environmental Claim (whether insured or uninsured) (“**Material Adverse Events**”) adversely affects the performance of the Work, Contractor shall give prompt written notice of the occurrence of such Material Adverse Event and provide its assessment of the impact thereof to the Construction Manager on the Relocated TL Project Costs and shall factor such assessment into each subsequent Financial Summary Report. Adjustments arising from Material Adverse Events will be specifically identified and Contractor shall provide detailed information concerning the actual impact of each such Material Adverse Event and amount expended as a result thereof until the full impact of such Material Adverse Event is known and incurred. To the extent reasonably feasible, financial information shall be presented separately for the Work associated with each Phase;
- (vii) documentation reasonably required to allow the Construction Manager to verify the reconciliation of Relocated TL Project Costs compared to the Relocated TL Budget therefor; and
- (viii) such other information as may be reasonably requested by the Construction Manager.

9.3 Progress Reports. Each progress report must be substantially in the form of the Progress Report attached as **Schedule H**, unless otherwise approved by the Construction Manager. The Progress Report(s) must address, among other things, the following matters with respect to the performance of Work, as applicable:

- (i) status of applications for waivers, franchises, variances, permits, authorizations, certificates, licenses and Orders of or from any Governmental Body having jurisdiction over Contractor, its Subcontractors, the Work or any portion of the Relocated TL Project, as may be in effect from time to time;
- (ii) status of equipment, materials and Relocated TL Real Property acquisition for the Relocated TL Project, including any condemnation proceedings initiated in furtherance thereof;
- (iii) a reasonable description of the progress of the Work, including a reconciliation of the Work to the Relocated TL Schedule and a reasonably detailed explanation of any variances, together with a listing of each of the subcontracts, Real Property Agreements, Change Orders, and amendments it has entered into under and pursuant to this Agreement since the preceding Progress Report provided to the Construction Manager (such listing must include the title, date of such instrument, the contracting parties, a summary of the scope of Work to be performed, materials and equipment to be obtained or the Relocated TL Real Property rights to be acquired and the contract price and payment terms corresponding thereto);
- (iv) identification of Subcontractors and the scope of their work, as applicable;
- (v) claims or disputes regarding the performance of Work of which Contractor has knowledge (including facts and circumstances of which Contractor has knowledge that are reasonably likely to give rise to a claim or dispute);
- (vi) a report on safety, injury and illness incidents, including statistics relating to lost time accidents, near misses and OSHA recordables;
- (vii) identification of Liens filed against any of the Existing Transmission Lines, the Relocated Project Owner TLs, or the Relocated TL Project or any portion thereof, the Facilities, or any other Minnesota Project-related assets (or real property associated with any of the foregoing) of which Contractor has knowledge other than: (a) Liens for taxes or assessments not yet delinquent; (b) Liens for workers' compensation awards, unemployment insurance and other types of social benefit obligations not yet delinquent; (c) unperfected Liens incurred in the ordinary course of business and not in connection with the borrowing of money, including Liens arising from the employment of labor or the acquisition of equipment, materials or consumables; and (d) Liens against any of the Existing Transmission Lines, the Relocated Project Owner TLs, or the

Relocated TL Project (or real property associated therewith) that Contractor grants, or has granted, to a lender;

- (viii) the status of Commissioning, Acceptance and inspections (including the results thereof), including a report as to the results of Commissioning of the Relocated Project Owner TLs and Acceptance of the Removal Work in a form reasonably acceptable to the Construction Manager;
- (ix) a statement of any other significant issues, including unresolved Change Orders;
- (x) identification of the date, time and location of inspections, tests and approvals of Work scheduled in the next succeeding month; and
- (xi) a summary of significant events that are scheduled or anticipated to occur during the next thirty (30) days.

ARTICLE 10

WORK CHANGES

- 10.1 Change of Work Requirements.** The Owners and the Relocated Project TL Owner may mutually agree to revise or make changes to the scope and specifications of the Work as set forth in **Schedule A**. The Owners reserve the right to direct Contractor to reschedule the order and rate of progress of the performance of the Work, as set forth in **Schedule B** pursuant to appropriate Management Committee actions under the Minnesota Project Participation Agreement. The Owners will consult with Contractor regarding any such change prior to any action by the Management Committee. The changes described above will be made pursuant to a Change Order issued by the Construction Manager, which has been counter-signed by Contractor pursuant to **Section 10.3**. All Change Orders issued by the Construction Manager will include an estimate of any budgetary increase or decrease of the change in scope and specifications and, if applicable, changes to the Relocated TL Schedule. Changes must be described with particularity.
- 10.2 Cost or Time of Change Order.** If Contractor asserts that a proposed Change Order causes an increase or decrease in the cost of or the time required for performance of the Work that differs from the estimates provided to Contractor pursuant to **Section 10.1**, Contractor shall provide the Construction Manager with sufficient documentation to justify such increase or decrease in the cost of or the time required for performance of the Work asserted by Contractor.
- 10.3 Acceptance of Proposed Change Order; Disputes.** The Construction Manager and Contractor may further adjust such proposed Change Order as necessary taking into consideration the information provided by Contractor pursuant to **Section 10.2** to reach agreement. Upon execution of the proposed Change Order by the Construction Manager and Contractor, this Agreement will be deemed modified by Change Order. Costs incurred in the performance of the Work described in the Change Order shall be treated as Relocated TL Project Costs in accordance with **Section 3.4**. If the Construction

Manager and Contractor cannot reach agreement on the terms of a proposed Change Order, any resulting dispute will be resolved in accordance with **Article 23**.

- 10.4 Effect of Failure to Comply.** Contractor's failure to comply with **Section 10.2** shall constitute Contractor's agreement to perform any such Change Order in accordance with the schedule specified in the original order and/or subsequent revisions thereto.

ARTICLE 11

SUSPENSION OF WORK

- 11.1 Suspension of Work.** The Owners may, by written notice to Contractor, suspend at any time the performance of all or any portion of the Work; **provided, however**, if the Existing Transmission Lines have been taken out of service, the Relocated TL Work may be suspended only if the suspension applies to the entire Segment or Phase in which the Relocated TL Work is a component; and **provided, further**, that once Removal Work is commenced, suspension of Removal Work shall only occur with the written consent of the Relocated Project TL Owner. During the period of suspension (i) Contractor shall use its commercially reasonable efforts to minimize costs associated with the suspension and (ii) the Owners shall be responsible for costs incurred in connection with the suspension in accordance with the provisions of **Section 11.3**.
- 11.2 Requirements Upon Notice of Suspension.** Upon receipt of any such written notice, Contractor shall, unless such notice requires otherwise:
- (i) immediately discontinue the applicable Work on the date specified in the notice;
 - (ii) place no further orders or subcontracts for materials, work or the like with respect to suspended Work other than to the extent required in the notice;
 - (iii) promptly make commercially reasonable efforts to obtain suspension upon terms satisfactory to the Construction Manager of all orders, subcontracts, rental agreements and the like to the extent they relate to performance of the Work suspended; and
 - (iv) promptly make commercially reasonable efforts upon terms satisfactory to the Construction Manager to protect or maintain the Work.
- 11.3 Compensation for Suspension.** To the extent reasonable and if such costs directly result from the suspension of the Work, the additional costs of such suspension shall be treated as Relocated TL Project Costs in accordance with **Section 3.4**, including the following:
- (i) a standby charge based upon costs incurred with respect to and for the period of suspension of the Work, which standby charge shall be the equivalent of Contractor's actual costs as permitted by the Minnesota Construction Management Agreement and the Minnesota Project Participation Agreement. Such costs shall include Contractor's cost of

keeping its organization and equipment committed to the Work in a standby status;

- (ii) the actual costs associated with actual mobilization and demobilization of Contractor's forces and equipment; and
- (iii) any actual increased cost of the Work incurred by Contractor.

Any such costs shall be documented and evidenced by all supporting documentation requested by the Construction Manager, and shall be subject to the audit rights of the Owners as set forth in this Agreement.

- 11.4 Notice to Resume Suspended Work.** Upon receipt of notice to resume suspended Work, Contractor shall promptly resume performance of the suspended Work to the extent required in the notice. Contractor shall provide a revised Relocated TL Schedule (with respect to the Work suspended and any other Work, the performance of which was adversely affected by the Work suspended) to the Construction Manager in writing within ten (10) days after Contractor's receipt of notice to resume the Work. Delivery of such revised Relocated TL Schedule shall be deemed to satisfy the provisions of **Section 8.4** requiring Contractor to deliver notice to the Construction Manager of delay caused by actions of the Construction Manager, but such delivery shall be without prejudice to any determinations to be made by the Construction Manager or Contractor (or both) pursuant to **Section 8.4**.

ARTICLE 12

CONTRACTOR WARRANTIES

- 12.1 Contractor General Warranty.** Contractor warrants that it will perform the Work with due care, skill and diligence, and in accordance with this Agreement, Applicable Law and Good Utility Practice.
- 12.2 Exculpatory Provision.** NO OTHER REPRESENTATION, GUARANTEE, OR WARRANTY WITH RESPECT TO THE QUALITY AND CONFORMITY OF THE WORK, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IS INTENDED IN OR BY THIS AGREEMENT.

ARTICLE 13

INSURANCE

- 13.1 General Insurance Requirement.** Contractor and its Subcontractors shall comply with the provisions of **Schedule E**.
- 13.2 Effect of Insurance.** The liability of Contractor under this Agreement is not limited to available insurance coverage.

- 13.3 Contractor's Release.** Contractor hereby releases the Construction Manager and the Owners, in their capacity as Owners and in each other capacity in which they participate in the Minnesota Project, from all claims for loss or damage to or loss of use of Contractor's tools, machinery, equipment, motor vehicles or any other property used in connection with the Work, whether owned, rented, or leased by Contractor in or about the Project Site (as that term is defined in **Schedule E**). Contractor shall be solely responsible for purchasing such insurance as it deems appropriate to cover loss or damage to or loss of use of Contractor's tools, machinery, equipment, motor vehicles or any other property used in connection with the Work.

ARTICLE 14

COMPLETION AND ACCEPTANCE OF WORK — RELOCATED PROJECT OWNER TLS

- 14.1 Commissioning.** Contractor agrees that the Construction Manager shall oversee for the benefit of the Owners the performance of all tasks necessary for Commissioning of all of the Facilities and the Relocated Project Owner TLS, including the performance of all inspection, testing, operations and other tasks inherent in Commissioning in accordance with Good Utility Practice and the equipment manufacturers' procedures. The Owners and the Construction Manager have a right to inspect the Work and to observe Commissioning.
- 14.2 No Performance Guarantees.** The Construction Manager shall oversee the applicable tests inherent in the process of Commissioning the Relocated Project Owner TLS, with the objective of verifying that the tests are conducted in accordance with the applicable procedures set forth in the Minnesota Project Agreements and such other procedures as may have been developed by the Construction Manager in accordance with Good Utility Practice. Contractor shall cooperate with such oversight in connection with Commissioning of the Relocated Project Owner TLS. In no way will the Construction Manager's oversight exculpate Contractor from its obligations hereunder. The Construction Manager is neither providing any performance guarantees nor guaranteeing successful Commissioning of the Minnesota Project or any portion thereof.
- 14.3 Initial Notice of Commissioning.** When Contractor believes that successful Commissioning of any Relocated Project Owner TL has been completed in accordance with this Agreement, it shall deliver to the Construction Manager a written notice of Commissioning. The notice of Commissioning must contain a report as to the results of such Commissioning in a form reasonably acceptable to the Construction Manager.
- 14.4 Notice of Deficiency.** The Construction Manager shall use its commercially reasonable efforts to notify Contractor at the earliest possible date of any inadequacy, inaccuracy or otherwise unacceptable information or result set forth in an applicable notice of Commissioning given to the Construction Manager with respect to the Commissioning of a Relocated Project Owner TL. If the Owners determine, after consultation with the Construction Manager and Contractor, that Commissioning of the Relocated Project Owner TLS has not been achieved, the Construction Manager shall notify Contractor of

such determination, specifying in reasonable detail the basis therefor. Contractor shall promptly take such action as is necessary to make such corrections or to perform additional Work as will likely effect successful Commissioning of the applicable Relocated Project Owner TL. This procedure will be repeated as necessary until Commissioning of the applicable Relocated Project Owner TL has been successfully accomplished in the judgment of the Owners and the Construction Manager and the Commissioning of the applicable Relocated Project Owner TL will have been deemed to have occurred on the date of the Owners' receipt of the most recently delivered notice of Commissioning, which will be considered the "final" notice of Commissioning as to the applicable Relocated Project Owner TL.

- 14.5 Inspection Opportunities.** Contractor shall give the Owners and the Construction Manager timely notice of readiness of the Work for all required inspections, tests or approvals and arrange for an opportunity for the Construction Manager and any Construction Manager's designees to be present.
- 14.6 Substantial Completion.** Following delivery of the final notice of Commissioning for the applicable Relocated Project Owner TL, Contractor shall notify the Construction Manager in writing when Contractor believes that Substantial Completion of the applicable Relocated Project Owner TL has been accomplished ("**Notice of Substantial Completion**"). The Notice of Substantial Completion must include the information required by **Section 14.7**. The Construction Manager shall review and promptly advise the Owners to accept or reject the Notice of Substantial Completion. The Construction Manager will deliver to Contractor a notice indicating that, in the determination of the Owners, after consultation with the Construction Manager: (i) Substantial Completion of the applicable Relocated Project Owner TL has occurred or (ii) Substantial Completion of the applicable Relocated Project Owner TL has not been achieved, in which latter event, such notice will set forth in reasonable detail the basis of the Owners' determination. If the Construction Manager notifies Contractor that the Owners have determined that Substantial Completion of the applicable Relocated Project Owner TL has not been achieved, Contractor shall promptly take such action to make such corrections or perform additional Work as will likely effect achievement of Substantial Completion of the applicable Relocated Project Owner TL. Contractor shall diligently continue working until Substantial Completion of the applicable Relocated Project Owner TL is achieved.
- 14.7 Creation of Punch List.** Each notice delivered by Contractor pursuant to **Section 14.6** must include a list of all minor items of the Work that have been identified by or disclosed to Contractor that remain to be completed but do not affect operation of the applicable Relocated Project Owner TL in accordance with Good Utility Practice (which elements must not include items that may affect the safety, performance or reliability of the applicable Relocated Project Owner TL) and the proposed schedule for the completion of such remaining Work. After reviewing such list, the Construction Manager, in consultation with Contractor, shall identify a detailed list of all elements of the Work that remain to be completed and establish a proposed schedule for completing such Work. Contractor shall come to agreement with the Construction Manager for the detailed list of items of the Work and the schedule for completion of such Work (once agreed to by the Construction Manager and Contractor, each such document herein a

“**Punch List**”). The Construction Manager shall supervise, manage and oversee the completion of all Work on each Punch List in accordance with the proposed schedule set forth therein.

- 14.8 Final Relocation Completion.** Following the achievement of Substantial Completion of the Relocated Project Owner TLs, Contractor shall notify the Construction Manager in writing when Contractor believes that Final Completion has been accomplished (“**Notice of Final Relocation Completion**”). The Notice of Final Relocation Completion will include a written statement by Contractor that Final Completion has been achieved and the basis therefor. The Construction Manager shall review and promptly deliver to Contractor a notice indicating that, in the determination of the Owners, after consultation with the Construction Manager that: (i) Final Completion has occurred or (ii) Final Completion has not been achieved. In the latter event, such notice must set forth in reasonable detail the basis of the Owners’ determination. If the Construction Manager notifies Contractor that, in the determination of the Owners, Final Completion has not been achieved, Contractor shall promptly take such action to make such corrections or perform additional Work as will likely effect achievement of Final Completion. Contractor shall diligently continue working until Final Completion is achieved.

ARTICLE 15

COMPLETION AND ACCEPTANCE OF WORK —EXISTING TRANSMISSION LINES

- 15.1 Transfer of Care, Custody and Control to Contractor.** Contractor shall be solely responsible for the care, custody, control, operation and maintenance of the Removal Work Site from and after the date that the Existing Transmission Lines are decommissioned, and thereafter shall bear the risk of loss, damage or destruction thereto, until the earlier of (i) the date upon which the Removal Work related to the Existing Transmission Lines is completed in accordance with the scope and specifications of the Removal Work set forth in **Schedule A** (the “**Acceptance Date**”) or (ii) the date of termination of this Agreement under the circumstances set forth in **Article 18** (the “**Care, Custody and Control Transfer Date**”). Following the Acceptance Date or the Care, Custody and Control Transfer Date, as applicable, Contractor shall have access to the Removal Work Site only as may be necessary to complete any Removal Work relating to the Removal Line, including warranty work to be performed prior to Acceptance, remaining to be performed hereunder; **provided, however**, such access shall be at reasonable times and only for permissible purposes determined in the reasonable discretion of the Owners.
- 15.2 Creation of Punch-List.** No later than thirty (30) days prior to the date upon which Contractor anticipates to be the then scheduled Acceptance Date, Contractor shall prepare and deliver to the Owners a list setting forth (i) all those certain minor, non-safety and non-operational items, and items that do not impact the availability or performance levels of the Removal Work that remain to be performed to complete the Removal Work; (ii) the proposed time limits within which Contractor shall complete such remaining Removal Work; and (iii) Contractor’s plan to complete such Removal Work. Upon

receipt of such list, the Owners shall review the same and notify Contractor within ten (10) Business Days of any proposed revisions thereto. Contractor and the Owners shall then meet and consult in good faith to agree upon the definitive, final list and plan, including the approved time limits within which Contractor shall perform such remaining Removal Work and the resources to be utilized to complete such Removal Work (such final list, as agreed to by the Owners the “**Removal Punch-List**”). Once the Removal Punch-List is agreed upon, Contractor shall promptly begin working on the items thereon; **provided, however**, that if Contractor has not completed such Removal Work within the approved time limits set forth in the Removal Punch-List, then the Owners may have such items completed for the account of the Owners. The taking of such actions by the Owners shall not relieve Contractor of its other unperformed obligations under this Agreement.

