

# FOR BOARD ACTION

Agenda Item # 8.

Meeting Date:

1/29/08

**SUBJECT:**

SLP Unit 4 Bottom Ash Hopper Rehabilitation – OEM Scope of Supply

**PREPARED BY:**

Rob Dunnette – Manager of Power Resources

ITEM DESCRIPTION:

The SLP Unit 4 bottom ash hopper has reached the end of its useful service life and is in need of major reconstruction. The reconstruction will require the utilization of original equipment manufacturer (OEM) designs and materials. A proposal for those OEM designs and materials was solicited from United Conveyor Corporation, the area OEM sales representative, on a sole-source basis. The attached proposal is the product of an iterative exchange between the SLP Plant Engineer, Tom Williamson, and United Conveyor Corporation. The proposal provides for all parts and materials that are specialty items, including updated design drawings. The firm price for the design and supply of all specialty materials is \$93,990.00. Drawing modifications and on-site work is quoted for an additional \$14,710.00.

Non-specialty parts and materials, and installation labor, are not included in this scope of supply. These project components will be competitively bid within the Emissions Reduction Project mechanical contract (part 2).

The project is a scheduled major maintenance item funded from the approved Power Resources allocation budget, and the proposal is in line with the cost projection used to develop that budget.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Utility Board approve a contract agreement with United Conveyor Corporation in the amount of \$108,700.00 for the provision of specialty design, parts and materials necessary for the reconstruction of the SLP Unit 4 bottom ash hopper, subject to review and approval of the terms and conditions by the City Attorney and RPU General Manager, and that the Mayor and City Clerk execute the final agreement.

  
General Manager

  
Date



## United Conveyor Corporation

2100 Norman Drive West • Waukegan, Illinois 60085-6753

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17 January 2008

Rochester Public Utilities  
Silver Lake Station  
425 W Silver Lake Dr NE  
Rochester, MN 55906-3675

Attention: Tom Williamson, Plant Engineer

Subject: ROCHESTER PUBLIC UTILITIES  
Silver Lake Station  
UCC Installation No. 53931  
UCC Proposal No. Q07020  
Unit No. 4 Bottom Ash Hopper Rehabilitation

United Conveyor Corporation (UCC) is pleased to offer the following revised firm price proposal for the rehabilitation of the Unit No. 4 bottom ash hopper at Rochester Public Utilities' Silver Lake Station. UCC previously provided a budget proposal for the replacement of the complete hopper. UCC understands that Rochester Public Utilities considers the hopper's support structure to be in acceptable condition and not requiring replacement. Accordingly, a contractor will replace just the hopper plate and will install all items to be furnished by UCC. The contractor will also be replacing the existing access panel with a pokhole at the south end of the hopper be replaced with a flat plate. This is anticipated to be easier to open/remove when personnel need to access the hopper interior during outages.

UCC's scope of design for this project is geared toward UCC supplying the "specialty" fabrications required. These items would be those for which a fabricator would need to know specific information about UCC components (e.g., bolt patterns, design details) in order to fabricate the items. It is intended that the contractor would only need to align and weld the fabrications to be supplied by UCC, rather than cutting and drilling openings.

As part of this project, UCC will create views of the hopper showing any items to be supplied. UCC will also create a field welding diagram showing how supplied items are to be attached to the hopper plate. The existing UCC design drawing for the hopper, UCC No. 527-53931-1, will be revised as necessary. Please note that UCC design will assume that the bottom ash hopper support steel, structural steel, and plate are per original UCC design. No redesign of the overall hopper—including changes in plate thickness or structural member sizes—is included. UCC design will essentially be "blind" to the fact that some of the plate will be replaced, and no instructions for this replacement will be provided. Finally, it will be the obligation of Rochester Public Utilities to perform a thorough review of the existing structure to ensure that it is in good condition and has not been altered from the design shown on UCC Drawing No. 527-53931-1.

