

FOR BOARD ACTION

Agenda Item # 5.a.

Meeting Date:

3/28/06

SUBJECT: Coal Supply - 2006

PREPARED BY: Tom Williamson
Sr. Mechanical Engineer

ITEM DESCRIPTION:

On March 21, 2006 proposals were received for coal supply from three companies. A total of five different coal mines or blends were offered with pricing dependent on final delivery made and coal sizing.

Specifications were sent to eight companies. A tabulation of the prices is attached.

Due to a mine closing, the current coal supplier is 50,000 tons short of coal on the 2006 order of 180,000 tons. Avoca Bement will remain a primary supplier of coal for RPU

The coal situation provided RPU an opportunity to look at alternate coal supplies, so specifications were prepared. Various options for coal have been proposed that allow more flexibility in unloading, handling, and burning at Silver Lake Plant. Small test burn quantities will not be requested.

Pending Board approval, an order will be placed for 30,000 to 50,000 tons of coal for delivery by rail in 2006. The contract will be written to allow renewal on an annual basis, the flexibility to provide alternative coal and transportation in the future, and escalation of prices for fuel and other costs.

The final contract agreement will be reviewed by the City Attorney prior to execution.

The specific coal recommended for purchase at this time is the River Trading Company, East Kentucky Blend Coal to be delivered by rail at a price of \$108.15 plus escalation.

UTILITY BOARD ACTION REQUESTED:

Staff recommends the Utility Board approve a Coal Supply Agreement with River Trading Company and request the Mayor and City Clerk to execute the agreement.


General Manager


Date

ROCHESTER PUBLIC UTILITIES

BID TABULATION
COAL SUPPLY - 2006
DUE DATE: MARCH 21, 2006

Company	River Trading Co.		River Trading Co.		River Trading Co.		River Trading Co.		River Trading Co.		Avoca		Avoca		Alpha	
	Indiana	Ind Stoker	Ind Blend	E. Kentucky	E. KY Stoker	E. KY Blend	Gal/Colo	Peabody	CA/Ind	CA	SLP	SLP	SLP	SLP	SLP	SLP
Heating Value Btu/lb.	11,500	12,000	11,700	12,000	12,800	12,300	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
Total Price Per Ton	\$75.25	\$87.75	\$83.58	\$85.00	\$100.50	\$95.33	\$80.00	\$85.00	\$80.00	\$85.00	\$80.00	\$85.00	\$80.00	\$85.00	\$80.00	\$90.00
FOB*	Dock	Dock	Dock	Dock	Dock	Dock	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP
Truck \$/mmBTU @ SLP	\$3.88	\$4.23	\$4.06	\$4.11	\$4.78	\$4.66	\$3.48	\$3.70	\$3.48	\$3.70	\$3.48	\$3.70	\$3.48	\$3.70	\$3.48	\$3.91
Rail Price (Price per ton)	\$88.07	\$100.57	\$86.40	\$97.82	\$113.32	\$108.15	\$83.00	\$89.25	\$83.00	\$89.25	\$83.00	\$89.25	\$83.00	\$89.25	N/A	N/A
FOB	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP	SLP
Rail \$/mmBTU	\$3.83	\$4.37	\$4.19	\$4.25	\$4.93	\$4.70	\$3.61	\$3.88	\$3.61	\$3.88	\$3.61	\$3.88	\$3.61	\$3.88		
Analysis:																
Moisture %	15	15	15	8	6	7	10	8.5	10	8.5	10	8.5	10	8.5	10	7
Ash %	9	8	9	12	9	10.5	8.5	13.5	8.5	13.5	8.5	13.5	8.5	13.5	9	11
Sulfur %	0.97	<1.0	0.99	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0

* FOB Dock - RPU arranges transportation to SLP. Price below includes estimated delivery to SLP.