15.3 Acceptance.

15.3.1 Criteria for Acceptance of the Removal Work. The Removal Work shall be deemed accepted by the Owners when each and all of the following have been fully and completely satisfied (“**Acceptance**”):

- (i) Contractor has completed all Removal Punch-List items in accordance with this Agreement;
- (ii) Contractor has not received, as of the date on which Notice of Acceptance is delivered to the Owners pursuant to **Section 15.3.2**, notice that it is in breach of any warranty;
- (iii) the Owners have received from Contractor all permits Contractor is required to obtain to comply with Applicable Law and such permits are in full force and effect;
- (iv) Contractor has confirmed in writing that there are no outstanding payments or fees owed to any Person (other than Contractor) with respect to the Removal Work and there are no pending or threatened disputes between the Owners and Contractor or between Contractor and any Governmental Body regarding the Removal Work relating to the Existing Transmission Lines;
- (v) Contractor has provided to the Owners all Documentation not previously provided to the Owners and shall have collected and assembled all Subcontractor warranties and delivered them to the Owners;
- (vi) Contractor has provided final Lien releases and waivers in the applicable form of Schedule F and has certified that there are no outstanding payment disputes with any other Subcontractors;
- (vii) no Liens attributable to Contractor or any Subcontractor have attached to any part of the Removal Work Site and remain unbonded or unsatisfied;

- (viii) Contractor and all Subcontractors have demobilized from the Removal Work Site and removed all of their materials and equipment, construction aids and waste materials, rubbish and temporary facilities from the Removal Work Site;
- (ix) Contractor has completed performance of all Removal Work relating to the Existing Transmission Lines required under this Agreement, other than Removal Work covered by warranties; and
- (x) Contractor has properly completed training of the Owners' designees for remaining features of the Removal Work Site that will require continuing maintenance, monitoring or other attention, if any.

15.3.2 Notice and Report of Acceptance. When Contractor determines that the conditions set forth in **Section 15.3.1** have been satisfied with respect to the Removal Work, Contractor shall deliver a notice of such determination (a "**Notice of Acceptance**") to the Owners. The Notice of Acceptance shall contain a report in a form reasonably acceptable to the Owners and with sufficient detail to enable the Owners to determine whether such conditions have been met, and such other information that the Owners may reasonably require to determine whether the criteria for Acceptance have been met.

15.3.3 Achievement of Acceptance. The Owners shall within twenty (20) Days following the Owners' receipt of the Notice of Acceptance, either: (i) deliver to Contractor a certificate which states that Contractor has met the requirements set forth in **Section 15.3.1** ("**Certificate of Acceptance**") for the Removal Work or (ii) notify Contractor in writing that the conditions set forth in **Section 15.3.1** have not been met, stating with specificity the reasons therefor. If the Owners deliver a Certificate of Acceptance for the Removal Work, the date of Contractor's receipt of the Notice of Acceptance shall be deemed the Acceptance Date and shall be so stated on the Certificate of Acceptance. If the Owners notify Contractor that not all of such conditions have been met, Contractor shall promptly take such actions as necessary to meet all of such conditions, and shall then issue another Notice of Acceptance to the Owners stating that Contractor believes that all of such conditions have been met. Such procedure shall be repeated until the Acceptance Date of the Removal Work has occurred.

ARTICLE 16

RIGHT TO AUDIT AND TAXES

16.1 Record Retention. Contractor shall, in accordance with Good Utility Practice, maintain or cause to be maintained all Relocated TL Project records generated or received by it in connection with its performance of the Work, including:

- (i) Documents, other design documentation, other construction documentation, including schedules, correspondence, minutes of meetings,

daily logs, Progress Reports, currently marked and as-built documentation, and similar construction or technical data;

- (ii) Subcontracts and Change Orders and amendments thereto, including all records relating to the procurement of equipment and materials;
- (iii) Real Property Agreements for the Relocated TL Real Property and amendments thereto, closing documentation pursuant to which such Relocated TL Real Property is acquired, surveys, title insurance policies and other documents related to the acquisition, use, title, or restrictions upon such Relocated TL Real Property;
- (iv) financial records pursuant to which Contractor will seek recognition of Relocated TL Project Costs (including Work performed by its Subcontractors), including payroll records, daily time sheets, other personnel records, books of account, records of monies expended or received, financial obligations incurred, credits accrued, as well as other documentation used by Contractor to accumulate financial and statistical data in connection with the Work;
- (v) financial records in support of amounts it is required to pay to Subcontractors or other Persons, together with all documentation provided by such Persons to justify either the payment of amounts owed to them or the amounts incurred by them for which they are entitled to credit;
- (vi) all Governmental Approvals relevant to the design or construction of the Relocated TL Project, together with related applications, notices of violation, and related correspondence with Governmental Bodies;
- (vii) all sales and use tax records, including documents relating to payments, refunds, exemptions, or other communications with Governmental Bodies relating to such taxes;
- (viii) all records relating to Third Party Claims and Third Party Environmental Claims by or against Contractor or the Owners arising out of the performance of Contractor's obligations under this Agreement;
- (ix) all records relating to insurance policies related to the Relocated TL Project or the Work or claims thereunder;
- (x) all records of incidents requiring medical attention in connection with the performance of the Work; and
- (xi) all other documents relating to the Relocated TL Project, generated or received by Contractor in connection with the performance of its obligations under this Agreement (collectively, all of the foregoing, "**Records**").

- 16.2 Transfer and Disposal.** Contractor may destroy or dispose of Records if they have been retained for at least five (5) years after Final Completion of all of the Work if Contractor has first offered to transfer such Records to those Owners that require such Records for its or their purposes in lieu of destroying or disposing of them and no Owner, within thirty (30) days of receipt of Contractor's offer, requests such Records to be transferred to it. Otherwise, Contractor shall transfer such Records to the Owner that requests them. If more than one Owner requests them, the Management Committee shall vote to decide which Owner will become the custodian of such Records. Any Owner accepting custody of such Records shall provide access to them to the other Owners on the terms set forth in this **Article 16** and must make them available for transfer to the other Owners on substantially the same conditions as set forth in this **Section 16.2** if at any time it no longer wishes to retain custody of such Records. Contractor shall use its commercially reasonable efforts to insert or cause to be inserted provisions substantially similar to this **Article 16** (to the extent appropriate) in each contract with a Subcontractor, which provisions will serve to the benefit of each Owner.
- 16.3 Audit of Records.** Contractor shall make all Records it is required to retain under this Agreement available to: (i) the Independent Accountants and (ii) except as provided below, the Owners for inspection and audit. Contractor will make the Records available at Contractor's principal place of business or other agreed location upon at least five (5) Business Days' notice. Contractor shall not make the Records described in **Sections 16.1(iv), (v) or (vii)** (and other financial records) available to any Person other than the Independent Accountants except in accordance with a protocol adopted by the Management Committee that will be designed to avoid use of such information by the receiving Owner in a manner that could violate Applicable Law.
- 16.4 Taxes Generally.** Unless otherwise specified in this Agreement, Contractor shall process and pay all sales, use and other taxes that are lawfully assessed and due in connection with the Work, and costs of such taxes shall be treated as Relocated TL Project Costs to the extent eligible pursuant to **Section 3.4**. The actual amount of sales, use and other taxes paid by Contractor shall be shown as separate items on all invoices.
- 16.5 Sales and Similar Taxes.** Contractor shall use commercially reasonable efforts to secure any available refund of sales, consumer or use taxes paid in connection with the Relocated TL Project, which refunds shall be remitted to the Owners. The Owners and Contractor will provide reasonable assistance to each other in connection with any applications for such refunds. Notwithstanding the foregoing, Contractor is not obligated to attempt to secure such a refund unless the refund would be greater than Fifteen Dollars (\$15.00).

ARTICLE 17

TERMINATION FOR CONVENIENCE

- 17.1 Termination of Agreement.** The Owners may, at the Owners' option, terminate this Agreement for convenience, in whole or in part, at any time by written notice thereof to Contractor, whether or not Contractor is in default; **provided, however**, that any such

termination for convenience must also include a termination for convenience of the Minnesota Project as a whole or of the Phase of which the portion of the Relocated Minnesota TL Project to be terminated is a part. No termination for convenience shall be allowed if such termination applies only to Contractor and the Relocated TL Project and not to the Phase of which the portion of the Relocated Minnesota TL Project to be terminated is a part; **provided, however**, if the Existing Transmission Lines have been taken out of service, the Relocated TL Work may not be terminated for convenience and must continue until Commissioning of the Relocated Project Owner TLs, unless (i) the Work is terminated and (ii) the termination for convenience includes the restoration to service and re-Commissioning of the Existing Transmission Lines at the same location. By way of clarification, if the Existing Transmission Lines have been taken out of service, and such service will not be restored on the Existing Transmission Lines at the same location, then the Owners may not suspend Relocated TL Work or Removal Work for convenience.

17.2 Requirements Upon Termination of Agreement. Upon any such termination, the cost for all Work completed and the reasonable cost of demobilization shall be treated as Relocated TL Project Costs to the extent eligible pursuant to **Section 3.4**. No amount shall be allowed for overhead or anticipated profit on unperformed Work. Upon receipt of any notice of termination for convenience and unless the notice requires otherwise, Contractor shall forthwith:

- (i) discontinue the applicable Work (including the removal of workers and all other Contractor agents from the Relocated TL Real Property);
- (ii) place no further orders or subcontracts as to the applicable Work other than as may be necessary for completion of any such portion of the Work under this Agreement that is not terminated;
- (iii) make commercially reasonable efforts to obtain cancellation upon terms satisfactory to the Owners of all orders and subcontracts to the extent they relate to the performance of the applicable Work terminated;
- (iv) as directed by the Construction Manager, assist the Construction Manager in the maintenance, protection and disposition of equipment materials, supplies or other Property acquired pursuant to this Agreement; and
- (v) deliver to the Construction Manager copies of all Documents and other material and information, whether or not complete, related to the Work.

Notwithstanding the foregoing, Contractor may elect in its sole discretion to continue the terminated Work outside of the Minnesota Project and complete it. The costs of such completion will not be credited to Contractor with respect of the Minnesota Project.

ARTICLE 18

TERMINATION FOR DEFAULT

18.1 Termination for Default. The Owners may, by written notice of default to Contractor terminate the whole or any part of this Agreement if:

- (i) Contractor or its Subcontractors fail to perform any of their material obligations under this Agreement or fail to make progress so as to endanger timely completion of the Work, and Contractor does not cure such failure within fifteen (15) days after receipt of notice by the Construction Manager, or provide a plan that is reasonably acceptable to the Owners to commence a cure within fifteen (15) days after receipt of notice and diligently and continuously pursue a cure thereafter;
- (ii) a “**Construction Period Payment Default**” as defined in clause (i) of such definition in the Minnesota Project Participation Agreement has occurred with respect to the Contractor (in its capacity as an Owner), and Contractor has failed to cure such a Construction Period Payment Default within the CPP Default Cure Period applicable to such Construction Period Payment Default; or
- (iii) a CP Insolvency Default has occurred with respect to Contractor.

18.2 Completion of Work Upon Termination for Default. In the event the Owners terminate the whole or any part of this Agreement as provided in this **Article 18**, the Owners may at the Owners’ option arrange for completion of the Work, and the cost of completion will be paid by the Owners. The Construction Manager shall have access to the Relocated TL Work and the Relocated TL Real Property as necessary for completion of the Work, and is hereby granted (by Contractor in its capacity as the Relocated Project TL Owner) a royalty-free limited license over the Relocated TL Real Property and the Removal Work Site for such completion. This limited license shall continue and remain in effect until the Acceptance Date. The Owners will incur such costs without recourse against Contractor, except as set forth in the Minnesota Project Participation Agreement. The Owners’ right to complete the Work is granted pursuant to the Minnesota Construction Management Agreement, the Minnesota Project Participation Agreement or the Transmission Easement Agreement, and accordingly, the Owners reserve the right to contract with others for the same type of work, as is the subject of this Agreement or to employ their own personnel in such work. The Owners will not have a right to offset any amounts paid by the Owners with respect to completion of the Work, except as set forth in the Minnesota Project Participation Agreement (which describes the payments required to be made to cure a payment default and, in the event of an uncured default during the construction period, the imposition of liquidated damages). In no event will the Owners have the right to a claim against ownership interests of Contractor in the Relocated TL Project as a Relocated Project TL Owner, subject to the easements granted and associated rights with respect thereto.

18.3 Requirements Upon Termination for Default. Unless otherwise stated in the notice, upon receipt of notice of termination for default, Contractor shall:

- (i) immediately discontinue the Work or the relevant portion of the Work on the date and to the extent specified in the notice;
- (ii) place no further orders or subcontracts as to the Work, other than as may be necessary for completion of any such portion of the Work that is not terminated;
- (iii) make commercially reasonable efforts to obtain cancellation upon terms satisfactory to the Construction Manager of all orders and subcontracts to the extent they relate to the performance of the Work terminated;
- (iv) as directed by the Construction Manager, assist the Construction Manager in the maintenance, protection and disposition of equipment, materials, supplies, other Property or the like acquired pursuant to this Agreement; and
- (v) deliver to the Construction Manager copies of all Records, whether completed or in process related to the Work.

18.4 Remedies of Contractor Upon Default. If, after delivery of notice of termination, it is determined for any reason that Contractor was not in default, Contractor's remedies shall be as set forth in the Minnesota Project Agreements.

18.5 Remedies Exclusive. The rights and remedies of the Owners and Contractor in the event of termination for default shall be solely those set forth in the Minnesota Project Agreements. No failure or delay on the part of the Owners or Contractor in exercising any right shall operate as a waiver thereof.

ARTICLE 19

CONFIDENTIAL INFORMATION

19.1 Confidentiality Provisions Incorporated by Reference. Contractor acknowledges and agrees that the confidentiality provisions set forth in **Schedule 1** to the **Minnesota Project Participation Agreement**, including **Article 4 (Confidentiality)** thereof, will bind Contractor in its capacity as Contractor, and such provisions are incorporated by reference to this Agreement.

ARTICLE 20

NOTICE OF CLAIMS AND LIENS

20.1 Relocated TL Work Free of All Liens and Encumbrances. The Work performed by Contractor shall be free and clear of all Liens, except for "**Permitted Owner Liens**" allowed under the Minnesota Project Participation Agreement. If such a Lien has been

filed or noticed, Contractor shall satisfy or bond-over the Lien not later than the earlier of five (5) days after the Lien has been filed or notice has been received. If Contractor chooses to bond-over the Lien, the amount of the bond shall not be less than one hundred fifty percent (150%) of the claim. Any such bond shall survive the termination or expiration of this Agreement. Contractor will furnish, when requested by the Owners, written evidence that all claims, bills, payrolls, costs, taxes and other indebtedness, incurred in connection with the Work, have either been paid in full or bonded-over, including releases and waivers of all Liens and claims of Contractor and its Subcontractors substantially in the applicable form in **Schedule F**.

- 20.2 Owner Right to Settle Contractor Liens and Encumbrances.** In the event the Owners are notified in writing of a Third Party Claim, Third Party Environmental Claim or other claims arising from the Work performed by Contractor, the Owners shall notify Contractor of such claim or claims and Contractor shall appoint a representative who will have the authority and will use its commercially reasonable efforts to settle any claims, subject to the prior approval of any settlement terms by the Owners. If Contractor fails to appoint a representative to settle such claims, the Owners shall have the right to make settlement thereof and bill the same for payment in cash to the Owners by Contractor. The Owners will not have a right to offset any such amounts against ownership interests of Contractor in the Minnesota Project as an Owner. The amount owing from Contractor to the Owners with respect to the foregoing is a general unsecured creditor claim of the Owners against Contractor (in the absence of a Construction Period Payment Default under the Minnesota Project Participation Agreement).
- 20.3 Prohibition Against Liens on Owner Property.** Contractor is responsible for paying all Subcontractors and other Third Parties for the Work. Contractor shall not allow any Liens to be (i) filed against the Owners or (ii) placed upon the Facilities or other Property of the Owners by any Persons that performed Work on the Relocated TL Project. If any such Lien is asserted against the Facilities or any other Property of any Owner, Contractor shall promptly cause such Lien to be removed from the Facilities or any other Property of any Owner. Contractor further agrees to defend, indemnify, save and hold harmless the Owners from and against any and all such Liens (and related costs including attorneys' fees) asserted against the Facilities or any other Property of any Owner, including Liens of Subcontractors and other Persons related to the Work.