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UCC's scope of supply for this Proposal includes the following:

- Six replacement 316 SS seal trough nozzles
- Three vertical lifting door cylinders. Rochester Public Utilities purchased replacement doors without cylinders and position indicating rods (UCC Part No. 4-2015-61-1) in July of 2007 under Purchase Order No. 45-29680 (United Conveyor Supply Company Order No. 7-E0537). Note that the cylinders, UCC Part No. 44540, will be supplied without the fasteners and gaskets normally required when a cylinder is replaced. The required fasteners and gaskets were supplied with the replacement doors.
- Three replacement EXCEN-Crusher™ solids reducers. These will be the "bare" crushers without drive components (e.g., gearmotor, sprockets, chain, drive guards, couplings and shafts between crushers), although the crusher for the south end of the hopper will include a gearmotor mounting bracket and an extension plate (both carbon steel) for reattaching the existing gearmotor. The new crushers will include pillow block bearings, carbon steel bodies, carbon steel shafts, and eccentric ring cast steel cams with hardened teeth. See UCC Drawing No. 5-2102-121.

Eccentric ring cams are recommended in applications such as this where multiple crushers are driven by a single gearmotor. UCC's current standard for crusher cams is to use four DURITE® "H" or tungsten carbide sections mounted on a central square cam support. If such cams are desired to ease maintenance and/or to reduce particle size in the conveying line, the single gearmotor would need to be replaced with individual gearmotors for each crusher to prevent stalling.

- Two pressurized pokeholes, one each for the north end and the rear of the hopper.
- ASTM A36 carbon steel adapters to which the access door and hopper pokeholes will mount
- Three ASTM A36 carbon steel vertical lifting door enclosures with removable fronts. Each enclosure will include grease piping to allow lubrication of the vertical lifting door wheels from outside the enclosures. This piping will be supplied loose and will need to be installed in the field.
- Three frames to which the vertical lifting doors and their enclosures will mount
- Two ducts for installation between the enclosures. Each duct will be fabricated from 12" diameter Schedule 40 carbon steel pipe. The middle enclosure will include a "box" for connecting the air supply piping.
- Three 9" x 12" access doors, three floodlights, and three pressurized pokeholes with windows for installation in the enclosure front plate

As is noted above, UCC will create new and modify existing bottom ash hopper drawings to show how all new equipment is to be installed and to confirm the part numbers of all supplied equipment. This includes modifying UCC Drawing No. 414-53931-1 (Economizer, Air Heater, and Bottom Ash Flow and Piping Diagram) as necessary.



Rochester Public Utilities has also requested that this Proposal include modifications to existing UCC drawings. These revisions would reflect both changes that have been made since UCC design was completed and an additional change that Rochester Public Utilities wishes to make in order to allow the addition of a door. Marked drawings and sketches showing these changes were provided on 7 January 2008. UCC has provided an adder for the engineering required to revise the drawings. Included in this adder is a site visit by a UCC Conveyor Designer and a UCC Systems Engineer to review all the changes with Rochester Public Utilities personnel. This will include confirmation of the conveying line routings. After the completion of the visit, UCC will prepare a list of necessary or recommended new parts for Rochester Public Utilities to purchase through United Conveyor Supply Company.

The existing UCC drawings will be revised by hand as necessary to reflect the changes made and to confirm all parts that are or will be in place. New drawings will only be created if it would be impractical to show specific details on the existing drawings. The price provided assumes that the changes to be made are exactly as shown on the marked drawings provided. Should it be determined during the site visit that additional design is required (e.g., due to the identification of additional “as built” areas), UCC reserves the right to issue a Contract Change Request for the additional work. Note also that this Proposal does not include recalculation of system performance based on any conveying line changes—either those already made or to be made. The UCC Systems Engineer will review existing system performance during the site visit to determine if the changes have affected or would likely affect conveying. If it determined that recalculation of system performance and the evaluation of possible system modifications would be warranted, a Contract Change Request for the additional engineering will be provided.