RIVER TRADING COMPANY

LIMITED LIABILITY COMPANY

10900 89th Avenue North
Maple Grove, Minnesota 55369
Tel: 763-463-3400 • Fax: 763-463-3434

March 20, 2006

Mr. Tom Williamson
Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55906-2813

Dear Tom:

Attached please find our bid for your 2006 coal requirements. I have proposed two different kinds of coal with three different sizing options. In addition, I have bid the coals FOB dockside, Kujak Terminal, Winona, MN. This would allow you to stockpile the coal at Kujak Terminal and take delivery by truck during the winter months of 2006 and 2007. This bid is considerably less expensive than our other bid which is delivered by rail to your Silver Lake plant.

All of the bids are subject to prior sale based on the availability of both the coal and barges.

Thank you for allowing us to bid on your coal requirements. If you have any questions or require additional information, you can reach me at 763-463-3408.

Sincerely,

River Trading Company, LTD



Dave Balk

DB/mj

Enclosures

RIVER TRADING COMPANY

LIMITED LIABILITY COMPANY

10900 89th Avenue North
Maple Grove, Minnesota 55369
Tel: 763-463-3400 • Fax: 763-463-3434

March 20, 2006

Mr. Tom Williamson
Rochester Public Utilities
4000 East River Road N.E.
Rochester, MN 55906-2813

Dear Mr. Williamson:

River Trading Company is pleased to offer various Indiana and Eastern Kentucky coal under the following terms and conditions.

1. Price

SEE ATTACHED

2. Quality

SEE ATTACHED

3. Weight

Certified truck scale, certified barge drafts, or certified rail weights shall govern and be used for settlement purposes.

4. Tonnage

Thirty thousand (30,000) net tons to fifty thousand (50,000) net tons based on method of delivery.

Mr. Tom Williamson
Page 2
March 20, 2006

5. Delivery Schedule

To be mutually agreed upon by both River Trading Company and Rochester Municipal Utilities.

6. Payment

Payment for coal shall be due 15 days from date of invoice.

7. Price Adjustment

Our coal is quoted on a price per ton basis, and there are no price adjustments.

The governing analysis shall be representative of coal sampled and tested at loading in accordance with A.S.T.M. standards by an independent testing company, mutually acceptable to both Buyer and Seller.

8. Firm Price

Our price is subject to prior sale.

9. Force Majeure

In the event of a coal strike, disruptions in production, or in the normal means of transportation, during this proposed contract shipping period, River Trading Company may request flexibility in the shipping schedule, or adjustments in pricing, caused by the hardship of such an event. The Buyer shall have the right to accept the price change or cancel the Agreement.

10. Unforeseen Government Regulations

Unforeseen government regulations which would increase or decrease the price of coal would be passed on to the Buyer. The Buyer shall have the right to accept the price change or cancel the Agreement.

Mr. Tom Williamson
Page 3
March 20, 2006

11. Other Remarks

Buyer and Seller agree that the terms set forth above and the ADDITIONAL TERMS AND CONDITIONS attached hereto constitute the entire agreement between the parties with respect to the purchase and sale of the product designated above and that this Contract supersedes all other agreements, oral or written, between the parties on the subject matter hereof.

Thank you for this opportunity to quote on your business. Should you have any questions regarding our quote, or require additional information about our coal, please call me at 763-463-3408.

Sincerely,

RIVER TRADING COMPANY

ROCHESTER PUBLIC UTILITIES



Dave Balk
DB/mj

By: _____

Title: _____

Date: _____

COAL SALES ADDITIONAL TERMS AND CONDITIONS

1. **PAYMENT.** The price specified herein shall be paid in United States funds. Overdue payments shall accrue interest from the date due at the rate of two percent over the prime lending rate as published from time to time in the *Wall Street Journal*, but in no event to exceed the maximum lawful rate.