ARTICLE 21

THIRD PARTY INDEMNIFICATION

21.1 Indemnification.

21.1.1 Indemnification by the Owners. To the maximum extent permitted by Applicable Law, each Owner shall, severally to the extent of its individual Percentage Interest as defined in the Minnesota Project Participation Agreement, defend, indemnify and hold harmless Contractor, its Affiliates, and their respective directors, officers, shareholders, members, partners, employees, and agents from and against Third Party Claims, and Third Party Environmental Claims relating to real

property acquired from a Third Party for the Relocated TL Project on or after the date and time hereof, in each case, arising from the Relocated TL Project in the event such Third Party Claims or such Third Party Environmental Claims arise solely from Owners' (other than the Owner that is acting in its capacity as Contractor) (i) willful or negligent acts or omissions or those of Owners' officers, employees, agents or Affiliates arising out of this Agreement or (ii) breach of this Agreement. The indemnification obligations hereunder are not limited by insurance coverage. For the avoidance of doubt (a) if Contractor is one of the Owners, this **Section 21.1.1** is intended to require that Contractor in its capacity as an Owner defend, indemnify and hold itself harmless (to the extent of its Percentage Interest as defined in the Minnesota Project Participation Agreement) in its capacity as Contractor and (b) all indemnification claims will either be paid directly to the holder of such Third Party Claim or such Third Party Environmental Claim or, if having been first paid by Contractor, Contractor will be entitled to reimbursement by the other Owners as provided in the Minnesota Project Participation Agreement. Contractor will apply such payment against (as a reduction of) Relocated TL Project Costs.

21.1.2 Indemnification by Contractor. To the maximum extent permitted by Applicable Law (and in addition to Contractor's defense, indemnification, and hold harmless obligations set forth in **Section 21.2**), Contractor shall defend, indemnify and hold harmless each Owner and the Construction Manager, and their Affiliates and their respective directors, officers, shareholders, members, partners, employees and agents from and against:

- (i) Third Party Claims arising from Contractor's negligent act or omission, gross negligence, intentional misconduct or willful misconduct in connection with the performance of or failure to perform the Work under this Agreement; provided, that the liability of Contractor to defend, indemnify and hold harmless for a Third Party Claim arising from Contractor's negligent act or omission (but not gross negligence, intentional misconduct or willful misconduct) will not exceed the amount of proceeds recovered from insurance required under this Agreement or Relocated TL Insurance with respect to such Third Party Claim; and
- (ii) Third Party Environmental Claims, except claims described in clause ii of the definition of Third Party Environmental Claim other than to the extent exacerbated by the gross negligence, intentional misconduct or willful misconduct of Contractor arising out of, or in connection with, the performance of or failure to perform the Work under this Agreement. Contractor's liability to defend, indemnify and hold harmless each Owner for a Third Party Environmental Claim arising from its negligent act or omission (but not gross negligence, intentional misconduct or willful misconduct) will not exceed the amount of proceeds recovered from insurance required under this Agreement or Relocated TL Insurance with respect to such Third Party Environmental Claim.

- 21.1.3 Contributory Negligence. With respect to Third Party Claims and Third Party Environmental Claims alleging a negligent act or omission or gross negligence (but not intentional misconduct or willful misconduct) by the Indemnifying Person under **Section 21.1.1** or **21.1.2** such Indemnifying Person will not be responsible for that portion of any award or judgment as to which it is determined (whether in the proceeding brought by the Third Party or in any subsequent proceeding commenced by a Person to determine the allocation of liability) that another Person was negligent or grossly negligent to the extent of the specific percentage of negligence or gross negligence allocated pursuant to a judgment rendered in the proceeding to such other Person; **provided, however**, the foregoing will not relieve the Indemnifying Person of its obligation to defend the Indemnified Person(s) in any such claim in accordance with **Section 21.1.1** or **21.1.2**, as applicable, this **Section 21.1.3** shall not be deemed to limit **Section 21.2**.
- 21.1.4 Capacity of Persons. The provisions in this **Article 21** apply to a Party solely in its specified capacity and not to such Party acting in any other capacity.
- 21.1.5 Conduct of Claims. Any Person or its officers, directors, employees or agents entitled to indemnification under this Agreement for any Third Party Claim or Third Party Environmental Claim (“**Indemnified Person(s)**”) shall, promptly after the receipt of notice of any legal action or claim against such Indemnified Person in respect of which indemnification may be sought pursuant to this **Article 21** notify the Person from whom it seeks indemnity (“**Indemnifying Person(s)**”) of such Third Party Claim or Third Party Environmental Claim. The Indemnifying Person(s) is not obligated to indemnify the Indemnified Person(s) with respect to any such claim if the Indemnified Person(s): (i) fails to notify the Indemnifying Person(s) thereof in accordance with the provisions of this **Section 21.1.5** in sufficient time to permit the Indemnifying Person(s) timely to defend against such matter and to make a timely response thereto, including any responsive motion or answer to a complaint, petition, notice or other legal, equitable or administrative process relating to the action or claim and (ii) such failure causes material prejudice to the defense of, or otherwise damages, the Indemnifying Person(s). If a Third Party Claim or a Third Party Environmental Claim is made or brought against the Indemnified Person(s), the Indemnifying Person(s) may, or if so requested by the Indemnified Person(s) shall, assume the defense thereof with counsel of its selection reasonably acceptable to the Indemnified Person(s). In such circumstances, the Indemnified Person(s) shall: (a) at no cost or expense to the Indemnified Person(s), cooperate with the Indemnifying Person(s) and provide the Indemnifying Person(s) with such information and assistance as the Indemnifying Person(s) reasonably requests in connection with such claim and (b) at its own expense, have the right to participate and be represented by counsel of its own choice in such claim. If the Indemnifying Person(s) assumes the defense of such claim (1) the Indemnifying Person(s) will not be liable for any settlement thereof that is made without its consent and (2) the Indemnifying Person(s) shall control any settlement of such claim; **provided, however**, that the Indemnifying Person(s) shall not conclude

any settlement that requires any action or forbearance from action or payment (unless paid in full by the Indemnifying Person(s)) or admission by the Indemnified Person(s) or any of its Affiliates without the prior approval of the Indemnified Person(s). The obligations of an Indemnifying Person(s) will not extend to any loss, damage or expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the taking, after the receipt of notice of such claim against the Indemnified Person(s), by the Indemnified Person(s) of any action (unless required by Applicable Law or applicable legal process) that materially prejudices the successful defense of the claim, without the prior written consent of the Indemnifying Person(s) (such consent not to be required in a case where the Indemnifying Person(s) has not assumed the defense of the claim). The Indemnified Person(s) agrees to afford the Indemnifying Person(s) or its counsel the opportunity to be present at, and to participate in, conferences with all Persons, including Governmental Bodies, asserting any such claim against the Indemnified Person(s) covered by the indemnity contained in **Section 21.1.1** or **21.1.2**, as applicable, or conferences with representatives of or counsel for such Person(s).

21.2 Environmental Indemnity By Contractor as Owner of Existing Transmission Lines.

21.2.1 Existing Transmission Lines Indemnity. To the maximum extent permitted by Applicable Law, Contractor, in its capacity as a Relocated Project TL Owner, hereby waives any claim for liability against and shall defend, indemnify and hold harmless each of the Owners and the Construction Manager and their respective Affiliates and their respective directors, officers, shareholders, members, partners, employees and agents, from and against: (i) Third Party Claims or (ii) Third Party Environmental Claims that result from any spill, discharge, release or other contamination from Hazardous Substances on the Removal Work Site, except to the extent caused by the negligent act or omission, gross negligence, intentional misconduct or willful misconduct of the Owners or the Construction Manager.

21.2.2 Relocated TL Work Indemnity. To the maximum extent permitted by Applicable Law, Contractor, as a Relocated Project TL Owner, hereby waives any claim for liability against and shall defend, indemnify and hold harmless the Owners and the Construction Manager and their respective Affiliates and their respective directors, officers, shareholders, members, partners, employees and agents, from and against: (i) Third Party Claims or (ii) Third Party Environmental Claims that result from any spill, discharge, release or other contamination from Hazardous Substances, in each case that arise during the construction and Commissioning of the Relocated Project Owner TLs, and the Removal of the Existing Transmission Lines, except to the extent (a) caused by the negligent act or omission, gross negligence, intentional misconduct or willful misconduct of the Owners (other than Contractor in its capacity as an Owner) or the Construction Manager (other than Contractor in its capacity as Construction Manager, if Contractor is the Construction Manager) or (b) arising from Hazardous Substances existing on Relocated TL Real Property; **provided, that** Contractor was not responsible for

such spill, discharge, release or other contamination as of the time such real property interest was acquired.

- 21.3 Insurer Obligations.** The provisions of this **Article 21** and **Article 22** are not to be construed so as to relieve any insurer of its obligation to pay any insurance claim in accordance with insurance policies obtained in respect of the services or for the Work.
- 21.4 Indemnification Costs.** Damages incurred in connection with Third Party Claims and Third Party Environmental Claims constitute Relocated TL Project Costs to the extent eligible pursuant to **Section 3.4** except to the extent Contractor is obligated to indemnify the Owners therefor pursuant to this **Article 21**.

ARTICLE 22

LIMITATION OF LIABILITY

- 22.1 Limitation on Consequential Damages.** No Party will be liable to any other Party under this Agreement for any special, incidental, consequential, indirect, exemplary, treble or punitive Damages (including loss of revenue, loss of profits, diminution in value, cost of capital, loss of goodwill or increased operating costs); **provided, however**, the foregoing exclusion will not apply to liability to indemnify for Damages arising from any Third Party Claim or Third Party Environmental Claim pursuant to **Section 21.1**.

22.2 Contractor Limits of Liability.

22.2.1 Cap Upon Damages to the Owners. Contractor's total aggregate liability to the Owners for any and all Damages of any kind arising out of or relating to this Agreement is limited to One Hundred Three Thousand Forty Dollars (\$103,040), except Damages arising from: (i) Contractor's fraud; (ii) Contractor's intentional misconduct or willful misconduct; (iii) Contractor's defense, indemnification and hold harmless obligations under **Section 21.1.2** or **21.2** or (iv) the exercise of a remedy by an Owner against Contractor, in its capacity as an Owner, under **Articles 14** and **15** of the **Minnesota Project Participation Agreement**. Proceeds of insurance, including Relocated TL Insurance will not reduce the aggregate limit of liability of Contractor under this **Section 22.2.1**. Notwithstanding the foregoing, any liability of Contractor covered by insurance or Relocated TL Insurance will be paid first from the proceeds thereof and then, solely to the extent insurance proceeds cannot be recovered, from Contractor.

22.2.2 Liability Exclusions. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CONTRACTOR SHALL HAVE NO LIABILITY TO THE OWNERS FOR DAMAGES SUFFERED OR INCURRED BY THE OWNERS TO THE EXTENT RESULTING FROM:

- (i) Contractor's reliance upon, or compliance with, any agreement, waiver, consent, approval, instruction, direction or communication given to Contractor by the Construction Manager or the Owners (provided Contractor and Construction Manager are not the same Person or

Affiliates), in writing, except to the extent caused by the negligent act or omission (but only to the extent of Relocated TL Insurance coverage therefor), gross negligence, intentional misconduct or willful misconduct of Contractor;

- (ii) the failure of any Party (other than Contractor in any of its capacities, including Construction Manager or Owner) to comply with the provisions of any Minnesota Project Agreement;
- (iii) the absence, lapse or voidance of any required approval of a Governmental Body or any warranty, other than any such absence, lapse or voidance resulting from the gross negligence, intentional misconduct or willful misconduct of Contractor (in any of its capacities, including Construction Manager or Owner); or
- (iv) a design defect in the Relocated TL Project or a design or construction defect in the Facilities, or any component incorporated therein, other than a design or construction defect resulting from the negligent act or omission (but only to the extent of Relocated TL Insurance coverage therefor), gross negligence, intentional misconduct or willful misconduct of Contractor (in any of its capacities, including Construction Manager or Owner).

22.2.3 Limited Recourse. The obligations of a Party are obligations of that Party only, and no recourse will be available against any director, officer, shareholder, member, partner, employee, or agent of that Party or of its Affiliates in connection therewith. The Owners' liability, including any liability of the Construction Manager as agent of the Owners, on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach hereof shall in no case exceed the fair value of the Damages caused which shall be determined by the cost of repair or replacement (subject to the limitations of **Section 22.1** above), except for Damages arising from the Owners' defense, indemnification and hold harmless obligations under **Section 21.1.1**.

ARTICLE 23

DISPUTES

23.1 Rule Governing Disputes. All disputes among and between the Parties shall be resolved in accordance with the provisions of **Article 3** of **Schedule 1** to the **Minnesota Project Participation Agreement**, notwithstanding **Section 3.1** thereof, or whether this Agreement is a Minnesota Project Agreement. In the event a dispute hereunder constitutes a Claim Subject to Mandatory Arbitration as defined in **Section 3.3.1** of **Schedule 1** to the **Minnesota Project Participation Agreement**, the rules of arbitration will be the Construction Industry Arbitration Rules described in **Section 3.4** of **Schedule 1** to the **Minnesota Project Participation Agreement**.

- 23.2 Governing Law and Venue.** Any disputes under this Agreement will be governed by the internal laws of the State of Minnesota, without regard to conflicts of laws provisions, and any action brought with respect to this Agreement shall be brought and venued in Minneapolis, Minnesota.

ARTICLE 24

INDEPENDENT CONTRACTOR AND CAPACITY

- 24.1 Independent Contractor and Capacity Generally.** The Parties expressly agree that Contractor is an independent contractor and is not an employee, partner or joint venturer of the Owners. Contractor shall (i) exercise its independent professional judgment in the performance of this Agreement and (ii) supply the manner and means of performance of the Work hereunder. Contractor, its Subcontractors and their respective employees, agents and other representatives shall not have the right to represent or bind the Owners in any manner. Except as otherwise expressly provided, the provisions in this Agreement apply to a Party solely in its specified capacity and not to such Party acting in any other capacity.
- 24.2 Contractor Sole Responsibility.** Contractor and its Subcontractors are directly and solely responsible for the safety of their respective agents, employees and other representatives. The Owners and the Construction Manager in no way assume any of the duties, obligations or liabilities attributed to Contractor under this Agreement. Contractor shall immediately report via telephone and in writing to the Construction Manager all accidents in connection with the Work that result in death, personal injury, or property damage.
- 24.3 Contractor Responsibility for Agents and Employees.** Any and all agents, employees and Subcontractors of Contractor provided to perform the Work shall be the agent, employee or Subcontractor of Contractor. Contractor shall be solely responsible for the wages, salary, overtime, taxes, benefits (if any) and any and all other payments or benefits owed to an agent, employee or Subcontractor of Contractor for Work provided under or pursuant to this Agreement. No Contractor's employee shall be entitled to any retirement, welfare, fringe or other benefit provided by the Owners to their employees.
- 24.4 Determination as to Employees.** If for any reason an investigation is conducted or a proceeding commenced by any Governmental Body, the purpose of which is to determine whether for any reason a Contractor's employee is an employee of the Owners, Contractor shall assist and cooperate with the Owners in preparing a response to or defending against, as the case may be, any such investigation or proceeding or the appeal of any such investigation or proceeding.
- 24.5 Reimbursement of the Owners.** If it is determined by a Governmental Body that a Contractor's employee is an employee of any of the Owners other than the Owner that is the same Person as Contractor and the Owners elect not to appeal such determination or such determination shall not be appealable, Contractor shall reimburse the Owners for any Damages of any kind which the Owners are ordered to pay by the Governmental

Body. The Parties further agree that if a Governmental Body determines that a Contractor's employee is an employee of any of the Owners, such Contractor's employee shall be considered to be an employee of such Owner or the Owners only and solely to the extent set forth in the determination of the Governmental Body and for no other purpose.

- 24.6 Relationship of Owners.** The covenants, obligations and liabilities of the Owners under this Agreement and each Minnesota Project Agreement are several and not joint or collective. Nothing contained in this Agreement will ever be construed to create an association, joint venture, trust, partnership or other legal relationship, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the Parties.

ARTICLE 25

ASSIGNMENT AND SUBCONTRACTING

- 25.1 Prohibition on Assignment.** Except as to Permitted Transfers as defined in **Section 10.2** of the **Minnesota Project Participation Agreement** and the requirements of **Article 10** of the **Minnesota Project Participation Agreement**, Contractor shall not assign this Agreement, or any part hereof, nor delegate in whole or in part, its responsibilities hereunder, without the prior written consent of the Owners. Any purported Transfer without compliance with **Article 10** of the **Minnesota Project Participation Agreement** will be void. Unless otherwise agreed to in writing by the Owners or otherwise in compliance with and allowed under **Article 10** of the **Minnesota Project Participation Agreement**, no assignment will release or discharge Contractor from any obligations under this Agreement.
- 25.2 Approval of Subcontractors.** Contractor may subcontract the Work to contractors or vendors appearing on the Approved Bidders List as defined in the Minnesota Construction Management Agreement. To the extent Contractor is permitted to subcontract any portion of the Work, Contractor shall ensure that all Subcontractors are bound by the terms of this Agreement in a writing executed by Contractor and the applicable Subcontractors. The Owners shall be and are intended Third Party beneficiaries of any Subcontractor agreement for the purpose of taking over such agreement in the event of a default by Contractor which necessitates the Owners' assumption of the Relocated TL Project. Any delegation of the Work through subcontracting shall neither relieve Contractor of its responsibilities under this Agreement nor result in extra cost or liability to the Owners.

ARTICLE 26

THIRD PARTY BENEFICIARIES

- 26.1 No Third Party Beneficiaries.** Except as otherwise expressly provided herein, no provision of this Agreement shall in any way inure to the benefit of any third Person so as

to make any such Person a Third Party beneficiary of this Agreement or of any one or more of the terms of this Agreement.

ARTICLE 27

FORWARD CONTRACT

- 27.1 Forward Contracts; Single Agreement.** Contractor and the Owners acknowledge and agree that this Agreement and the Minnesota Project Agreements are “forward contracts” and that the Parties and the Minnesota Project Agreements are “forward contract merchants”, as those terms are defined in the United States Bankruptcy Code. The Parties further acknowledge and agree that this Agreement and the Minnesota Project Agreements form a single, integrated agreement, and this Agreement and the Minnesota Project Agreements are entered into in reliance on the fact that this Agreement and the Minnesota Project Agreements collectively form a single agreement among the Parties as the Owners.