The following items are not included in this Proposal:

- Design and supply of new or replacement hopper lining, including insulation block, refractory, stainless steel fibers, anchors, and coatings
- Design and supply related to replacing the access panel and pokehole at the south end of the hopper. Revised UCC drawings will note that this equipment was replaced by others.
- Design and supply related to the hopper seal trough, other than the supply of replacement seal trough nozzles
- Replacement control accessories (e.g., reservoirs, solenoid valves, air filters, air pressure regulators, supply valves, and relief valves) for the vertical lifting doors; routing and supply of compressed air and water piping for the vertical lifting door controls.
- Design and supply related to supplying air from the FD fan to the middle bottom ash hopper enclosure, including piping and valves.
- Surface preparation and coating of material other than per the standard guidelines of UCC and its suppliers. All fabricated carbon steel will be supplied with one coat of high temperature inorganic zinc primer.
- Installation and erection of supplied materials.
- Installation checkout, startup, commissioning, and training services by a UC Service Corporation Field Engineer. Such service can be purchased directly from UC Service Corporation per the rates noted in the Standard Service Agreement in effect at the time the service is to be performed. A copy of the current Agreement is attached.

Rochester Public Utilities  
Silver Lake Station  
UCC Proposal No. Q07020  
17 January 2008  
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**Firm price, design and supply** US \$93,990.00

**Adder, drawing modifications and site visit** Add US \$14,710.00

**Estimated delivery** 20-24 weeks A.R.O.

**Payment terms** 100% upon delivery, net 30 days

**Freight terms** F.O.B. Origin, freight collect

**Pricing will remain valid for sixty days and does not include taxes. Pricing is not subject to escalation, assuming that all equipment would be delivered by September of 2008. UCC's standard Domestic Conditions of Sale will apply.**

**This submittal supersedes all previous submittals for this Proposal.**

United Conveyor Corporation thanks Rochester Public Utilities for the opportunity to provide this proposal, and we look forward to working with you toward this project's successful completion. Should you have any questions or comments, please feel free to contact either Mark Fougner of Fougner Engineered Sales or me.

Respectfully submitted,

UNITED CONVEYOR CORPORATION

*Jason Kaull*

Jason Kaull  
Systems Engineer, North American Sales

/jk

Attachments

**Represented by:**

Fougner Engineered Sales, Inc.  
Attention: Mark Fougner  
5101 Thimsen Avenue  
Minnetonka, MN 55345  
Phone: (952) 470-1950  
Mobile: (612) 701-4540  
Fax: (952) 470-1949  
eMail: [mark@fougner.com](mailto:mark@fougner.com)

# UC Service Corporation

## STANDARD SERVICE AGREEMENT

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_ by and between UC SERVICE CORPORATION, an Illinois Corporation (hereinafter referred to as "UCSC") and \_\_\_\_\_ (Hereinafter referred to as "Customer"):

1. UCSC Services. UCSC agrees for the charges stated herein, to furnish to the Customer at the location and upon the System or Systems identified below, only those consulting services specifically described below:

Location: \_\_\_\_\_  
\_\_\_\_\_

Identification of Systems: \_\_\_\_\_  
\_\_\_\_\_

Description of Consulting Services \_\_\_\_\_  
\_\_\_\_\_

2. Service Limitations. UCSC and Customer agree that UCSC shall be responsible to provide all services to Customer in accordance with paragraph 1. Customer agrees, understands and acknowledges that the UCSC service agent or agents shall not perform or provide any engineering or design services not specifically described in Paragraph 1.

3. Customer Responsibilities.

- (a) Customer shall make any and all service and/or operation decisions, affecting the System or Systems, relating to UCSC's recommendation for such, to be provided hereunder.
- (b) Customer shall be responsible for the acts and workmanship of its employees, contractors, subcontractors and agents, to perform the work recommended by UCSC and accepted by Customer.
- (c) Customer shall be deemed to have accepted the work and services performed by UCSC upon completion of the services specified in this Agreement.
- (d) Customer shall provide all labor, tools, equipment and supplies required to perform the work recommended by UCSC and accepted by Customer.

4. Fees - Standard.

- (a) The standard charge (not including living or travel expense) for each UCSC service agent, for each (8) hour day or part thereof, Monday through Friday, will be as follows:

<u>CHARGE</u>	<u>CONDITIONS</u>
\$1,200/day	Standard (8) hour work day with a minimum two week lead-time required.
\$1,488/day	Standard (8) hour work day when an office engineer is required or requested.