2. **Warranties. OTHER THAN THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SALE AND PURCHASE OF COAL HEREUNDER. ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED. SELLER MAKES NO WARRANTY CONCERNING THE SUITABILITY OF COAL DELIVERED HEREUNDER FOR USE IN ANY FACILITIES.**

3. **FORCE MAJEURE.** If a Party to this Agreement is rendered unable by a Force Majeure to carry out, in whole or part, its obligations under this Agreement and such Party gives oral notice and full details of the event to the other Party as soon as reasonably practicable after the occurrence of the event (such notice to be confirmed in writing within three days of the oral notice), then during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the event (other than obligations to make payments then due or accrued) shall be suspended but only to the extent required by the event. "Force Majeure" means any cause(s) not reasonably within the control, and without the fault or negligence of the party affected thereby, which wholly or partly prevents the performance by that party of its obligation hereunder (except the payment of money); provided, however, in no event shall a Force Majeure be construed to relieve a Party of any obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred by such Party through performance of such obligations. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch; provided however, that this provision shall not require Seller to deliver or Buyer to receive, the Coal at points other than the Delivery Point, unless mutually agreed upon. If there is an event of complete Force Majeure or an event of partial Force Majeure that materially affects performance and such event persists for a continuous period of 60 days, then the Party not claiming Force Majeure shall have the option, upon ten days' prior written notice, to terminate the affected Agreement and the obligations of the Parties there under (other than payment obligations for prior performance there under). In the event of a Force Majeure, delivery of the affected quantity of Coal shall be made up only by mutual agreement between the Parties. If Seller claims Force Majeure and is unable to meet all of its sales obligations under this Agreement and any other of its coal sales agreements involving coal of the same type and quality as the coal, or if Buyer claims Force Majeure and is unable to meet all of its purchase obligations under this Agreement and any other of its coal purchase agreements involving coal of the same type and quality as the Coal, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall, to the extent practicable, be allocated on a pro rata basis among the affected Agreements(s) and such other purchase agreements involving coal of the same type and quality as the Coal unless such allocation is prohibited in any such Agreements or other sale or purchase agreement. When the Force Majeure condition has terminated, the party claiming the Force Majeure shall notify the other party in writing as soon as practicable, but not to exceed five (5) business days after the Force Majeure condition has terminated, stating the duration of the Force Majeure event in calendar days.

4. **DAMAGES.**

(a) Unless excused by Force Majeure or Buyer's failure to perform, if Seller fails to deliver all or part of the quantity of coal to be delivered hereunder, Seller shall pay Buyer for each ton of such deficiency (the "Deficiency") an amount equal to the positive difference, if any, obtained by subtracting the Price for the Deficiency from the Replacement Price. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute coal for the Deficiency or, absent such a purchase, the market price for such quantity of coal F.O.B. the Delivery Point, as determined by Buyer in a commercially reasonable manner. It is expressly agreed that Buyer shall not be required to enter into a replacement transaction in order to determine Replacement Price.

(b) Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to accept all or any part of the quantity of coal to be delivered hereunder, Buyer shall pay Seller for each ton of the Deficiency an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Price. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells (if at all) the Deficiency or, absent such a sale, the market price for such quantity of coal F.O.B. the Delivery Point, as determined by Seller in a commercially reasonable manner. It is expressly agreed that Seller shall not be required to enter into a replacement transaction in order to determine the Sales Price.

(c) Each party hereby stipulates that the payment obligations set forth in this paragraph 4 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and each party hereby waives the right to contest such payments as an unreasonable penalty or otherwise. The remedy set forth in this paragraph 4 shall be sole and exclusive remedy of the aggrieved party for the failure of the other to deliver or accept, as the case may be, the quantity of coal specified herein, and all other damages and remedies are hereby waived as to such failure(s), except as set forth in paragraph 5 below.

5. **Limitation of Liability.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS OTHERWISE PROVIDED IN THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREBIN PROVIDED, THE LIABLE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT OR IN ANY TRANSACTION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR IN CONTRACT, UNDER THIS AGREEMENT, ANY TRANSACTION, ANY INDEMNITY PROVISION OR OTHERWISE.

6. **TITLE/RISK OF LOSS.** Seller warrants good title to all coal delivered hereunder, free and clear of all claims and encumbrances. Title and risk of loss shall pass to Buyer upon delivery at the Delivery Point.