ARTICLE 28

HEADINGS

- 28.1 Headings and Titles.** Article and section headings and titles are included for the convenience of the Parties and shall not affect the meanings of the terms or conditions hereof.

ARTICLE 29

SEVERABILITY

- 29.1 Severability.** In the event any words, phrases, clauses, sentences or other provisions hereof are held to be invalid or to violate any Applicable Law, such offending provision(s) shall be ineffective to the extent of such violation without invalidating the remainder of this Agreement, and the remaining provisions of this Agreement shall be construed consistent with the intent of the Parties as closely as possible, and this Agreement, as reformed, shall be valid, enforceable and in full force and effect.

ARTICLE 30

ENTIRE AGREEMENT AND WAIVER

- 30.1 Entire Agreement.** This Agreement and the other Minnesota Project Agreements, constitute the entire agreement among the parties thereto with respect to the subject matter hereof and thereof, and supersede all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealings among the parties thereto on the subject matter hereof and thereof. Each Owner acknowledges and agrees that it would not have entered into this Agreement or any individual Minnesota Project Agreement in its capacity as an Owner without the

execution and delivery of all of the other Minnesota Project Agreements to which it is a party in its capacity as an Owner.

ARTICLE 31

NOTICES

- 31.1 Notices.** All notices, requests or other communications required under this Agreement will be in writing and will be deemed “given”: (i) if delivered in person or by courier, upon receipt by the intended recipient or upon the date of delivery (as confirmed by, if delivered by courier, the records of such courier); (ii) if sent by facsimile transmission, when the sender receives confirmation from the sending facsimile machine that such facsimile transmission was transmitted to the facsimile number of the addressee; (iii) if mailed, upon the date of delivery as shown by the return receipt therefor; or (iv) if delivered by a nationally recognized mail delivery service, upon the date of delivery. Notices must be sent to the following addresses:

If to Contractor:

City of Rochester
201 4th St SE
Room 247
Rochester, MN 55904
Attention: Terry Adkins, City Attorney
Facsimile: (507)328-2727

With copy to:

Rochester Public Utilities
4000 E River Rd NE
Rochester, MN 55906
Attention: Randy Anderton
Telephone: (507)280-1503
Facsimile: (507)280-1542

If to the Owners:

Northern States Power Company, a Minnesota Corporation
414 Nicollet Mall MP-8
Minneapolis, MN 55401
Attention: Tony Jandro
Telephone: (612) 330-5825
Facsimile: (612) 573-9161

With copy to:

Northern States Power Company, a Minnesota Corporation
 414 Nicollet Mall MP-8
 Minneapolis, MN 55401
 Attention: David M. Adams
 Telephone: (612) 215-4668
 Facsimile: (612) 215-4544

Notwithstanding the foregoing, notices of default must be delivered in accordance with **clause (i)** and by any other means described in **clauses (ii)-(iv)** above.

- 31.2 Informal Communications.** Informal communications of a routine nature may be given in such manner as the Parties deem appropriate.
- 31.3 Designation of Different Addresses and Persons.** A Party may, at any time, by written notice to each other Party, designate different or additional Persons or different addresses for giving of notices, demands or requests to it under a Minnesota Project Agreement.

ARTICLE 32

FORCE MAJEURE

- 32.1 Force Majeure.** No Party (in any capacity) will be liable hereunder to the extent that its performance of an obligation hereunder is delayed or prevented by an event of Force Majeure. Such Party shall use its commercially reasonable efforts to overcome the limitations imposed by the occurrence of any event of Force Majeure and to mitigate the consequences to the other Parties of delays or its inability to perform. If an event of Force Majeure results in a delay of Contractor's performance under this Agreement, Contractor's sole remedy with respect to such delay shall be a time extension for the completion dates required by the Relocated TL Schedule, which extension shall be the time period lost by reason of an event of Force Majeure.

ARTICLE 33

SURVIVAL

- 33.1 Survival.** In the event of termination or expiration of this Agreement, the following Articles (in their entirety) and subsections of this Agreement shall survive any such termination or expiration: **Articles 1 (Definitions and Rules of Construction), 5 (Ownership of Relocated TL Project and Ownership/Licensing of Work Documents), 11 (Suspension of Work), 12 (Contractor Warranties), 13 (Insurance), 15 (Right to Audit), 16 (Taxes), 17 (Termination for Convenience), 18 (Termination for Default), 19 (Confidential Information), 21 (Third Party Indemnification), 22**

(Limitation of Liability), 23 (Disputes), 26 (Third Party Beneficiaries), 27 (Forward Contract), 28 (Headings), 29 (Severability), 30 (Entire Agreement and Waiver), 31 (Notices), 32 (Force Majeure) and 33 (Survival).

[The remainder of this page has been intentionally left blank]

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have read this Agreement, including the Contract Documents referenced herein and executed this Agreement intending to be legally bound as of the date and time set forth above.

AGREED:

CONTRACTOR

[CONTRACTOR]

BY _____

ITS _____

AGREED:

OWNERS

NORTHERN STATES POWER COMPANY, a Minnesota corporation, as agent for:

DAIRYLAND POWER COOPERATIVE, the CITY OF ROCHESTER, acting through the ROCHESTER PUBLIC UTILITIES, SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY, and NORTHERN STATES POWER COMPANY, a Minnesota corporation

BY _____

NAME _____

ITS _____

SIGNATURE PAGE TO RELOCATED TL SELF-PERFORMANCE AGREEMENT – SOUTHEAST TWIN CITIES– ROCHESTER – LA CROSSE TRANSMISSION PROJECT (MINNESOTA)

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SCHEDULE A
SCOPE, SPECIFICATIONS OF THE WORK, RELOCATION AND REMOVAL OF
REAL PROPERTY

- 1) Remove two existing wood transmission structures on the City of Rochester's 161,000 volt Q6 transmission line. The transmission structures are located adjacent to 4930 48th Street NE (structure 94) and 5010 48th Street NE (structure 95).
- 2) Install two steel transmission structures on concrete piers as replacement structures at the above mentioned address.
 - a. Steel structures will be procured using CapX2020 Specification for Tubular Steel Structures dated July 3, 2012 with modifications/exceptions at the discretion of the City of Rochester.
 - b. Foundations will be installed per CapX2020 Specification for Drilled Pier Foundation Construction dated February 3, 2012 with modifications/exceptions at the discretion of the City of Rochester.
- 3) Terminate existing transmission phase conductors to new Q6 structures so that the new structures are configured as double deadends. If the existing transmission conductor is not of adequate length new conductor will be installed between the two new structures.
- 4) Terminate the existing transmission static wire from the west to structure 94 and terminate the existing transmission static wire from the east to structure 95. No static wire will be installed between structures 94 and 94 in order to allow enough clearance for the future CapX2020 transmission line between the NSP North Rochester Substation and the City of Rochester Chester Substation.
- 5) Note following activities and associated costs are not covered in this proposal and will be the responsibilities of the Owners:
 - a. Relocation of Peoples Co-op electric distribution in this area.
 - b. Engineering services performed by POWER Engineers, Inc. related to this project.
 - c. Procuring additional right-of-way required for this project.

SCHEDULE A-1**RELOCATED TL WORK - SCOPE AND SPECIFICATIONS**

- 1) Install two steel transmission structures on concrete piers as replacement structures adjacent to 4930 48th Street NE (structure 94) and 5010 48th Street NE (structure 95) .
 - a. Steel structures will be procured using CapX2020 Specification for Tubular Steel Structures dated July 3, 2012 with modifications/exceptions at the discretion of the City of Rochester.
 - b. Foundations will be installed per CapX2020 Specification for Drilled Pier Foundation Construction dated February 3, 2012 with modifications/exceptions at the discretion of the City of Rochester.
- 2) Terminate existing transmission phase conductors to new structures so that the new structures are configured as double deadends. If the existing transmission conductor is not of adequate length new conductor will be installed between the two new structures.
- 3) Terminate the existing transmission static wire from the west to structure 94 and terminate the existing transmission static wire from the east to structure 95. No static wire will be installed between structures 94 and 94 in order to allow enough clearance for the future CapX2020 transmission line between the NSP North Rochester Substation and the City of Rochester Chester Substation.
- 4) Not following activities and associated costs are not covered in this proposal and will be the responsibilities of the Owners:
 - a. Relocation of Peoples Co-op electric distribution in this area.
 - b. Engineering services performed by POWER Engineers, Inc. related to this project.
 - c. Procuring additional right-of-way required for this project.

SCHEDULE A-2**REMOVAL WORK - SCOPE AND SPECIFICATIONS**

- 1) Remove two existing wood transmission structures on the City of Rochester's 161,000 volt Q6 transmission line. The transmission structures are located adjacent to 4930 48th Street NE (structure 94) and 5010 48th Street NE (structure 95).

SCHEDULE B**RELOCATED TL SCHEDULE (RELOCATION AND REMOVAL)**

- 1) November 17 – 24, 2014: Install Drilled Pier Foundations
- 2) August 2015 (tentative): Install replacement structures, terminate transmission conductors, and remove existing wood structures 94 and 95.

SCHEDULE C

RELOCATED TL BUDGET (RELOCATION AND REMOVAL)

Description of Work/Material	U of M	QTY	Unit Price	Extended Price with Loadings
Stock Material	lot	1		\$8,936.27
Non Stock Material (minor)	lot	1		\$771.91
Structure # 94B	ea	1	\$15,121.74	\$15,454.42
Structure # 95B	ea	1	\$17,468.72	\$17,853.03
Anchor Cage for Structure # 94B	ea	1	\$2,272.16	\$2,322.15
Anchor Cage for Structure # 95B	ea	1	\$2,335.22	<u>\$2,386.59</u>
Material Estimate Extended (Loaded)				<u>\$47,724.37</u>
Foundation for Structure # 94B and 95B	lot	1	\$49,950.00	\$51,048.90
Stump Grinding	lot	1	\$1,442.58	\$1,474.32
Foundation Construction Inspection and Testing Services	lot	1	\$1,058.20	\$1,081.48
Crane Service (estimated)	lot	1	\$12,000.00	\$12,264.00
Crane Pad Construction (estimated)	lot	1	\$15,000.00	\$15,330.00
Road Detour signage and flagging (estimate)	lot	1	\$5,000.00	<u>\$5,110.00</u>
External Labor/Services Estimate Extended (Loaded)				<u>\$86,308.70</u>
Staging Area Lease 2014 (expired)	lot	1	\$1,500.00	<u>\$1,533.00</u>
Line worker	hr.	400	\$120.00	\$67,200.00
Equipment	lot	1	\$9,600.00	\$13,440.00
RPU Engineering	hr.	160	\$160.00	<u>\$35,840.00</u>
RPU Labor & Equipment				<u>\$116,480.00</u>
ESTIMATE				\$252,046.07
CONTINGENCY				<u>\$37,806.91</u>
TOTAL ESTIMATE WITH CONTINGENCY				<u>\$289,852.98</u>

<u>Description of Work/Material</u>	<u>Qty</u>	<u>UofM</u>	<u>Unit Price</u>	<u>Extended with Loadings</u>
<u>Foundations for Structures 94 and 95</u>	<u>1</u>	<u>lot</u>	<u>\$49,950.00</u>	<u>\$54,945.00</u>
<u>Structure 94</u>	<u>1</u>	<u>ea</u>	<u>\$14,149.00</u>	<u>\$15,563.90</u>
<u>Structure 94 anchor Bolts</u>	<u>1</u>	<u>ea</u>	<u>\$2,126.00</u>	<u>\$2,338.60</u>
<u>Structure 95</u>	<u>1</u>	<u>ea</u>	<u>\$16,345.00</u>	<u>\$17,979.50</u>
<u>Structure 94 anchor Bolts</u>	<u>1</u>	<u>ea</u>	<u>\$2,185.00</u>	<u>\$2,403.50</u>

<u>Concrete Testing</u>	<u>1</u>	<u>lot</u>	<u>\$1,448.50</u>	<u>\$1,593.35</u>
<u>Burndy Grounding Material & misc Material</u>	<u>1</u>	<u>lot</u>	<u>\$1,000.00</u>	<u>\$1,100.00</u>
<u>RPU Stock Material</u>	<u>1</u>	<u>lot</u>	<u>\$15,000.00</u>	<u>\$22,500.00</u>
<u>RPU Engineering</u>	<u>120</u>	<u>hr</u>	<u>\$160.00</u>	<u>\$19,200.00</u>
<u>Lineworker</u>	<u>400</u>	<u>hr</u>	<u>\$120.00</u>	<u>\$48,000.00</u>
<u>Equipment</u>	<u>1</u>	<u>lot</u>	<u>\$9,600.00</u>	<u>\$9,600.00</u>
<u> RPU Sub Total</u>				<u>\$195,223.85</u>
<u>Crane Services</u>	<u>24</u>	<u>hr</u>	<u>\$500.00</u>	<u>\$13,200.00</u>
<u>Construction and Demolition of Crane Pads</u>	<u>2</u>	<u>ea</u>	<u>\$7,500.00</u>	<u>\$16,500.00</u>
<u>Road Closure</u>	<u>1</u>	<u>ea</u>	<u>\$5,000.00</u>	<u>\$5,500.00</u>
<u> Contractor Sub Total</u>				<u>\$35,200.00</u>
<u> Contingency</u>				<u>\$34,563.58</u>
<u> Project Total</u>				<u>\$264,987.43</u>

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

**SCHEDULE C-1
RELOCATED TL WORK PROJECT BUDGET**

Description of Work/Material	U of M	QTY	Unit Price	Extended Price with Loadings
Stock Material	lot	1	\$7,288.98	\$8,936.27
Non Stock Material (minor)	lot	1	\$755.30	\$771.91
Structure # 94B	ea	1	\$15,121.74	\$15,454.42
Structure # 95B	ea	1	\$17,468.72	\$17,853.03
Anchor Cage for Structure # 94B	ea	1	\$2,272.16	\$2,322.15
Anchor Cage for Structure # 95B	ea	1	\$2,335.22	<u>\$2,386.59</u>
Material Estimate Extended (Loaded)				<u>\$47,724.37</u>
Foundation for Structure # 94B and 95B	lot	1	\$49,950.00	\$51,048.90
Stump Grinding	lot	1	\$1,442.58	\$1,474.32
Foundation Construction Inspection and Testing Services	lot	1	\$1,058.20	\$1,081.48
Crane Service (estimated)	lot	1	\$12,000.00	\$12,264.00
Crane Pad Construction (estimated)	lot	1	\$15,000.00	\$15,330.00
Road Detour signage and flagging (estimate)	lot	1	\$5,000.00	<u>\$5,110.00</u>
External Labor/Services Estimate Extended (Loaded)				<u>\$86,308.70</u>
Staging Area Lease 2014 (expired)	lot	1	\$1,500.00	<u>\$1,533.00</u>
Line worker	hr.	352	\$120.00	\$59,136.00
Equipment	lot	1	\$8,448.00	\$11,827.20
RPU Engineering	hr.	160	\$160.00	<u>\$35,840.00</u>
RPU Labor & Equipment				<u>\$106,803.20</u>
ESTIMATE				\$242,369.27
CONTINGENCY				<u>\$36,355.39</u>
TOTAL ESTIMATE WITH CONTINGENCY				<u>\$278,724.66</u>

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

**SCHEDULE C-2
REMOVAL WORK PROJECT BUDGET**

Description of Work/Material	U of M	QTY	Unit Price	Extended Price with Loadings
Stock Material	lot	0		\$0.00
Non Stock Material (minor)	lot	0		\$0.00
Structure # 94B	ea	0	\$15,121.74	\$0.00
Structure # 95B	ea	0	\$17,468.72	\$0.00
Anchor Cage for Structure # 94B	ea	0	\$2,272.16	\$0.00
Anchor Cage for Structure # 95B	ea	0	\$2,335.22	\$0.00
Material Estimate Extended (Loaded)				\$0.00
Foundation for Structure # 94B and 95B	lot	0	\$49,950.00	\$0.00
Stump Grinding	lot	0	\$1,442.58	\$0.00
Foundation Construction Inspection and Testing Services	lot	0	\$1,058.20	\$0.00
Crane Service (estimated)	lot	0	\$12,000.00	\$0.00
Crane Pad Construction (estimated)	lot	0	\$15,000.00	\$0.00
Road Detour signage and flagging (estimate)	lot	0	\$5,000.00	\$0.00
External Labor/Services Estimate Extended (Loaded)				\$0.00
Staging Area Lease 2014 (expired)	lot	0	\$1,500.00	\$0.00
Line worker	hr.	48	\$120.00	\$8,064.00
Equipment	lot	1	\$1,152.00	\$1,612.80
RPU Engineering	hr.	0	\$160.00	\$0.00
RPU Labor & Equipment				\$9,676.80
ESTIMATE				\$9,676.80
CONTINGENCY				<u>\$1,451.52</u>
TOTAL ESTIMATE WITH CONTINGENCY				\$11,128.32

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SCHEDULE D

COSTS FOR SERVICES

Rochester Public Utilities

Discretely Owned Substation Costs will include labor-related charges as set forth below with respect to the use of Contractor's employees to perform, undertake and carry out the Work. Discretely Owned Substation Costs, in accordance with this Agreement are to be paid or incurred by Contractor and credited as provided in the Project Participation Agreement and the Construction Management Agreement.

1. Direct Labor

"**Direct Labor**" means employees of Contractor.