- (b) If a UCSC service agent is summoned to the Customer's plant, and for reasons beyond UCSC's control, work is interrupted and cannot proceed, or if no work is performed, the daily charge plus living expenses will be made for each day the service agent is detained.
- (c) Job conditions, schedules, size, and/or complexity of the System involved may require the services of more than one (1) service agent to effectively provide technical assistance with such work, in which case, the charges for each additional service agent will be the same as above.

5. Fees - Overtime and Special Circumstances.

- (a) A charge of 1.5 x daily rate/8 per hour will be made for all time worked over eight (8) hours per day, Monday through Friday.
- (b) Sixty (60) hours is the maximum a service agent may work in any one week. Time in excess of sixty (60) hours will require assignment of an additional service agent (or agents) at the applicable rates.
- (c) A charge of 1.5 x daily rate/8 per hour will be made for all time worked or traveled on Saturdays, plus living expenses and transportation.
- (d) A charge of 2.0 x daily rate/8 per hour will be made for all time worked or traveled on Sundays or holidays, plus living expenses and transportation.

6. Travel, Transportation and Living Expense Charges.

- (a) There will be a charge for transportation, to and from the service agent's origin of departure, plus travel time, at an hourly rate based on the daily unit cost applicable, for an eight (8) hour work day. Travel charges will be limited to 8 hours for U.S. travel and 24 hours for international travel. When appropriate, travel time and site work will be combined to comprise a workday.

# UC Service Corporation

## International Service Agreement

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- (b) Local transportation will be charged at UCSC's actual cost.
  - (c) When air travel and rental cars are used, they will be charged at UCSC's actual cost. Air travel will ordinarily be by coach, tourist, or economy class. First class will be used only under special circumstances, such as the non-availability of lesser accommodations. When transportation is by personal or company vehicle, a charge for mileage will be made at the rate of \$.60 per mile.
  - (d) Living expenses, including, but not limited to, hotels, meals and telephone will be charged at \$185.00 per day. A meal expense of \$60.00/day will be charged in lieu of living expenses when the visit does not require the use of a hotel.
  - (e) If time includes Saturdays, Sundays, or holidays when no actual work is performed, a charge will be made for living and car rental expenses only, per 6c and 6d above.
7. **Training Charges.** If a service engineer is utilized for training, the standard per diem rate applies. There is an additional charge for classroom training sessions to cover preparation time and office costs.
  8. **Payment Terms.** The above fees and charges will be invoiced on a monthly basis, for fees and charges incurred the previous month. Terms are thirty (30) days net.
  9. **Assignments Lasting More Than Thirty (30) Days.** On assignments, which are expected to last longer than thirty days, the Customer shall provide suitable office facilities convenient to the job site. The office facilities will include, at a minimum, heat, light, desk, chair, telephone and safe storage space for drawings, manuals, tools and equipment.
  10. **Limitation of Liability.** Customer agrees that UCSC shall not be liable for any direct, indirect, special, incidental or consequential damages, or for any lost profits or any claim or demand by Customer or any other party, whether based upon contract, strict liability, tort or any other legal theory (1) arising from UCSC's performance or non-performance of services under this Agreement, or (2) arising from products, accessories, equipment, materials, goods or services provided by any person or entity, including UCSC, designated by Customer, or (3) any changes made to the System or Systems or the products, accessories, equipment, materials, goods or other property relating thereto, whether made with or without the knowledge of the UCSC service agent, unless such changes receive the prior written approval of a UCSC engineer.
  11. **Indemnification.** Customer hereby agrees to indemnify and hold UCSC harmless from and against, and to reimburse UCSC with respect to, any and all claims, demands, losses, damages, liabilities, costs and/or expenses, including by way of illustration and without limitation, court costs and attorney's fees from time to time made against or incurred or suffered by UCSC which arise out of, result from or are attributable to the performance or non-performance of any work, service, products, advice, consultation, or assistance provided to Customer by UCSC either pursuant to this Agreement or which may be outside the scope of this Agreement.
  12. **Conflicting Terms.** This Agreement contains the complete and final agreement between UCSC and Customer and no agreement or other understanding in any way purporting to modify the terms and conditions herein provided shall be binding upon UCSC and any other terms and conditions which conflict with this Agreement shall be void and have no effect.
  13. **Delays.** UCSC is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.
  14. **Waiver.** The waiver by UCSC of one breach or default or any delay by UCSC in exercising any rights hereunder shall not constitute a waiver of any subsequent breach or default.
  15. **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified in the Agreement or such other address as either party may specify in writing.
  16. **Governing Law.** This Agreement shall in all respects be governed by the laws of the State of Illinois. The parties hereby agree that any dispute relating to the services provided hereunder shall be subject to the jurisdiction of the courts within the State of Illinois.
  17. **Severability.** If any of the provisions of this Agreement are held to be invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted.
  18. **Survival.** The obligations imposed upon UCSC and the Customer shall survive the performance of the consulting services by UCSC under this Agreement.
  19. **Cancellation Charge:** If a site visit is canceled after the field engineer has been dispatched, the customer will be charged for the actual costs incurred to recall the field engineer to base location.

CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. FURTHER, CUSTOMER AGREES THAT THIS AGREEMENT, INCLUDING ANY WRITTEN AMENDMENTS, IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, AND SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

UC SERVICE CORPORATION

BY \_\_\_\_\_

Pamela A. Powroznik

TITLE Field Engineering Coordinator

Email: pampowroznik@unitedconveyor.com

CUSTOMER

NAME \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_

Effective: 01 January 2008



## UNITED CONVEYOR CORPORATION

### DOMESTIC CONDITIONS OF SALE

1. **Acceptance.** This contract must be accepted by Buyer within 30 days of the date hereof, in which event all prices quoted shall be protected to the extent specified in Paragraph 7 hereof.
2. **Entire Contract.** This contract constitutes the only contract between Buyer and Seller covering the transaction set forth herein. The terms and conditions contained in this contract supersede any terms and conditions in any order form of Buyer, any acceptance by Buyer, any bid proposal, invitation to bid, general conditions or other terms, provisions and conditions contained in any other document whatsoever. Changes requested by Buyer to the Equipment or the system after date hereof shall be permitted only upon such price and other terms and conditions as Seller shall accept in writing amending this contract.
3. **Delivery.** Seller shall make delivery of Equipment to or for the account of Buyer as specified herein in one or more deliveries in accordance with the Time Schedule and the agreed upon freight terms of sale, but subject to timely performance by Buyer of its undertakings hereunder.
4. **Terms of Payment.** Buyer agrees to pay an additional charge of 1-1/2% per month on all past due amounts, and all invoices shall require payment on a net 30 day basis from date of invoice. Seller shall, in addition, have all other rights and remedies provided herein or by law on account of default of Buyer.
5. **Engineering Drawing Submittal and Time Schedule.** Buyer shall, within the period specified in the Time Schedule, furnish to Seller complete satisfactory drawings and measurements of the plant, the site and the precise location where the Equipment is to be installed, and all information as to physical conditions, utilities, or any other matters whatsoever which exist or will exist at such places and which the Equipment and Seller's plans, drawings and instructions should accommodate in order for the proper installation and operation of the Equipment. Seller will thereafter, within the period specified in the Time Schedule, furnish working drawings and/or instructions for the installation and operation of the Equipment, which Buyer shall promptly approve and return. Both the engineering schedule and the purchase price assumes no more than two drawing submittals for each class of drawings for final approval, plus one later submission for record only. Customer approval of UCC drawings supersedes possible conflicting statements in Customer specifications that would otherwise make UCC liable for work on material beyond that which has been called out in the UCC proposal. Revisions made to plant arrangement, layout, or terminal data after Seller's engineering drawings are substantially complete, shall be subject to additional charges at the discretion of Seller.
6. **Other Material and Costs.** Seller shall have no cost, expense, responsibility or liability on account of the installation, erection, or placement of the Equipment into operation. Any parts, materials or services other than as shown in this contract which are necessary for the completion, installation, erection or operation of the Equipment shall be furnished by Buyer at its own expense, such as but not limited to: safety devices of any kind, whether or not required by law; trenches and trench cover plates; sleeves and flashings; supports, brackets, handrails, anchors and hangers; wiring, conduit, pushbutton stations and motor starters; clear water pumps and accessories; water and compressed air supply and drain lines complete with valves, vents and overflow piping, foundations and anchor bolts; seal plates or drip castings attached to headers, side walls, tubes or casing; rebar design, rebar, metal decking or wood forms for concrete; sand, cement, gravel and concrete work; heat tracing and insulation where required; hopper heating and/or any other device necessary to insure dry free-flowing fly ash and labor, engineering and other services and work required to install, erect and test the Equipment.
7. **Price Adjustment.** All prices are subject to change without notice after the stated bid validity date, unless bid basis validity is extended in writing by Seller. Any increase in Seller's cost of the Equipment due to increase in cost of labor or materials or due to government legislation, regulation or order, or due to any matter which is a cause for delay or failure in delivery specified in Paragraph 13 hereof may at Seller's discretion be added to the purchase price specified herein as to any undelivered portion of this contract.
8. **Cancellation.** At any time prior to final delivery of all of the Equipment and after written notice to Seller of its desire to cancel, Buyer may cancel this contract provided it shall have paid to Seller all sums claimed by Seller for Equipment delivered or held by Seller, all parts and materials ordered or purchased by Seller on account hereof, and all costs and expenses incurred by Seller for labor and services pursuant to this contract. Upon payment of all sums as aforesaid, this contract shall be terminated and neither party shall have any further obligation or liability one to the other of any kind or nature on account of this contract or on account of any part of the Equipment theretofore delivered to Buyer.