7. **ASSIGNMENT.** Neither party shall assign this Agreement without the prior written consent of the other, which consent may not be unreasonably withheld or delayed.

8. **ENTIRE AGREEMENT.** This Agreement is the final and entire agreement between the parties. No modification or amendment of this Agreement shall be effective or binding unless set forth in writing signed by both parties.

9. **NO WAIVER.** Waiver of any breach of this Agreement shall not be construed as a waiver of any other breach.

10. **GOVERNING LAW.** This agreement shall be construed and governed by the laws of the state of Ohio, including, without limitation, the Uniform Commercial Code, without giving effect to principles of conflicts of law.

11. **CONFIDENTIALITY.** Each party acknowledges that this Agreement contains confidential information which would put them at a competitive disadvantage if disclosed to the public. Therefore, the terms of this Agreement shall be kept confidential by the parties, except to the extent disclosure may be required by law, regulation or judicial or administrative order.

12. **TERMINATION FOR DEFAULT.** Either party may terminate this Agreement if the other party fails to perform any of its material obligations and if such failure is not cured within five (5) business days after receipt of written notice thereof by the defaulting party. In addition, this Agreement shall automatically terminate upon the occurrence of any of the following events: if either party (a) files a petition in bankruptcy; (b) has such a petition filed against it; (c) failure to provide adequate assurance as requested in paragraph 17; or (d) becomes otherwise insolvent or unable to pay its debts as they become due.

13. **FORWARD CONTRACT.** The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code, including, without limitation, a transaction or any other agreement for the purchase, sale or transfer of Coal or Interest related thereto which has a maturity date or delivery period more than two days after the date the Forward Contract is entered into.

14. **NO NETTING OR SETOFF.** Neither Party shall discharge offsetting obligations through netting or setoff.

15. **NOTICES.** Notices under this Agreement shall be in writing and shall be effective when received at the address shown on the first page of this Agreement.

16. **FINANCIAL RESPONSIBILITY.** When reasonable grounds for insecurity of payment or delivery of coal arise, either party may demand adequate assurance of performance. Adequate assurance shall mean sufficient security in the form and for the term reasonably specified by the party demanding assurance, including, but not limited to a standby letter of credit, a prepayment, a security interest in an asset acceptable to the demanding party or a performance bond or guarantee by a creditworthy entity.

17. **ARBITRATION.** All claims, demands, disputes, controversies, and differences that may arise between the parties hereto that cannot be settled between the parties shall be finally resolved by arbitration pursuant to the commercial rules of the American Arbitration Association governing such proceeding which is to be held and

conducted before a panel of three (3) arbitrators in Cincinnati, Ohio. A decision of the majority of the arbitrators shall be binding upon the parties hereto.

18. Title and Indemnity. Seller warrants that at the time of delivery it will have title to the Coal, and will deliver the Coal to Buyer, free and clear of all liens, claims and encumbrances arising prior to the transfer of title to Buyer. Seller and Buyer shall each indemnify, defend and hold harmless the other Party from any Claims arising from failure of title or loss of the Coal while title to and risk of loss of the Coal is vested in the indemnifying Party.

19. NO WAIVER. The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of the Agreement, or to exercise any of its rights hereunder at any time shall not operate or be construed as a waiver of any such provisions or relinquishment of any such right at any future time or times, but the same shall continue and remain in full force and effect.

20. INDEPENDENT CONTRACTORS. Buyer and Seller shall be, and act as independent contractors, and not as an agent or employee of the other, and shall have supervision over and responsibility for the safety and actions of their respective employees and representatives and shall have control and management over and responsibility for their respective equipment. The parties agree that the Agreement, or its implementation, does not create a joint employer, single employer, alter ego, agency relationship or successorship relationship between the parties.

21. SURVIVAL OF OBLIGATIONS. All remedial and payment obligations of the parties provided herein shall survive the termination, cancellation or expiration of this Agreement.