All Direct Labor costs (wages, salaries, overtime, and a factor for compensated absences such as vacation, sick leave and holidays).

2. Additive Expenses

Labor related charges associated with Contractor's Direct Labor charged to the Owners hereunder. Labor Additive shall be based on prevailing policies of the Contractor for which the relevant employee works. The labor additive is typically a percentage developed by taking the Additive Expenses including, but not limited to those listed below and dividing by Contractor's total Direct Labor costs.

.Additive expenses ("**Additive Expenses**") means all payroll taxes, statutory contributions and other benefits paid for on behalf of Direct Labor by Contractor including:

Employer FICA and Medicare

Employer contribution to the multi-employer Minnesota Public Employee

Retirement Association (PERA) Defined Benefit Pension Plan

Employee Medical, Dental and Life insurance

Contractor, as a policy of general application, calculates the cost of Additive Expenses as a percentage of its aggregate Direct Labor cost as defined above.

3. General and Administrative Costs on Direct Project Costs

Contractor shall recover general and administrative costs associated with Direct Labor. A percentage ("A&G Percentage") shall be applied to Contractor's Direct Labor Cost charged to Owners. Contractor will calculate the A&G Percentage annually using its own methodology.

Insurance premium expense corresponding to policies of insurance required to be maintained by Contractor pursuant to Schedule E of this Agreement, but only if any such insurance policy (or any endorsement or rider thereto) is maintained in the ordinary course of business of Contractor, and was not purchased solely for the purpose of meeting Contractor's insurance coverage obligation set forth in Schedule E of this Agreement. Costs and expenses of the insurance included in the A&G Percentage specifically exclude any costs and expenses paid or payable by the Contractor: (i) with respect to deductibles, co-insurance or self insured retentions or (ii) to obtain any endorsements necessary to designate any Owner (other than the Contractor) as an additional insured.

4. Contractor's Calculation of the A&G Percentage

Services performed by employees in the following types of departments of the Contractor are considered chargeable only through the application of the A&G Percentage. Therefore, an individual working in any of these departments will not

directly assign their time to this Agreement, as this type of direct labor is nonreimbursable. In lieu of direct charging, the Contractor is to be compensated by the addition of the A&G Percentage.

However, an individual may direct charge the Project as long as the position is entirely dedicated to the support of this Project and costs are not included in the A&G Percentage.

Finance & Accounting

Business Services (includes Administrative Support and Human Resources)

Information Technology

Building and Grounds- Headquarters

Executive Management

An A&G Percentage will be derived annually using the most current calendar year administrative and general costs and total O&M labor costs reported.

In a given year, the A&G Percentage will be a ratio determined by using prior year actual costs in the cost categories listed below divided by total company O&M salaries and wages. All or a portion of the total calendar year account balances in the following cost categories for administrative departments will be used for determining the A&G overhead rate:

- Salaries & Benefits
- Materials & Supplies
- Utility Insurance & Claims
- Outside Services
- Employee Expenses
- Organizational Expenses
- Occupancy Expenses

The determined A&G rate will be applied to labor charged to the project. If there is a material difference between the A&G overhead rate initially charged to the project and the actual A&G overhead rate at year-end, a true-up adjustment will be made.

The A&G rate for 2015 is expected to be 40.0%.

5. Contractor's Purchasing/Warehouse Overheads

The Contractor distributes purchasing-related costs by applying an overhead rate to the cost of non-inventoried materials and services charged directly to the **Minnesota** Project. The Purchasing Overhead rate for 2015 is expected to be 2.2%.

Purchasing costs include the following activities:

- Developing requisitions
- Contracts and purchase orders to procure materials and services
- Manage supplier relationships
- Negotiating procurement agreements / contracts
- Monitoring supplier performance
- Managing purchase records
- Managing supplier qualification records

The Contractor distributes warehousing-related costs by applying an overhead rate to the cost of materials issued from inventory. The Warehouse Overhead rate for 2015 is expected to be 20.4%.

Inventory warehousing costs include the following costs:

- Labor
- Labor additive
- Stores materials and supplies
- Equipment expense
- Building Occupancy

– Other miscellaneous

SCHEDULE E

INSURANCE REQUIREMENTS

Capitalized terms that are not defined in this Agreement have their respective meanings defined in the applicable policies of insurance. The Parties acknowledge that the Management Committee has the authority to amend the insurance requirements for the Minnesota Project on a Level B Vote. For purposes of this **Schedule E**, the Construction Manager (the “CM”) shall perform the obligations imposed on the Owners in **Section A** of this **Schedule E**.

A. Construction Phase - Minnesota Project Specific Insurance

As of the Effective Time, the CM shall be responsible for implementing a controlled insurance program for the Minnesota Project (the “CIP”). The CIP will be administered by the Minnesota Project’s designated insurance broker (the “CIP Administrator”). Unless otherwise provided herein, the CM shall as of the Effective Time procure and maintain the following insurance coverages set forth in this **Section A**, the cost of which (including premiums, deductibles and self-insured retentions) will constitute a CM Cost (as defined in the Minnesota Construction Management Agreement):

1. Commercial General Liability (“CGL”) insurance (on form ISO CG 00 01 or its equivalent) including contractual liability coverage per above-referenced policy form, with primary limits of \$2,000,000 per occurrence / \$4,000,000 aggregate and excess liability limits of \$25,000,000 per occurrence and in the aggregate. General Aggregate Limits will reinstate annually during the multi-year policy period. The Products Completed Operations Aggregate Limit of \$4,000,000 will apply annually during the construction period and once for the ten year completed operations extension which begins upon each respective Phase In-Service Date (as defined in the Minnesota Construction Management Agreement). This insurance shall include the Enrolled Parties (as defined below) as named insureds. Endorsements have been included removing any exclusion for work done within 50 feet of a railroad under ISO endorsement CG 24 17 10 01. Allocated loss expense shall be in addition to the above policy limits.

CGL Self-insured Retention: \$100,000 to \$250,000 per occurrence.

Minnesota Project Site means Minnesota Project Real Property, including the sites upon which the Discretely Owned Substation Assets, the Underlying System Improvements, the Underbuild Lines, the Co-located Owner Lines, the Existing Distribution Lines, the Existing Transmission Lines, the Relocated Transmission Lines and the Relocated Distribution Lines are to be constructed, installed or removed, as applicable, and other approved sites incidental and/or adjacent to the Construction Work (as defined in the Minnesota Construction Management Agreement), including the Work.

Enrolled Parties means the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, Contractor, eligible contractors and subcontractors of any tier who perform operations on the Minnesota Project Site and such other persons or entities as the CM may designate as enrolled parties, who perform direct labor at the Minnesota Project Site. Temporary labor services and leasing companies are to be included as subcontractors and enrolled in the program. Contractor and all subcontractors of any tier must comply with the requirements set forth in the CIP Enrollment Manual, a copy of which will be provided by the CM on request. The CIP Enrollment Manual requirements include the submittal of all necessary enrollment forms to be enrolled into the Controlled Insurance Program as evidenced by a confirmation of enrollment letter and certificates of insurance issued by the CIP Administrator.

CIP is defined as the above-described general liability and excess liability insurance coverage to be procured by the CM.

Each Owner should ensure that its practice policies will apply excess/ and difference in conditions of the project specific insurance. Should an Owner be insured through Associated Energy Gas Insurance Services Limited (“AEGIS”), there is potential for sharing of limits, leaving other Owners with an eroded or diluted maximum aggregate limit on its respective practice insurance programs. Each Owner insured through AEGIS and/or Energy Insurance Mutual Limited will need to evaluate and manage the potential for sharing of limits or other concerns under its excess liability policies.

2. Contractor’s Pollution Liability (“CPL”) insurance with total limits of \$10,000,000 each Loss and in the aggregate. The policy aggregate limits will not reinstate annually. The CM will obtain the maximum policy term reasonably available from the selected insurer as of the Effective Time. CPL insurance will insure Third Party bodily injury, Third Party property damage (including loss of use) and/or Third Party clean up costs claims arising from any new pollution condition and/or exacerbation of a pre-existing pollution condition resulting from covered operations performed on the Minnesota Project Site. This policy shall also provide coverage for Third Party claims arising from the transportation of materials and/or waste to and from the Minnesota Project Site. Coverage will also respond to Third Party claims arising from the disposal of materials at non-owned disposal sites that meet the criteria outlined in the policy. This insurance shall include as insureds the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, Contractor, and subcontractors performing work on the Minnesota Project Site.

CPL deductible: \$50,000 to \$250,000 each Loss.

3. Marine Cargo insurance: If ocean transit is utilized, for equipment or materials for which risk of loss will pass to the buyer before transit occurs, Marine Cargo insurance on a “warehouse to warehouse” basis must be procured, insuring the materials to be used by Contractor or subcontractors in the performance of the

Work against loss or damage arising from customary “all risk” marine perils (including war, strikes, riots, and civil commotion, if readily available) while in transit. The Marine Cargo policy shall be subject to a physical damage deductible not to exceed \$25,000. The CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, and Contractor will be named insureds, as their interests may appear. The CM shall either provide this insurance or cause such insurance to be procured, in each case prior to the time the risk being insured arises. If the CM provides or causes this insurance to be provided, the premiums, deductibles and self-insured retentions will constitute CM Costs (as defined in the Minnesota Construction Management Agreement). If the insurance is provided by a contractor or subcontractors at any tier, the premiums, deductibles and self-insured retentions will be a CM Cost (as defined in the Minnesota Construction Management Agreement) by inclusion of such cost in the cost of goods or services being provided. If the contractor is a Discretely Owned Substation Owner or a Remote Credited USI Owner, the premiums, deductibles and self-insured retentions will constitute a Discretely Owned Substation Cost or a Remote Owner USI Cost, as applicable.

4. Non-Owned Aircraft Liability insurance: In addition to the requirements for contractors that use aircraft contained in **Section B(7)** below, consideration should be given by the Management Committee to requiring the CM to procure a non-owned aviation policy to insure the vicarious risk of the Owners, irrespective of the capacities in which they participate in the Minnesota Project, and the CM associated with such aircraft.
5. Professional Liability insurance

This insurance, if and when required by the Management Committee, shall be obtained by the CM and will substantially provide the following coverages:

(a) Errors & Omissions By Outside Firms – First Party Excess Indemnity

Subject to its terms, conditions, and exclusions, the policy will cover economic damages suffered by the Owners that an outside professional service firm is legally obligated to pay due to a professional error or omission, to the extent that such costs exceed the available professional liability insurance from the outside firm. In the event that a contractual limitation of liability applies to an error or omission in favor of the outside firm and such limitation is less than the available professional liability insurance, the policy will pay covered damages in excess of the limitation of liability. However, if such limitation of liability is less than \$1,000,000, the policy will only attach excess of \$1,000,000.

This coverage relates only to errors and omissions by outside firms – no entities with an ownership interest in the Minnesota Project (or their Affiliates) can make claims against each other under the policy.

(b) Professional Liability – Claims from Third Parties Against Owners

Subject to its terms, conditions, and exclusions, the policy will cover claims for damages from Third Parties (excluding all entities with an ownership interest in the Minnesota Project and their Affiliates) against the Owners arising out of the rendering of or failure to render professional services. This coverage relates only to claims from outside parties – no entities with an ownership interest in the Minnesota Project (or their Affiliates) can make claims under this coverage.

Extended Reporting Period

An extended reporting period (a “tail”) of up to five (5) years will be provided, allowing for claims to be made and reported after the policy has expired. If the construction period lasts longer than five years, then the length of the tail may be reduced by the amount of construction time in excess of five years.

Program Structure

- The policy period of each policy will match the construction period for the Minnesota Project.
- Limits of coverage: The Management Committee shall choose from coverage limits at the time of binding the policy. These limits apply to each claim and aggregate and the aggregate limit applies for the entire term of the Minnesota Construction Management Agreement.
- Self-Insured Retention (“SIR”): \$500,000 Each Claim for coverage under **Section (A)5(a)** and **(b)**.

For coverage a, the SIR is not in addition to the outside firm’s available insurance, but rather applies if the outside firm’s insurance has been exhausted or has not been maintained in compliance with the carrier’s minimum insurance requirements. The SIR shall also apply in the instance where the policy is broader than the outside firm’s primary insurance.

6. All-Risk Property (Builder’s Risk) insurance:

- (a) Each Discretely Owned Substation Owner shall procure “all risk” property/builders risk insurance (“**Builders Risk**”) through the Minnesota Project designated insurance broker to comply with **Section A(6)(b)** and **(c)**. Insurance procured to comply with **Section A(6)(b)** and **(c)** shall be procured prior to the time the risk being insured arises.
- (b) Builders Risk insurance shall include theft, vandalism, transit, off-site storage, flood, earthquake, windstorm, and testing / start up on the Discretely Owned Substation Assets described in **clauses (i), (ii) and (iii)** of the definition of **Discretely Owned Substation Assets**, as applicable, subject to usual and customary exclusions. Property damage limits shall be equal to the replacement cost of the construction work, except for commonly sub-limited perils/coverages such as earthquake, flood, terrorism, transit and off-site storage. Coverage shall include mechanical and electrical breakdown coverage during the start-up and commissioning and testing prior to final acceptance. The Discretely Owned Substation

Owner will be the named insured. Contractors of the Discretely Owned Substation Owner and their subcontractors will be additional insureds to the extent that such Persons have an interest in the Work. Delay in Start Up insurance is not included in this policy. **[Note: DOSA values given to insurers must include aggregate values of (i), (ii) and (iii) above for Builders Risk.]**

The maximum property/builders risk deductible allowed shall be \$100,000 per occurrence, which amounts will constitute Discretely Owned Substation Costs.

- (c) During the performance of the construction work on the Substation Project (*i.e.* the construction work for which the Builders Risk insurance pursuant to **Section A(6)(b)** is being procured), loss or damage to such Discretely Owned Substation Owner's existing substation assets that results from such construction work will be handled as follows:
- Builders Risk insurance will be obtained covering such existing substation assets with limits of \$500,000 for covered loss or damage.
 - Deductible amounts in respect of the insurance obtained under this **Section A(6)(c)** will constitute Discretely Owned Substation Costs.
 - To the extent there is coverage for loss that is paid under such Builders Risk insurance, the amount of the loss paid by such insurance is not a Discretely Owned Substation Cost.
 - Any remaining loss not insured by the Builders Risk insurance, or any loss outside the scope of such Builders Risk insurance (and not covered by other insurance covered by this **Schedule E-3**) is not to be considered a Discretely Owned Substation Cost and is to be borne by the Discretely Owned Substation Owner.
- (d) The Builders Risk coverages described in **Section A(6)(b)** and **(c)** will be endorsed to waive the carrier's rights of recovery against the CM, Owners, Discretely Owned Substation Owners, Contractor and subcontractors.
- (e) The Builders Risk coverage will terminate on the Phase In-Service Date of Phase of which the Substation Project is a part.
- (f) All of the insurance to be procured pursuant to this **Section A(6)** shall be placed with insurance companies with a current A.M. Bests Insurance Guide Rating of A- and Class VII, or better. Each policy must provide that it will not be cancelled unless at least 60 days' prior written notice (10 days for non-payment of premium) has been received by the CM, Owners and the Discretely Owned Substation Owner.

- (g) Proof of Loss: The Person maintaining each insurance policy shall make proofs of loss under each such policy and shall take all other action reasonably required to ensure collection from insurers for any loss under any such policy.

B. Construction Phase - Individually Procured Insurance

The CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, and Contractor, as of the Effective Time, and each subcontractor of any tier, upon the effective date of its respective Minnesota Construction Agreement, shall individually procure and maintain the additional following insurance coverages as provided below:

1. Workers' Compensation and Employers Liability insurance: The CM, each Owner, irrespective of the capacities in which it participates in the Minnesota Project, Contractor and each subcontractor of any tier will procure and maintain its own Workers' Compensation policy to comply with this **Section B(1)**. Workers' compensation will cover no less than the statutory liability under the workers' compensation laws of the states in which the work or services are performed. The Employers Liability limits on these policies will be no less than \$5,000,000 each accident, \$5,000,000 disease policy limit, and \$5,000,000 disease each employee; except as respects subcontractors in which case limits on this policy will be as determined by the CM but will be no less than \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

The above limits may be met by any combination of primary and/or excess liability insurance limits.

The cost of Workers' Compensation and Employers Liability insurance is to be reimbursed or credited, as applicable, to the CM, Discretely Owned Substation Owners, Relocated Project DL Owners, Relocated Project TL Owners, Remote Credited USI Owners and their respective Affiliates as set forth in **Appendix D** to the **Minnesota Construction Management Agreement**. The cost of such insurance required of Contractor and subcontractors (other than Discretely Owned Substation Owners, Relocated Project DL Owners, Relocated Project TL Owners or Remote Credited USI Owners or their respective Affiliates) will be a Discretely Owned Substation Cost by the inclusion of such cost in the cost of goods or services to be provided under this Agreement or the applicable Minnesota Construction Agreement. With respect to Owners, see **Section E** below.

Each of the above policies will include a waiver of subrogation in favor of the CM, each Owner, irrespective of the capacities in which it participates in the Minnesota Project, Contractor and subcontractors.

Coverage shall include United States Longshore and Harbor Workers (“**USL&H**”) and Maritime coverage endorsements if each such exposure exists.

2. Business Automobile insurance. The CM, each Owner, irrespective of the capacities in which it participates in the Minnesota Project, Contractor and each subcontractor of any tier shall procure and maintain its own business automobile policy to comply with this **Section B(2)**. This insurance shall contain a combined single limit of at least \$10,000,000 per occurrence (except as respects subcontractors in which case limits on this policy will be as determined by the CM but will not be less than \$2,000,000 per occurrence), and include coverage for:

- (a) Bodily injury and property damage; and
- (b) Any and all vehicles owned, used or hired.