9. **Risk of Loss.** Notwithstanding retention or existence of title to the Equipment in Seller, all Equipment ready for shipping, but held by direction of Buyer or awaiting final drawings of Buyer, and all Equipment delivered to the specified point of shipment or to a carrier for shipment to Buyer shall be deemed at the risk of Buyer, and all loss or damage subsequently occurring to such Equipment shall be borne by Buyer. Seller shall and does retain title for security purposes only to all of the Equipment whether installed or not, until paid for in cash, and Seller may at its option repossess the same upon Buyer's default in payment therefore, and pursue all other remedies afforded it at law. Buyer will perform all acts and execute all documents requested by Seller to perfect Seller's security interest in the Equipment. Until the full amount due Seller by Buyer is paid, Buyer shall keep the Equipment in good condition and repair. Buyer shall be fully responsible for any and all damage to Equipment after receipt. Buyer shall maintain insurance covering the Equipment in an amount and of a kind satisfactory to Seller from the time the risk of loss passes to Buyer and such insurance naming the Seller as an insured shall be maintained until the full amount due Seller is paid.
10. **Performance Specifications.** The Equipment being sold hereunder when properly erected, installed, started up and operated together with all other proper parts and materials to be supplied by others and required for a complete and operable conveyor system, will handle all the dry, free-flowing fly ash from moisture-free hoppers within the tolerances and other limitations, if any, specified by Seller herein or in its specifications or in accordance with Seller's instructions. Buyer shall be solely responsible for ascertaining all regulatory and safety requirements respecting the Equipment and its operation at its intended place of use and for obtaining all required approvals for installation and operation. The Equipment will upon delivery comply with design and safety requirements of any federal, state or local laws specifically designated by Buyer in a writing to be furnished to Seller together with the drawings referred to in Paragraph 5 hereof. All safety features and designs are subject to the use and service specified in manuals of operations and instructions and Buyer shall be solely responsible for governance of such use and service.
11. **Warranty to Buyer.** Seller warrants to Buyer that upon proper installation and startup the Equipment will meet the performance and other specifications set forth in this contract and will be free from defects in material and workmanship under normal use and service and within the tolerances and other limitations, if any, specified by Seller herein or in its specifications or operating instructions. Seller's sole obligation under this warranty shall be limited to repair or replacement of any Equipment or part thereof which shall be found by Seller to be defective within one (1) year from the date the system is first put in operation, but not later than eighteen (18) months from the last date on which all of the Equipment has been shipped. Seller shall have no liability for repairs or alterations made by Buyer or others without Seller's written consent or for any costs of disassembly and reassembly on account of defective materials or workmanship. Buyer shall give Seller written notice within thirty (30) days of receipt of the Equipment of any shortages or defects and provide Seller with an opportunity to examine the Equipment or part thereof alleged to be defective. In the event Buyer fails to notify Seller in writing within said thirty (30) day period of the nonconformity of the Equipment, then Buyer shall be deemed to have accepted same. Buyer shall be obligated to return at Buyer's expense any defective Equipment or part thereof to such place as Seller shall designate and Seller shall be obligated to repair or substitute new parts for same. This warranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose extending beyond the description in this contract and in lieu of all other obligations and liabilities on the part of the Seller. Seller will assign to Buyer the benefits of warranties received by Seller, if any, from others applicable to the Equipment or parts thereof furnished as part of the contract due to any specific name brand request in the Buyer's specifications. Seller neither adopts nor guarantees or warrants that the manufacturer will comply with any or all of the terms of any warranty of the manufacturer. The latter shall not apply if Seller specifically includes such items in the proposal as being included in the Seller's warranty for the Equipment. This warranty shall not apply and Seller shall be relieved from all obligations and liabilities under this warranty if:
- The Equipment shall have been operated with any accessory, equipment or part not specifically approved by Seller, not manufactured by Seller or not to Seller's design and specifications;
  - The Equipment shall not have been operated or maintained in accordance with Seller's instructions;
  - The Equipment shall not have been operated under normal industry use;
  - The Equipment shall have been repaired, altered, tampered with or modified without Seller's approval;
  - The Equipment shall have been operated subsequent to its involvement in an accident or breakdown, unless Buyer furnishes reasonable evidence that Seller was notified of such accident or breakdown and Seller was provided the opportunity to inspect any and all parts, reports, documentation, etc., relating to said accident or breakdown;
  - Buyer does not submit reasonable proof to Seller that the defect is embraced within Seller's warranty hereunder; or
  - The Equipment has been subject to misuse, neglect, improper storage on job site, wear and tear from abrasion or corrosion or improper lubrication.
12. **Limitation of Liability and Indemnification.** Seller shall not be liable whether in contract, in tort, strict liability, under any warranty, in negligence or otherwise for any direct, indirect, special, incidental or consequential damages suffered or incurred by Buyer or any third party relating to the Equipment or any part thereof. Furthermore, Buyer hereby agrees to indemnify, defend and save harmless Seller from any and all claims for loss, damage or injury to any and all persons and property arising out of any claim whether in contract, in tort, strict liability, under any warranty, in negligence or otherwise arising out of any alleged defect in the Equipment or arising out of any operations and activities pursuant to this contract even though the defect and/or loss, damage or injury to any and all persons and property resulted from the alleged negligence, breach of warranty or strict liability of Seller.