22. COMPLIANCE WITH LAWS. Buyer and Seller, including but not limited to Buyer's and Seller's subcontractor(s) shall comply with all applicable laws, rules, regulations, and ordinances of any governmental body or authority having jurisdiction as such laws are then interpreted and enforced by enforcement agencies.

	Quality (As Received)		
	Indiana Coal	Stoker	Blend
Size	2x0 – 55% - 1/4"	2x1/4 – 10% - 1/4"	2x0-30% - 1/4"
BTUs	11500	12000	11700
Moisture	15	15	15
Ash	9	8	9
Sulfur	.97 Max	-1.00% Max	.99 Max
SO	1.7# Max	1.7# Max	1.7# Max
HGI	55	55	55
Ash Fusion Temp			
Fluid	2600	2600	2600
	Price		
FOB Dockside	\$75.25	\$87.75	\$83.58
Winona, MN			

This would allow you to purchase the coal FOB dockside at the Kujak Terminal in Winona. You would then need to contract with them for unloading, storage, and delivery during the winter months. (See attached CD Corp pricing information.) This bid is based on barge rate of \$14.40 per net ton. The rate has a fuel escalation clause. The barge line provides us with their average cost of diesel fuel at St. Louis, Missouri for the previous quarter. This cost is used to calculate the rate for the next quarter. The rate is increased ½ of 1% for each 1 cent rise in fuel cost above \$1.25 per gallon. The fuel cost for the first quarter is \$1.85. The rate is adjusted on a quarterly basis.

FOB Silver Lake Plant

Delivered by rail **\$88.07** **\$100.57** **\$96.40**

If you choose to have the coal delivered to your Silver Lake plant by rail, the barge rate for this bid is \$12.00 per net ton. The fuel escalation clause for barges listed above will apply, as well as a rail rate of \$12.22 per net ton, which also has a fuel escalation clause. (See attached DME information.) The rail rate is adjusted on a monthly basis. The barge rate is adjusted on a quarterly basis.

	Quality (As Received)		
	East Kentucky Coal	Stoker	Blend
Size	2x0 – 55% - 1/4"	2x1/4 – 10% - 1/4"	2x0-30% - 1/4"
BTUs	12000	12800	12300
Moisture	8	6	7
Ash	12	9	10.5
Sulfur	-1.00% Max	-1.00% Max	-1.00% Max
SO	1.7# Max	1.7# Max	1.7# Max
HGI	40-45	40-45	40-45
Ash Fusion Temp			
Fluid	2700	2700	2700
	Price		
FOB Dockside	\$85.00	\$100.50	\$95.33
Winona, MN			

This would allow you to purchase the coal FOB dockside at the Kujak Terminal in Winona. You would then need to contract with them for unloading, storage, and delivery during the winter months. (See attached CD Corp pricing information.) This bid is based on barge rate of \$16.00 per net ton. The rate has a fuel escalation clause. The barge line provides us with their average cost of diesel fuel at St. Louis, Missouri for the previous quarter. This cost is used to calculate the rate for the next quarter. The rate is increased ½ of 1% for each 1 cent rise in fuel cost above \$1.25 per gallon. The fuel cost for the first quarter is \$1.85. The rate is adjusted on a quarterly basis.

FOB Silver Lake Plant

Delivered by rail **\$97.82** **\$113.32** **\$108.15**

If you choose to have the coal delivered to your Silver Lake plant by rail, the barge rate for this bid is \$13.60 per net ton. The fuel escalation clause for barges listed above will apply, as well as a rail rate of \$12.22 per net ton, which also has a fuel escalation clause. (See attached DME information.) The rail rate is adjusted on a monthly basis. The barge rate is adjusted on a quarterly basis.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a Coal Supply Agreement with River Trading Company, and request the Mayor and the City Clerk to execute the agreement for

30,000 to 50,000 Tons of East Kentucky Blend Coal
For Delivery by Rail in 2006 at a price of \$108.15 plus escalation

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 28th day of March, 2006.

President

Secretary