The above limits may be met by any combination of primary and/or excess liability insurance limits.

Each policy will include a waiver of subrogation in favor of the CM, each Owner, irrespective of the capacities in which it participates in the Minnesota Project, and Contractor.

3. Commercial General Liability insurance: The CM, each Owner, irrespective of the capacities in which it participates in the Minnesota Project, Contractor and each subcontractor of any tier will procure and maintain its own general liability and/or excess liability insurance to comply with this **Section B(3)**. For subcontractors such insurance shall be on form ISO CG 00 01 or its equivalent. For Enrolled Parties, such insurance will cover premises and operations away from the Minnesota Project Site. For all Persons, other than Enrolled Parties, coverage will apply to all work or services performed. Limits of liability shall be \$10,000,000 per occurrence and in the aggregate (except as respects subcontractors in which case limits on this policy will be as determined by the CM but will not be less than \$2,000,000 per occurrence). Contractor and subcontractors shall include the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, as additional insureds (unless otherwise included as a named insured) on the most current version of ISO CG 20 10 and CG 2037 or their equivalents.

The above limits may be met by any combination of primary and/or excess liability insurance limits.

Each policy will include a waiver of subrogation in favor of the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project.

4. Professional Liability insurance shall be procured and maintained by any Person performing professional services for the Substation Project that has no ownership interest in the Minnesota Project with total limits of \$5,000,000 each

claim/\$5,000,000 annual aggregate with discretion for the CM to require less insurance for smaller contracts. This coverage must remain in force and effect for a minimum of three to five years after completion of the professional services being performed for the Substation Project or contract termination. Any retroactive date on such insurance shall be prior to the commencement of professional services for the Substation Project.

5. Contractor's Equipment insurance: Contractor releases the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, (or otherwise accepts the full risk of loss or damage therefor) from all claims for loss or damage to or loss of use of Contractor's tools, machinery, equipment, motor vehicles or any other property whether owned, rented, or leased by Contractor in or about the Minnesota Project Site and shall purchase such insurance in respect thereto as Contractor deems appropriate. Contractor shall require similar releases in favor of the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, from subcontractors.
 6. Railroad Protective Liability insurance: Where required, Contractor as directed by the CM will purchase and maintain Railroad Protective Liability insurance in the name of the specific railroad in connection with all work across, under or adjacent to railroad tracks or right-of-way. Limits of liability for this insurance shall be as required by the railroad.
 7. Watercraft and Aircraft Liability insurance: If watercraft or aircraft of any kind is used by any contractor, or by anyone else on a contractor's behalf or otherwise as part of the Work, Contractor shall maintain, or cause the operator of the watercraft or aircraft to maintain, watercraft or aircraft public liability insurance covering bodily injury, property damage and passenger liability for any watercraft or aircraft owned, used, operated or hired in connection with the Work. The policy(ies) shall provide limits of \$10,000,000 to \$25,000,000 combined single limit for bodily injury and property per occurrence (& aggregate) and list the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, as additional insureds.
- C. All of the above insurance shall be placed with insurance companies with a current A.M. Bests Insurance Guide Rating of A- and Class VII, or better. Each policy shall provide that it shall not be cancelled, unless at least 60 days' prior written notice (10 days for non-payment of premium) has been received by the CM and each Owner, irrespective of the capacities in which it participates in the Minnesota Project.

D. Additional Provisions:

Certificates of Insurance: Contractor and each Owner, irrespective of the capacities in which it participates in the Minnesota Project, shall, on or before the date on which insurance required hereunder is to become effective, furnish to the CM certificates of insurance evidencing (i) its compliance with applicable requirements hereunder, and (ii), in the case of Contractor, compliance by the subcontractors with applicable requirements

hereunder. Each subcontractor (other than an Owner) shall, on or before the date on which insurance required hereunder is to become effective, furnish to Contractor certificates of insurance evidencing compliance by it and its subcontractors with applicable requirements hereunder. The CM shall maintain copies of certificates of insurance provided to it by the Owners and Contractor and shall maintain certificates of insurance evidencing the CM's compliance with the applicable requirements applicable to the CM hereunder. The CM shall make such certificates available for inspection and copying upon request by any Owner or by the Management Committee and as otherwise required to facilitate implementation of the applicable requirements hereunder. Compliance with "applicable requirements" includes specification of coverages, limits, insured status and applicable waivers or releases.

E. Costs

Premiums, deductibles and self-insured retentions incurred by each Owner, specifically in its capacity as an Owner, to provide the insurance required by **Section B(1), (2), and (3)** hereof do not constitute CM Costs (as defined in the Minnesota Construction Management Agreement). Discretely Owned Substation Owners, Relocated Project DL Owners, Relocated Project TL Owners and Remote Credited USI Owners, as contractors or subcontractors, will be entitled to be reimbursed or receive credit, as applicable, for the cost of insurance required by (i) **Section B(1) (2), and (3)** in accordance with **Appendix D** to the **Minnesota Construction Management Agreement** or the applicable Minnesota Construction Agreement or (ii) **Section B(4), (5), (6) and (7)**. Premiums, deductibles and self-insured retentions incurred by each contractor or subcontractor (except for Owners, irrespective of the capacities in which they participate in the Minnesota Project, or their respective Affiliates), each specifically in such capacity, to provide the insurance required by **Section B**, will be borne as provided in the applicable Minnesota Construction Agreement as a part of the provision of goods or services.

F. Subcontracts

Contractor shall utilize the insurance requirements approved by the Management Committee as part of the template documents to be used in the negotiation with subcontractors.

SCHEDULE F
FORMS OF LIEN WAIVER

The Contractor shall provide Lien Waivers as follows:

- a. in the form of attached Schedule F-1 for the Contractor's Lien Waivers to be provided periodically except upon Final Completion;
- b. in the form of attached Schedule F-2 for the Contractor's Lien Waiver to be provided upon Final Completion;
- c. in the form of attached Schedule F-3 for lien waivers from Subcontractors, Sub-subcontractors of every tier, and suppliers to be provided periodically except upon Final Completion; and
- d. in the form of attached Schedule F-4 for lien waivers from Subcontractors, Sub-subcontractors or every tier, and suppliers to be provided upon Final Completion.

SCHEDULE F-1

**PARTIAL LIEN WAIVER AND RELEASE
FOR CONTRACTOR**

City of Rochester (the “Contractor”) has furnished or will furnish certain labor, materials, skill, or equipment on the City of Rochester (the “Owner”) Q6 Transmission Project at 4930 to 5010 48th St NE (the “Project”). In consideration of value received to date and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor waives and releases any right which it now has or in the future may have to claim a mechanic’s lien or any other lien rights, and waives and releases all other claims of any kind (whether billed or unbilled), against (a) the real property where the Project is located; (b) the improvements and other property located thereon; (c) the Owner and its members, title company, lenders, successors, assigns, and their employees, officers, and agents; and (d) the surety or sureties of the Owner, for anything whatsoever related to the Project through the date hereof, except those claims listed as follows:

- Retainage, if any.
- Pending change orders, if any.
- _____

(If a claim is not listed above, it is not reserved, and any claims or potential claims not listed are waived and released.)

In order to induce payment to be made to the undersigned, the Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items connected with the above-referenced Project all amounts owed for the Work covered by payments which the Contractor has received for the Project prior to the date hereof; and to the fullest extent permitted by law the Contractor agrees to indemnify, defend and hold harmless the Owner and its members, title company, lenders, successors, and assigns from and against all claims, liabilities, damages, losses, costs, and expenses, including attorneys’ fees, relating to or arising out of any claims or liens waived or released herein but asserted or pursued after the date hereof by the Contractor or any claims (or related liens) that any of the Contractor’s subcontractors (of any tier) or suppliers (of any tier) or employees of the Contractor or any subcontractors (of any tier) have not been paid or relating to the enforcement of this paragraph. The foregoing is in addition to other rights and remedies the Owner may have and shall not relieve the Contractor of its obligations under the provisions of its contract with the Owner.

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

The Contractor has executed this waiver voluntarily and with full knowledge of the undersigned's rights under law. This waiver and release shall inure to the benefit of the Owner and its successors and assigns and be binding upon the Contractor and its successors and assigns.

Dated: _____
[Date through which
waiver and release is effective.]

By: _____
Its: _____

CONTRACTOR'S AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned, being duly sworn, deposes and says that he/she is the _____ of _____, the Contractor for the work on the _____ (the "Owner") Substation Project at [fill in address] _____ (the "Project"); that the total amount of the current contract between the Contractor and the Owner, including extras authorized by executed change orders, is \$_____, for which the Contractor has received consideration to date in the total amount of \$_____; that all waivers and releases provided by the Contractor are in the required form, are true, correct and genuine and are delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers and releases; that the attached sworn statement contains the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each; and that the items mentioned include all labor, skill, equipment, and material required to complete said work; that there are no other contracts for said work outstanding; and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with the Project other than as stated above or on the attached sworn statement.

Signed this _____ day of _____, 20__.

Signature:_____ Title:_____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Signature:_____

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SCHEDULE F-2

**FINAL LIEN WAIVER AND RELEASE
FOR CONTRACTOR**

City of Rochester (the "Contractor") has furnished or will furnish certain labor, materials, skill, or equipment on the City of Rochester (the "Owner") Q6 Transmission Project at 4930 to 5010 48th St NE (the "Project"). In consideration of the payments to date and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor waives and releases any right which it now has or in the future may have to claim a mechanic's lien or any other lien rights, and waives and releases all other claims of any kind (whether billed or unbilled) related to the Project, including, without limitation, claims and liens against (a) the real property where the Project is located ; (b) the improvements and other property located thereon; and (c) the Owner and its members, title company, lenders, successors, assigns, and their employees, officers, and agents; and (d) the surety or sureties of the Owner. The undersigned acknowledges receipt of payment in full for anything and everything in connection with or related to the Project.

As a condition of achieving Final Completion of the Project, the Contractor certifies that it has paid all of its subcontractors, suppliers, and employees for all items connected with the Project, and to the fullest extent permitted by law the Contractor agrees to indemnify, defend and hold harmless the Owner, its members, title company, lenders, successors, and assigns from and against all claims, liabilities, damages, losses, costs, and expenses, including attorneys' fees, relating to or arising out of any claims or liens waived or released herein but asserted or pursued after the date hereof by the Contractor or any claims (or related liens) that any of the Contractor's subcontractors (of any tier) or suppliers (of any tier) or employees of the Contractor or any subcontractors (of any tier) have not been paid or relating to the enforcement of this paragraph. The foregoing is in addition to other rights and remedies the Owner may have and shall not relieve the Contractor of its obligations under the provisions of its contract with the Owner.

The Contractor has executed this waiver voluntarily and with full knowledge of the Contractor's rights under law. This waiver and release shall inure to the benefit of the Owner and its successors and assigns and be binding upon the Contractor and its successors and assigns.

Dated: _____
[Date of signing.]

By _____
Its _____

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

CONTRACTOR'S AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned, being duly sworn, deposes and says that he/she is the _____ of _____, the Contractor for the work on the _____ (the "Owner") Substation Project at [fill in address] _____ (the "Project"); that the total amount of the current contract including extras authorized by executed change orders is \$_____ for which the Contractor has received consideration to date in the total amount of \$_____; that all waivers and releases provided by the Contractor are in the required form, are true, correct and genuine and are delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers and releases; that the attached sworn statement contains the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each; that the items mentioned include all labor and material required to complete said work; that there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with the Project.

Signed this _____ day of _____, 20__.

Signature: _____ Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Signature: _____

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SCHEDULE F-3

**PARTIAL LIEN WAIVER AND RELEASE
FOR SUBCONTRACTORS AND SUPPLIERS**

City of Rochester has furnished or will furnish certain labor, materials, skill, or equipment on the City of Rochester (the "Owner") **Q6 Transmission Project at** _4930 to 5010 48th St NE (the "Project"). In consideration of \$_____ representing the sum total of payments received by the undersigned for the Project to date and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned waives and releases any right which it now has or in the future may have to claim a mechanic's lien or any other lien rights, and waives and releases all other claims of any kind (whether billed or unbilled), against (a) the real property where the Project is located ; (b) the improvements and other property located thereon; (c) the Owner and its members, title company, lenders, successors, assigns _____ and their employees, officers, and agents; and (d) the surety or sureties of the Owner or _____, for anything whatsoever related to the Project through the date hereof, except those claims listed as follows:

Retainage in the amount of \$_____ (retainage shall be deemed to be zero if no amount is filled in)

(if a claim is not listed above, it is not reserved, and any claims or potential claims not listed are waived and released).

In order to induce payment to be made by the undersigned, the undersigned certifies that it has paid all of its subcontractors, suppliers, and employees for all items connected with the Project, and to the fullest extent permitted by law the undersigned agrees to indemnify, defend, and hold harmless the Owner and its members, title company, lenders, successors, assigns, and _____ from and against all claims, liens, liabilities, damages, costs and expenses, including attorneys' fees, related to or arising from any claim by the undersigned for any claims or liens waived or released herein or any claims (or related liens) that any of the undersigned's subcontractors, suppliers or employees have not been paid or relating to the enforcement of this paragraph.

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

The undersigned has executed this waiver voluntarily and with full knowledge of the undersigned's rights under law. This waiver and release shall inure to the benefit of the Owner and its successors and assigns and be binding upon the undersigned and its successors and assigns.

Dated: _____
[Date of Pay Application through which
waiver and release is effective.]

By _____
Its _____

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SUBCONTRACTOR’S/SUB-SUBCONTRACTOR’S/SUPPLIER’S AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned, being duly sworn, deposes and says that the undersigned is the _____ of _____ who is the Subcontractor/Sub-subcontractor/Supplier for the work on the _____ (the “Owner”) Substation Project at [fill in address] _____ (the “Project”); that the total amount of the current contract to which the undersigned is a party relating to the Project including extras authorized by change orders is \$_____ for which the party signing this waiver and release has received payments in the total amount to date of \$_____, with the most recent payment of \$_____ received on _____; that all waivers and releases provided by the party signing this waiver and release are in the required form, are true, correct and genuine and are delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers and releases; that the attached sworn statement contains the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each; that the items mentioned include all labor and material required to complete said work according to the contract relating to the Project and to which the party signing the waiver and release is a party; that there are no other contracts for said work outstanding relating to the Project and to which the party signing the waiver and release is a party; and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with the Project other than above stated.

Signed this _____ day of _____, 20__.

Signature: _____ Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Signature: _____

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SCHEDULE F-4

FINAL LIEN WAIVER AND RELEASE FOR SUBCONTRACTORS, SUB-SUBCONTRACTORS AND SUPPLIERS

City of Rochester has furnished or will furnish certain labor, materials, skill, or equipment on the City of Rochester (the "Owner") Q6 Transmission Project at 4930 to 5010 48th St NE (the "Project"). In consideration of \$ _____ representing the sum total of payments to date and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned waives and releases any right which it now has or in the future may have to claim a mechanic's lien or any other lien rights, and waives and releases all other claims of any kind (whether billed or unbilled) related to the Project, including, without limitation, claims and liens against (a) the real property where the Project is located ; (b) the improvements and other property located thereon; (c) the Owner and its members, title company, lenders, successors, assigns, _____, and their employees, officers, and agents; and (d) the surety or sureties of the Owner or _____. The undersigned acknowledges receipt of payment in full for anything and everything in connection with or related to the Project.

In order to induce payment to be made by the Owner to its contractor, the undersigned certifies that it has paid all of its subcontractors, suppliers, and employees for all items connected with the above-referenced Project, and to the fullest extent permitted by law the undersigned agrees to indemnify, defend, and hold harmless the Owner and its members, title company, lenders, successors, assigns, and _____ from and against all claims, liens, liabilities, damages, costs and expenses, including attorneys' fees, related to or arising from any claim by the undersigned for any claims or liens waived or released herein or any claims (or related liens) that any of the undersigned's subcontractors (of any tier), suppliers (of any tier), or employees have not been paid or relating to the enforcement of this paragraph.

The undersigned has executed this waiver and release voluntarily and with full knowledge of the undersigned's rights under law. This waiver and release shall inure to the benefit of the Owner and its successors and assigns and be binding upon the undersigned and its successors and assigns.

Dated: _____
[Date of signing.]

By _____
Its _____

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SUBCONTRACTOR’S/SUB-SUBCONTRACTOR’S/SUPPLIER’S AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned, being duly sworn, deposes and says that the undersigned is the _____ of _____ who is the Subcontractor/Sub-subcontractor/Supplier for the work on the _____ (the “Owner”) Substation Project at [fill in address] _____ (the “Project”); that the total amount of the current contract to which the undersigned is a party relating to the Project including change orders is \$_____ for which the party signing this waiver and release has received the sum total of payments received as of this date of \$_____; that all waivers and releases provided by the party signing this waiver and release are in the required form, are true, correct and genuine and are delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers and releases; that the attached sworn statement contains the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each; that the items mentioned include all labor and material required to complete said work; that there are no other contracts for said work outstanding; and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with the Project.

Signed this _____ day of _____, 20__.

Signature: _____ Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Signature: _____

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

SCHEDULE G
FORM OF FINANCIAL SUMMARY REPORT

FINANCIAL SUMMARY REPORT (Sample)

1. Current Month Variance Report

Comparisons of Credited USI Costs and Non-Credited USI Costs to the current USI Project(s) Budget and forecasted Credited USI Costs and Non-Credited USI Costs.