13. **Storage.** Buyer shall be solely responsible for safe and proper storage per UCC storage instructions of any Equipment delivered to it from time to time and shall pay to Seller on demand any storage charges or other costs of delivery or other performance by Seller hereunder.
14. **Backcharges.** Seller will not be responsible for or accept backcharges for any modifications to the Equipment to avoid or accommodate work or materials being furnished by or through Buyer or obstructions or other conditions in the field, site or plant of which it was not advised by Buyer in drawings or other official written notifications prior to the scheduled engineering freeze date. All backcharges are subject to Seller's review prior to actual remedy, and no other costs are authorized by Seller to correct problems unless prior written approval is given for same by Seller. Buyer shall give Seller prompt notice of all defects relating to backcharges and to warranty provisions of the contract.
15. **Delays and Force Majeure.** Seller's obligations with respect to delivery of all or any of the Equipment are expressly made subject to and contingent upon Buyer's prompt and timely performance of all of its undertakings and obligations hereunder and Seller's ability to secure the materials, parts or labor. Seller shall not be responsible for failure to deliver or for delays in delivering Equipment due to labor difficulties, fire, delays and defaults of Buyer or carriers and material suppliers. Seller is not responsible for delays due to customer changes in scope, acts of God, governmental acts, regulations and restrictions and any other causes, casualties or contingencies (whether or not of the same character as those hereinabove specifically enumerated), beyond Seller's control. Seller may extend any of its specified delivery dates for the period of any delay described herein. Under no circumstances will delay in delivery of Equipment not due to Seller's willful negligence be considered as a default under this contract; nor shall application of price adjustment provisions contained herein be restricted by reason of such delays. In no event shall Seller be responsible after delivery of the Equipment in good order or condition in accordance with the agreed upon freight term of sale. Notwithstanding Section 2-510 and Section 2-608 of the Uniform Commercial Code, after shipment of the Equipment by Seller, all risk of loss shall remain with Buyer regardless of any breach of warranty or nonconformities in the Equipment.
16. **Operations Test.** Buyer shall, within 45 days from the date hereof, conduct an operations test of the system containing the Equipment. If on such test the Equipment shall be found to be defective, Buyer's sole rights shall be as provided in Paragraph 11 hereof. Notwithstanding the fact that tests have not been or could not be conducted or that a test shall require corrections by Seller as provided in Paragraph 11, any remaining unpaid balance of the purchase price shall be paid by Buyer as specified in Paragraph 4 hereof and Buyer shall have no right to offset or withhold such payment because it has not performed the operations test or on account of any claims or the possibility of any claim under Paragraph 11 hereof.
17. **Equipment To Remain Personal Property.** The Equipment shall remain personal property irrespective of the manner of its attachment to the realty, and title thereto shall be and remain vested in Seller until the purchase price thereof has been fully paid and Buyer has fully complied with all of its obligations under this contract notwithstanding any granting of renewals or extensions hereof and notwithstanding any retaking of possession of the Equipment or redelivery of the Equipment to Buyer. The Equipment shall not be leased, loaned or removed from the address stated in this contract nor shall the Buyer permit the Equipment to be attached without the written consent of Seller.
18. **Rescission In The Event Of Buyer's Insolvency.** If Buyer ceases to conduct its operations in the normal course of business, including the inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Buyer, or if a receiver for Buyer is appointed, or if an assignee for the benefit of creditors is named by Buyer, or if Seller believes Buyer has suffered a material adverse change in its business or financial condition, then Seller may rescind this contract immediately without liability.
19. **Rescission In the Event of Buyer's Default.** In the case of any default by Buyer pursuant to the terms of this contract, Seller at its option may rescind this contract, and may retake all or any part of the Equipment without complying with or being bound by any of the provisions of this contract. Upon such retaking, Seller shall repay to Buyer the full amount paid by Buyer to Seller on the purchase price of the Equipment retaken less any costs or expense incurred by the Seller in connection with such rescission and any other sums due Seller by Buyer under this or any other contract.
20. **Termination.** In addition to all rights and remedies specifically provided herein or available at law and in equity on account of any breach or default hereunder by Buyer, Seller shall have the right to terminate this contract and any further duty or obligation on its part hereunder.
21. **Waiver.** No waiver by either party, whether express or implied, of any provision of this contract or of any breach or default by either party shall constitute a continuing waiver or a waiver of any other provisions of this contract, and no such waiver shall prevent a party from enforcing any and all provisions of this contract or from acting upon such default or breach of any subsequent default or breach of the other party.
22. **Governing Law and Assignments.** This contract and obligations imposed on Seller and Buyer shall be governed by and construed according to the laws of the State of Illinois. Buyer may assign this contract with written consent of Seller provided that no such assignment shall release Buyer from any of its obligations hereunder without the express written consent of Seller.



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a contract agreement United Conveyor Corporation, subject to review and approval of the terms and conditions by the City Attorney and RPU General Manager, and request the Mayor and the City Clerk to execute the agreement for

Silver Lake Plant Unit No. 4 Bottom Ash Hopper Rehabilitation  
UCC Installation No. 53931, UCC Proposal No. Q07020

The amount of the contract agreement to be ONE HUNDRED EIGHT THOUSAND SEVEN HUNDRED 00/100 DOLLARS (\$108,700.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29<sup>th</sup> day of January, 2008.

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President

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Secretary