Underlying System Improvement(s) (SAMPLE)

DATE: March 8, 2012									
REPORTING MONTH: February 2012									
MONTHLY VARIANCE REPORT - Brookings									
	Monthly			Year to Date			Project to Date		
	Actual	Forecast	Variance	Actual + Forecast	Budget	Variance	Actual + Forecast	Budget	Variance
Credited USI(s)									
Blue Lake - Wilmarth 345kV Line	\$1.0	\$1.1	\$0.1	\$1.0	\$1.1	\$0.1	\$1.0	\$1.1	\$0.1
Blue Lake Substation	\$0.1	\$0.2	\$0.1	\$0.1	\$0.2	\$0.1	\$0.1	\$0.2	\$0.1
Total CUSI	\$1.1	\$1.3	\$0.2	\$1.1	\$1.3	\$0.2	\$1.1	\$1.3	\$0.2
	Monthly			Year to Date			Project to Date		
	Actual	Forecast	Variance	Actual + Forecast	Budget	Variance	Actual + Forecast	Budget	Variance
Non-Credited USI(s)									
Chub Lake - Burnsville 115kV TLine Upgrade	\$4.0	\$6.0	\$2.0	\$4.0	\$10.0	\$6.0	\$4.0	\$10.0	\$6.0
Arlington - Green Isle TLine Upgrade	\$2.1	\$3.0	\$0.9	\$2.1	\$5.0	\$2.9	\$2.1	\$5.0	\$2.9
Total NCUSI	\$6.1	\$9.0	\$2.9	\$6.1	\$15.0	\$8.9	\$6.1	\$15.0	\$8.9

Variance Details

Construction was delayed due to severe weather conditions.

Status of Project Budget

Project X continues to maintain its initial Project Budget, but anticipate submitting for MC approval a Pre-Construction Estimated Project Budget will be April ____, 2012.

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

2. Summary of Payroll for Services

Summary of payroll information for the Work performed, identifying, at a minimum, total costs for all labor, identified by billing category and specifying hours and employee labor classification.

SUMMARY OF PAYROLL INFORMATION					
DATE: March 8, 2012					
REPORTING MONTH: February 2012					
Billing Category		Hours	Labor	Additive	A&G
					36.0%
Blue Lake - Wilmarth 345kV Line					
Employee Labor Classification:					
	Project Manager	248.00			
	Construction Manager	60.00			
	Controls Supervisor	20.00			
	Total:	328.00	\$0	\$0	\$0
Chub Lake - Burnsville 115kV Line Upgrade					
Employee Labor Classification:					
	Project Manager	120.00			
	Construction Manager	60.00			
	Controls Supervisor	20.00			
	Total:	200.00	\$0	\$0	\$0

3. Summary of Committed and Spent Costs by Supplier

The table below represents the current committed costs and spent to date costs by major supplier. These committed and spent costs are current as of March 1, 2012.

	Supplier	Scope of Work	Committed Value	Spent to Date	% of Committed Value
Blue Lake - Wilmarth 345kV Line					
	POWER Engr	OE Services	\$600	\$450	75%
	Ultieg	Civil engineering	\$187	\$98	52%
	ETG	Aerial survey	\$188	\$55	29%
	Ultieg - ROW	ROW Agents	\$2,000	\$122	6%
Chub Lake - Burnsville 115kV Line Upgrade					
	POWER Engr	OE Services	\$600	\$450	75%
	Ultieg	Civil engineering	\$187	\$98	52%
	ETG	Aerial survey	\$188	\$55	29%
	Ultieg - ROW	ROW Agents	\$2,000	\$122	6%

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

4. Schedule of Payment from 3rd Parties

Explanation of funds received from Third Parties including damages.

5. Cash Flow Forecast by Month

Credited USI Costs and Non-Credited USI Costs projected to be incurred through Final Completion of the Credited USI and Non-Credited USI Project(s) Budget.

Reporting Month:		Brookings - SE Twin Cities - Underlying System Improvement(s)																
Last Forecast Refresh Date:		9.3 (vii) (b) - Schedule G - Financial Summary Report																
		Monthly Actual Costs incurred to date plus Forecast through Final Completion																
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	<< Actual	<< Actual	Forecast ->	Forecast	Forecast	Forecast	Forecast	Forecast
		P-T-D Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	2011 Total	Jan-12	Feb-12	Mar-12
Credited Underlying System Improvements																		
Blue Lake Substation (NSP)	Helena Substation																	
Blue Lake - Willmarth 345KV Line (NSP)	Helena Substation																	
Credited Underlying System Improvements																		
Monthly Totals																		
Cumulative Totals																		
Non-Credited Underlying System Improvements																		
Chub Lake - Burnsville 115KV Line (NSP)	Chub Lake Substation																	
Non-Credited Underlying System Improvements																		
Monthly Totals																		
Cumulative Totals																		

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Reporting Month:
Last Forecast Refresh Date:

Jul-11
7/7/11

Credited Underlying System Improvements

		Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
		Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	2012 Total	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13		
Blue Lake Substation (NSP)	Helena Substation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	160,000	-
Blue Lake - Willmarth 345kV Line (NSP)	Helena Substation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,110,000	-
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,270,000	-
Credited Underlying System Improvements																			
Monthly Totals		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,270,000	-
Cumulative Totals		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,270,000	-

Non-Credited Underlying System Improvements

Chub Lake - Burnsville 119kV Line (NSP)	Chub Lake Substation	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-Credited Underlying System Improvements																			
Monthly Totals		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cumulative Totals		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Reporting Month: Jul-11																	
Last Forecast Refresh Date: 7/7/11																	
		Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
		Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	2013 Total	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14
Credited Underlying System Improvements																	
Blue Lake Substation (NSP)		-	-	-	-	-	-	160,000	-	-	-	-	-	-	-	-	-
Blue Lake - Wilmarth 345KV Line (NSP)		-	-	-	-	-	-	1,110,000	-	-	-	-	-	-	-	-	-
Helena Substation		-	-	-	-	-	-	1,270,000	-	-	-	-	-	-	-	-	-
Credited Underlying System Improvements																	
Monthly Totals		-	-	-	-	-	-	1,270,000	-	-	-	-	-	-	-	-	-
Cumulative Totals		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-Credited Underlying System Improvements																	
Chub Lake - Burnsville 115KV Line (NSP)		-	-	-	-	-	-	-	-	-	-	825,000	-	-	-	-	-
Chub Lake Substation		-	-	-	-	-	-	-	-	-	-	825,000	-	-	-	-	-
Non-Credited Underlying System Improvements																	
Monthly Totals		-	-	-	-	-	-	-	-	-	-	825,000	-	-	-	-	-
Cumulative Totals		-	-	-	-	-	-	-	-	-	-	825,000	-	-	-	-	-

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

Reporting Month:
Last Forecast Refresh Date:

Jul-11
7/7/11

Credited Underlying System Improvements

	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Grand Total
	Oct-14	Nov-14	Dec-14	2014 Total	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	2015 Total		
Blue Lake Substation (NSP)	-	-	-	-	-	-	-	-	-	-	-	-	160,000
Blue Lake - Wilmarth 345kV Line (NSP)	-	-	-	-	-	-	-	-	-	-	-	-	1,110,000
Helena Substation	-	-	-	-	-	-	-	-	-	-	-	-	1,270,000
Monthly Totals	-	-	-	-	-	-	-	-	-	-	-	-	1,270,000
Cumulative Totals	-	-	-	-	-	-	-	-	-	-	-	-	-

Non-Credited Underlying System Improvements

Chub Lake - Burnsville 119kV Line (NSP)	-	-	-	825,000	-	-	-	-	-	-	-	-	825,000
Monthly Totals	-	-	-	825,000	-	-	-	-	-	-	-	-	825,000
Cumulative Totals	-	-	-	825,000	-	-	-	-	-	-	-	-	825,000

SCHEDULE H
FORM OF PROGRESS REPORT

[Name] Underlying System Improvement Project(s)

DATE

Prepared by:

_____ - Project Manager

_____ - Project Controls

& Project Team Contributors

CAPX2020 La Crosse Project

[Name] Underlying System Improvement Project(s)

(Month/Year) **MONTHLY REPORT**

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 - 8. Issues Log**
 - 9. Project Schedule Review**
 - a. Schedule Review and Analysis**
 - b. Project Milestones Schedules**
 - c. Significant Events in Next 30 Days**

I. EXECUTIVE SUMMARY

Executive Summary of Overall Progress (narrative)

Major materials are scheduled for delivery by May 1, 2015 with construction scheduled to start the following month. The project is expected to be completed by the scheduled in-service date which is September 15, 2015.

II. PROGRESS REPORT

1.0 Safety

Monthly Safety Report

Soil boring activities began the week of Nov. 7th by Braun Intertec. Braun Intertec has provided the site specific safety & health plan for this work. There have been no incidents related to soil boring activities.

(SAMPLE)
 (Name) Monthly Safety Indicator Tracking
 As of DATE

Safety	Month	Year to Date	Project To Date
Total Hours (Including Office/Mgmt/Support)			
Hours Worked (Exposure)			
FTE's (People Exposure)			
OSHA Recordable			
OSHA Rate			
Injuries Resulting in Lost Workdays			
Injuries Resulting in Restricted Workdays			
Near Misses			
DART Rate			

Safety Observations	Observations	Conditions	At Risk	% Safe	At Risk Conditions – Severity			
					Low	Med	High	Life Threat
This Month								
To Date								

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

Incidents	Month	Year to Date	Project to Date
Vehicle Accidents			
Material Damage Incidents			
Other Incidents			
Damage Value			

2.0 Applications, Permitting and Governmental Approvals

This section is to include the status updates regarding any applications for waivers, franchises, variances, permits, authorizations, certificates, licenses and Orders of or from any Governmental Body with regard to this underlying system improvement(s). (Examples below)

State Permitting Status Update

The MN CON filing should be ready for submittal by April 15, 2013.

State Permits and Filings

Permit/Decision	Jurisdiction	Status
Minnesota and South Dakota State Approvals		
MN Certificate of Need	MPUC	Application Submitted: Approval Received:
MN Route Permit	MPUC	Application Submitted: Approval Received:

Local Permitting Status Update

Local Permits and Filings

Permit/Decision	Jurisdiction	Status
Minnesota Local Approvals		
Water/Wetland Exemptions under WCA	BWSR	Application Submitted: Approval Received:

3.0 Siting and Land Rights (ROW)

Acquisition & Disposition Progress

Initial contact with landowners along the XYZ relocated distribution line has occurred with 7 out of the 10 easements required already secured.

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

Easements Required	Easements Signed	Easements Remaining	Initial Contacts	Survey Permissions Granted
10	7	3	10	10
Current Totals				

Condemnation Proceedings

All ROW easements will be acquired by May, 2013.

4.0 Procurement and Contract Management

Subcontracts List

Subcontracts						
Underlying System Improvement Project(s)						
As of: Date						
Title	Date	Contracting Parties	Scope of Work Summary	Materials/Equipment/ Real Property to be Obtained	Contract Price	Payment Terms
Grading	7/27/2012	ABC Graders Extrordinaire	Grading of site	n/a	\$50,000	within 30 days

Change Orders Log

CHANGE ORDERS LOG						
Underlying System Improvement Project(s)						
As of: Date						
Title	Date	Contracting Parties	Scope of Work Summary	Materials/Equipment/ Real Property to be Obtained	Contract Price	Payment Terms
Change Order	7/27/2012	BCE Trees	Removal of danger trees	n/a	\$50,000	within 30 days

Claims & Disputes

No claims or disputes.

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)

Liens Filed Against the Project(s)

Contractor	Description of Lien	Value of Lien	Status

Status of Equipment & Materials

Breakers and steel for dead-end structures are ordered with delivery projected for July 1, 2014, in anticipation of in-service by September 25, 2014.

5.0 Progress Summary

Description of work done in and plans going forward

6.0 Quality Assurance / Quality Control**QA/QC**

The QA/QC plan documents were sent out on October 10, 2011.

Inspections

Inspection Description	Date / Time	Approval	Location
Foundation 1-8	May 1, 2011 2:00 p.m.	Yes	Structures 235 – 243 near Helena sub

Vendor Review

Testing	Date / Time	Approval	Location
Witness testing of transformer	June 3, 2011 9:45 a.m.	Yes	Factory


Non-Conformance

Pending program implementation

7.0 Commissioning & Inspections

Per USISA 9.4.7 all inspections and testing are completed for commissioning. The final inspections are listed below.

8.0 Issues Log

					
Issues Log					
Underlying System Improvement Project(s)					
As of: <u>Date</u>					
PURPOSE: To delineate and discuss significant issues during the reporting period and the next 30 days.					
Item #	Date Initiated / Received	Initiated By / Received From	Description	Action Taken	Date Resolved
1	7/27/2012	BCE Trees	Drain tile damaged during tree removal	Repair of damages completed	8/3/2012

9.0 Project Schedule Review

Schedule Review and Analysis

Due to deeper than anticipated snow cover, tree clearing will be delayed in starting until May 1, 2012.

Project Milestones Schedules

Steel pole deliveries are anticipated within the next month.

Significant Events in Next 30 Days

Completion of the project is anticipated within the next two weeks.

Attachment: RPU La Crosse Relocation Agreement Execution Version (2) (4581 : CapX - Self Performance Agreement)



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the;

City of Rochester Relocated Owners TL Self-Performance Agreement

and authorize the Mayor and the City Clerk to execute the agreements.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of October, 2015.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 4442)

Meeting Date: 10/27/2015

SUBJECT: Saint Mary's Tower - New Cingular Wireless (AT&T) Lease Amendment

PREPARED BY: Mona Hoeft

ITEM DESCRIPTION:

A proposed fourth amendment to the 1999 New Cingular Wireless PCS, LLC Site Agreement for the Saint Mary's Tower is attached. This amendment reflects additional equipment, a rent increase and the removal of the annual CPI-U adjustment to a flat rate 4% annual adjustment factor in addition to updated language.

While the amendment has been agreed upon, there may be some minor technical changes upon final review of the subsequent construction documents.

The City Attorney has reviewed the amendment.

UTILITY BOARD ACTION REQUESTED:

Approve a resolution to authorize the Mayor and City Clerk to execute the Amendment with New Cingular Wireless PCS, LLC, in addition to authorizing the General Manager and City Attorney to approve any final technical changes.

FOURTH AMENDMENT TO SITE AGREEMENT

This FOURTH AMENDMENT TO SITE AGREEMENT ("AMENDMENT") is made and entered into by and between the CITY of Rochester, a Minnesota Municipal Corporation, ("CITY") acting through its Rochester Public Utilities and New Cingular Wireless PCS, LLC, a Delaware limited liability company (hereinafter, "LESSEE") effective this _____ day of _____, 2015.

Recitals

The parties hereto recite, declare and agree as follows:

A. CITY and LESSEE entered into the following Agreement:

Saint Mary's Water Tower Site (AT&T Site ROCHESTER II): Site Agreement dated December 15, 1999, as amended by the First Amendment to Site Agreement dated December 10, 2002, as amended by the Second Amendment to Site Agreement dated May 14, 2004, as amended by the Third Amendment to Site Agreement dated June 12, 2013 (collectively, the "Agreement") whereby CITY leases to LESSEE certain Leased Premises therein described, that are a portion of CITY's Property located at 901 4th St SW (formerly 929 4th St SW), Rochester, Minnesota, 55902

B. CITY and LESSEE desire to enter into this Amendment in order to modify and amend certain provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LESSEE covenant and agree as follows:

Effective with the signing of this Amendment, Paragraph 4 "RENT" and Paragraph 5 "USE", of the Agreement will be deleted in their entirety and replaced with the following:

1. **RENT**

(a) LESSEE shall make all payments of rent to CITY to the address as listed on the invoice.

(b) LESSEE shall pay rent annually in advance, as indicated in the payment schedule below:

- (1) The 2015 annual base rent of \$22,515.25 will be increased by three thousand six hundred and no/100 Dollars (\$3,600.00). This rent increase shall be pro-rated for 2015 and shall have a Commencement Date of November 1, 2015. The pro-rated rent based on the Commencement Date shall be in the amount of Six Hundred and no/100 dollars (\$600.00) and shall be paid within sixty (60) days of the full execution of this Amendment. Thereafter, the annual rent due hereunder shall be paid on or before the fifth (5th) day of January of each succeeding year.
- (2) Commencing January 1, 2016, and on January 1st of each subsequent year, the rent shall be increased annually by four percent (4%).

- (3) LESSEE shall not install, and/or operate any additional antennas or related equipment beyond those Communications Facilities identified in Exhibit "A," *Antenna Site Application with Site Technical Information*, without the prior written consent of CITY, such consent not to be withheld, conditioned or delayed without cause. Such additional equipment may either require an amendment to the existing Agreement or a new Agreement and may result in a rent increase as may be reasonably determined by CITY. Notwithstanding, LESSEE has the right to perform routine maintenance and repairs upon notice to CITY as indicated by Exhibit "B," *Site Access Procedure*, attached hereto and incorporated herein. To the extent Exhibit "A" identifies frequencies, it is for the limited purpose of coordinating frequencies to prevent interference, and identification of the frequencies does not establish any limit on LESSEE's rights.
- (4) If this Agreement is terminated for any reason other than LESSEE's default, any prepaid rents for the period after termination will be refunded to LESSEE .
- (5) CITY shall invoice LESSEE for any and all charges payable hereunder (such as late fees or interest, after-hours entry fees or other expenses incurred) within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by CITY, and shall not be payable by LESSEE. The foregoing shall not apply to monthly rent, which is due and payable without a requirement that it be billed by CITY, or balances due from LESSEE for escrow fees. The provisions of this subsection shall survive the termination or expiration of this Agreement.

2. USE

LESSEE

(a) Primary Use of Property

The primary use and purpose of the Property, including the Leased Premises, is for a water storage structure and appurtenances to provide water service to customers of the CITY ("Primary Use"). CITY's operations in connection with pursuit of the Primary Use ("CITY's Operations") take priority over LESSEE's operations.

(b) User priority

LESSEE agrees that the following priorities of use, in descending order, shall apply in the event of communication interference, emergency public safety needs, Structure repair or reconditioning, or other conflict while this Agreement is in effect, and LESSEE's use shall be subordinate accordingly:

- (1) CITY's Operations;
- (2) Public safety agencies, including law enforcement, fire, and ambulance services, that are not related to CITY;
- (3) Other governmental agencies where use is not related to public safety;
- (4) Pre-existing Lessees (a "Pre-existing Lessee" is defined as a lessee on the Property that installed its equipment prior to the installation of LESSEE's equipment under the Original Lease);
- (5) LESSEE.

(c) Jeopardy of Primary Use

- (1) In the event that the CITY's Primary Use of the Structure is put at risk solely because of LESSEE's operations ("Jeopardy"), it shall become the immediate and affirmative duty of the LESSEE to diligently pursue a cure of the occurrence that causes the Jeopardy.
- (2) The parties agree that such an occurrence caused by LESSEE's use or operation of LESSEE's communication facilities warrants an emergency response whereby the CITY shall provide notice verbally by telephone, by facsimile or by e-mail, whichever is determined by the CITY to be the most immediate method of notification. Notice of Jeopardy of Primary Use caused by LESSEE's operations shall be phone to the following:

LESSEE's Emergency Responder:
Telephone Number: (605) 360-0055

LESSEE has the right to change the numbers from time to time by providing notice to the CITY. Notwithstanding anything herein to the contrary, before the CITY may exercise its rights under Section 18 of the Agreement, the CITY must provide written notice to LESSEE of any Jeopardy or Severe Jeopardy at the addresses provided in Section 3 of this Amendment.

- (3) LESSEE shall send a qualified technician or representative to the Leased Premises within twenty-four (24) hours from the time that the notice of Jeopardy is provided by CITY. The required twenty-four (24) hour emergency response time under these circumstances is applicable 24 hours a day, 7 days a week. The qualified technician or representative shall be capable of assessing the situation and eliciting the necessary response, including any repairs, alterations or modifications to LESSEE's antennas, towers or ground equipment.
- (4) If such Jeopardy cannot be cured within twenty-four (24) hours after the notice was received, the LESSEE shall immediately cease operation of the Communications Facilities or the use of the specific equipment causing such Jeopardy until such Jeopardy is cured to the reasonable satisfaction of CITY.
- (5) In the event of Jeopardy that poses an immediate threat of substantial harm or damage to the water supply, to persons, and/or property on the Property, as solely determined by CITY ("Severe Jeopardy"), CITY may enter the Leased Premises and take actions it determines are required to protect the water, individuals or personal property from such Severe Jeopardy; provided that promptly after such emergency entry onto the Leased Premises, and in no event later than twenty-four (24) hours after such entry, CITY shall call the emergency responder at the telephone number above indicating to LESSEE of CITY's emergency entrance and the specific action taken by the CITY at the Leased Premises.

(d) LESSEE's Use of Leased Premises

- (1) LESSEE shall have the exclusive right, at its sole cost and expense, to use the Leased Premises for the transmission and reception of communications signals ("Approved Use").
- (2) In accordance with this Approved Use, the LESSEE has the right, with CITY's approval, to install, operate, maintain, repair, replace and remove its Communications Facilities as shown in Exhibit "B", *Antenna Site Application*. Any proposed modifications or alterations to the CITY's Structure that may affect its structural integrity shall be included in the documentation

provided by the LESSEE and shall include plans and drawings signed by a professional structural engineer licensed in the State of Minnesota.

- (3) LESSEE shall be responsible for all reasonable expenses incurred by the CITY resulting from the use and/or occupancy of the Leased Premises by LESSEE. CITY shall notify LESSEE prior to incurring such expenses and shall provide an estimate of the costs that CITY anticipates will be incurred. CITY shall submit an itemized invoice of such expenses together with reasonable supporting documentation evidencing such expenses to LESSEE and LESSEE shall make payment to CITY within thirty (30) days of receipt.

(e) Access

Access to the Property, including the Leased Premises, by outside persons, including LESSEE's employees, agents and assigns, shall at all times be governed by CITY's Site Access Procedure, attached hereto and incorporated herein as Exhibit "B". LESSEE agrees it shall conduct its operations on the Property and the Leased Premises in accordance with all requirements and conditions of Exhibit B. Subject to said requirements and conditions LESSEE and CITY agree to the following:

- 1) CITY shall, at all times provide LESSEE ingress, egress, and access to the Leased Premises subject to (i) the terms of this Agreement; (ii) the CITY's hours of operation and prevailing wages that are due for such department employees to provide access, and (iii) twenty-four hours advance notice by LESSEE to CITY.
- 2) CITY will not allow any mechanics' or materialmen's liens to be placed against the Property as a result of LESSEE's work on the Property.
- 3) Access to antenna equipment on the Structure shall be with prior notice, LESSEE's employee's identification and in the presence of CITY's employee.
- 4) Both CITY and LESSEE shall maintain a written record of all site visits, including the name of all personnel.
- 5) In the event it is necessary for LESSEE to have access to the Structure at some time other than the normal working hours of CITY, CITY may charge LESSEE for whatever reasonable expense, including employees' wages that CITY may incur in providing such access to LESSEE.
- 6) LESSEE shall have access to the ground-based Leased Premises at all times, in accordance with the requirements of this section.
- 7) CITY retains the right to examine and inspect the Leased Premises for safety reasons and to ensure LESSEE's compliance with the terms of this Agreement. CITY shall be liable for, and hold harmless LESSEE from, any damage to the Leased Premises or to LESSEE's equipment and Communications Facilities caused by CITY in exercising its right to examine and inspect the Leased Premises.

NOTICES

All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or delivered by a nationally recognized overnight courier service, to the following addresses or to any other address of LESSEE or CITY that is given from time to time to the other party pursuant to this provision, regarding written notice:

If to CITY: Rochester Public Utilities
 Attn: Purchasing
 4000 East River Road NE
 Rochester, Minnesota 55906

If to LESSEE: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: MPLSMN3151; Cell Site Name: Rochester II
FA No: 10082044
575 Morosgo Drive NE
Atlanta, GA 30324

With a copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #: MPLSMN3151; Cell Site Name: Rochester II
FA No: 10082044
208 S. Akard Street
Dallas, TX 75202-4206

Local Lessee Contact: Mitchell Sadoff
Sr. Real Estate Manager, Network
612.325.0305
ms8788@att.com

Exhibits "A" and "B" listed below are hereby incorporated into this Amendment by reference.

- Exhibit "A" *Antenna Site Application with Site Technical Information*
- Exhibit "B" *Site Access Procedure*

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment to Site Agreement effective the day and year first written above.

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

CITY OF ROCHESTER

By: AT&T Mobility Corporation
Its: Manager

By _____
Name: _____
Title: _____

By _____
Ardell Brede, Mayor
By _____
Aaron Reeves, CITY Clerk

Approved as to form:

By _____
Terry Adkins, CITY Attorney

ROCHESTER PUBLIC UTILITIES

By _____
Mark Kotschevar, General Manager



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a lease amendment with

New Cingular Wireless PCS, LLC (AT&T) for the Saint Mary's Tower

and authorize the General Manager and City Attorney to approve any final technical changes prior to execution by the Mayor and City Clerk.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of October, 2015.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 4633)

Meeting Date: 10/27/2015

SUBJECT: Sale of 0.65 Acres of RPU Service Center Property

PREPARED BY: Bill Cook

ITEM DESCRIPTION:

Olmsted County's 55th Street NW Extension Project includes upgrades to Broadway Avenue North. Those upgrades will move the east access to the Service Center property north 425 feet and will entail construction of a segment of frontage road. This requires the sale of 0.65 acres of Service Center Property, temporary easement on 0.64 acres, and moving of fencing and access gates.

Springer Appraisal Associates prepared an appraisal for the County which values those three impacts as outlined below:

Acquisition - \$169,884

Temporary Easement - \$16,727

Additional Damages (fencing) - \$16,989

Board policy requires at least one independent property appraisal for financial consideration in excess of \$25,000. Management is satisfied with the valuation by Springer in part because Springer has been RPU's appraiser for many years and the valuation is 20% higher than we paid for the same property in 2012.

Guidance for the sale of real estate is found in the Utility Board charter:

SECTION 15.07. (Contracts). Subdivision 2; The public utility board, with authorization by resolution of the Common Council, may enter into a contract if the contract: ... (B) involves the sale or purchase of real or personal property in an amount greater than \$100,000.00;

A warranty deed and memorandum of agreement have been prepared for the sale. The sale and related documents have been reviewed by the City Attorney's office.

FOR BOARD ACTION

Agenda Item # (ID # 4633)

Meeting Date: 10/27/2015

UTILITY BOARD ACTION REQUESTED:

Management recommends Board and Council approval of a resolution authorizing the sale of the property and execution of the warranty deed and memorandum of agreement by the Mayor and City Clerk.

WARRANTY DEED

STATE DEED TAX DUE HEREON: \$ _____

Date: _____, 20_____

FOR VALUABLE CONSIDERATION, City of Rochester, a Minnesota Municipal Corporation under the laws of the State of Minnesota, Grantors, hereby conveys and warrants to the County of Olmsted, a Political Subdivision of the State of Minnesota, Grantee(s), real property in Olmsted County, Minnesota, described as follows:

Parcel 3, Olmsted County Highway Right of Way Plat No. 201, County State Aid Highway No. 33 and includes all right of access as shown on Olmsted County Right of Way Plat No. 201.

AND

Also, a temporary easement for highway construction purposes over Temporary Easement Parcel 3, Olmsted County Highway Right of Way Plat No. 201, County State Aid Highway No. 33 and includes all right of access as shown on Olmsted County Right of Way Plat No. 201.

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions: Easements, covenants and restrictions of record

- The seller certifies that the seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this documents.
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor certifies that he does not know of any wells on the described property.

GRANTOR:
City of Rochester

By: _____
Mayor

By: _____
City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF OLMSTED)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Ardell F. Brede and Aaron S. Reeves the Mayor and City Clerk, respectively, of the City of Rochester, a Minnesota Municipal Corporation under the laws of the State of Minnesota, on behalf of the corporation.

NOTARY PUBLIC

Tax Statements for the real property described in this instrument should be sent to:

Olmsted County
Attn: Dale Prestegard
2122 Campus Drive SE, Suite 200
Rochester, MN 55904

This instrument was drafted by and return to:
SRF Consulting Group, Inc.
One Carlson Parkway, Suite 150
Minneapolis, MN 55447-4443

Attachment: Warranty Deed revised (4633 : Sale of 0.65 Acres of RPU Service Center Property)



MEMORANDUM OF AGREEMENT

55th Street NW Extension Project

Plat/Parcel No: 201-3
Fee Owners: City of Rochester

On this _____ day of _____, 2015, by the City of Rochester, a Minnesota Municipal Corporation under the laws of the State of Minnesota, Owners of the above described parcel of property located in County of Olmsted, State of Minnesota, did execute and deliver a conveyance to the aforesaid real estate to Olmsted County.

This agreement is now made and entered as a Memorandum of all the terms, and the only terms, agreed upon in connection with the above transaction. It is hereby acknowledged and agreed upon between the parties that:

- 1. The Owners have been furnished with the approved estimate of just compensation for the property acquired and a summary statement of the basis for the estimate. The Owners understand that the acquired property is for use in connection with the construction of the 55th Street NW Extension Project.
2. The Owners understand and acknowledge that Olmsted County has no direct, indirect, present or contemplated future personal interest in the property or in any benefits from the acquisition of the property.
3. That in full compensation for the conveyance of said property, Olmsted County shall pay the Owners the sum of \$_____ for land and damages. Owners understand that payment by Olmsted County must await approval of title and processing of a voucher.
4. Additionally:

It is understood and agreed that the entire agreement of the parties is contained in this Memorandum of Agreement and that this Agreement supersedes all oral agreements and negotiations between the parties.

Owner(s)
City of Rochester

Olmsted County

By: _____
Mayor

By: _____

By: _____
City Clerk

Its: _____

Attachment: Memorandum of Agreement (4633 : Sale of 0.65 Acres of RPU Service Center Property)

RIGHT OF WAY PARCEL LAYOUT

OLMSTED COUNTY TRANSPORTATION DIVISION



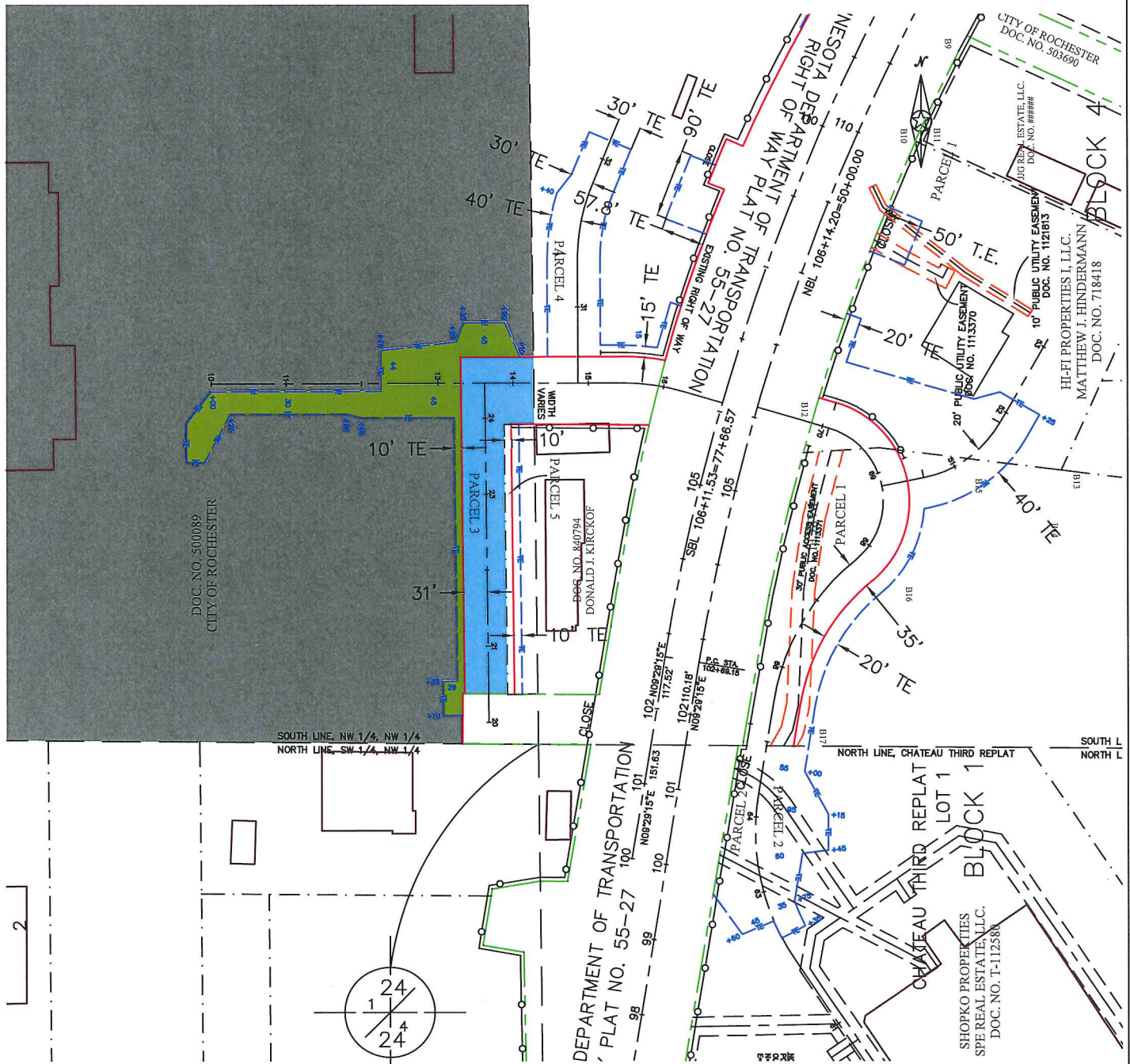
Topographic information required: Proposed R/W line & access taking. Lot line & dimensions. Show north arrow. Outline & location of buildings & improvements. Streets or highway footage.

S.A.P. 055-622-050

OWNER CITY OF ROCHESTER SCALE 0 100' 200' PARCEL NO. 3

PLAT NO. 201
S.A.P. 055-622-050

PARCEL NO.	OWNER	LOCATION	ENTIRE TRACT WITH EXIST. R/W	ENTIRE R/W TRACT	TRACT BAL. AFTER ACQ.	EXIST. R/W	NEW R/W	R/W INTEREST	TEMPORARY EASEMENT
3	CITY OF ROCHESTER	NW 1/4, NW 1/4 SEC. 24, T107N, R14W	39 AC.	0.65 AC.	38.35 AC.	N.A.	0.65 AC.	FEE	0.64 AC. EXP. 09/30/18



Layout sketch by T. MARTIN Date 7/7/15 Parcel No. 3



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a resolution authorizing the sale of the property and execution of the warranty deed and memorandum of agreement by the Mayor and the City Clerk to execute the agreement for:

The Sale of 0.65 Acres of RPU Service Center Property

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of October, 2015.

President

Secretary