

## FOR BOARD ACTION

Agenda Item # 9

Meeting Date: 9/26/06

**SUBJECT:** Subcontract Agreement (S193593) between Johnson Controls, Inc and City of Rochester through it's Public Utility

**PREPARED BY:** Patty Hanson, Manager of Marketing and External Affairs

ITEM DESCRIPTION:

At the May 15, 2006 City Council meeting, the City of Rochester hired and contracted Johnson Controls, Inc. (JCI) for a City wide facilities improvement project. As part of the project, 18 City buildings were identified for energy saving opportunities in lighting. JCI is sub-contracting RPU Energy Solutions to complete the lighting retrofits. The work includes fixtures, supplies, materials, permits, disposal fees, labor and hazardous waste disposal. RPU and Judisch and Judisch, Inc, as Energy Solutions, will provide services not to exceed \$928,478.

As stipulated in the agreement, Section 10 Bonds, RPU will provide JCI with a Payment and Performance Bond in the amount of one million dollars. The cost of the bond was quoted at approximately \$13,500.00. JCI will reimburse RPU for the cost of the bond once the work is completed..

UTILITY BOARD ACTION REQUESTED:

Subject to final document approval by the City Attorney, the Board is requested to approve a resolution to approve the following:

1. A Sub Contract Agreement with Johnson Controls, Inc. for services not to exceed \$928,478.00, and request the Mayor and the City Clerk to execute the Agreement.
2. Purchase of the Payment and Performance Bond for the approximate price of \$13,560 and the general indemnity agreement. JCI will reimburse RPU for the cost of the bonds.

  
General Manager

  
Date

**ROCHESTER PUBLIC UTILITIES**

# REQUEST FOR COUNCIL ACTION

MEETING **49**  
DATE: May 15, 2006

**AGENDA SECTION:**  
Consent Agenda/Organizational Business

**ORIGINATING DEPT:**  
Finance Department

**ITEM NO.**  
D-10

**ITEM DESCRIPTION:** Authorize Agreements in Accordance with Minnesota Statutes 471.375 to Complete Energy Saving Improvements to City Facilities and Provide for Its Financing.

**PREPARED BY:**  
Dale Martinson

At the May 8<sup>th</sup> Committee of the Whole work session, Council reviewed a proposal by Johnson Controls, Incorporated (JCI) to provide improvements to various City facilities and to pay for those improvements through the savings in energy costs that those improvements would produce. This program is specifically authorized under Minnesota Statutes 471.375 as a provision designed to encourage local governments to seek out ways to reduce their energy consumption.

Based upon the criteria staff provided to JCI, their engineers have spent several months studying our facilities and now recommend a project scope of approximately \$6 million as shown in the attached project summary. A sample of the large items and largest percentage savings items from this proposed project has been independently reviewed and validated by Mike Smith of RPU and his assigned engineers. We anticipate these improvements will reduce energy and direct operating costs by over \$640,000 annually based on electric and gas rates currently in effect. Most of that savings will be used to repay the capital costs of the improvements over a 12-year amortization. However, we expect energy costs to continue to rise over that 12 years and we anticipate the useful life of these improvements to exceed 12 years in length. We therefore believe significant savings will accrue the taxpayer in future years. JCI guarantees those savings based on current usage and rates and will provide annual measurement and verification of those savings. Our engineers will again be providing independent validation of those annual calculations.

The project is proposed to be financed through a municipal lease being offered through CitiCapital. They have an Energy Finance division that concentrates on funding these types of improvements and have provided the best quote at a rate of 4.1%.

We have reserved the right to make final review and adjustment to the JCI program based upon Mikes review and latest data available so we are asking for a "not to exceed" authorization of \$6.1 million and will bring back any change orders to the project as they occur. We are further requesting approval be subject to legal review of the final documents and to securing CitiCapital's final approval of the municipal lease as has been proposed.

## RECOMMENDED COUNCIL ACTION

Subject to final document approval by our legal department and to the securing of financing, approve the resolution authorizing the Mayor and City Clerk to enter into the following agreements:

- a) Agreement with Johnson Controls, Incorporated to provide various energy improvements to City facilities as authorized under Minnesota Statutes 471.375 in an amount not to exceed \$6.1 million, and
- b) Municipal lease agreement with CitiCapital to finance said improvements over 12 years.

**COUNCIL ACTION:** Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_ to:

x	1	Airport	\$82,993	\$10,968	\$93,961	\$9,213	\$2,040	\$896,780	\$42,252	\$854,528
x	2	Art Center	\$6,428	\$2,254	\$8,682	\$0	\$1,200	\$37,148	\$3,940	\$33,208
x	3	City Hall	\$60,235	\$3,844	\$64,079	\$4,574	\$2,040	\$213,642	\$7,002	\$206,640
x	4	Civic Center	\$54,865	\$0	\$54,865	\$0	\$1,200	\$499,515	\$6,300	\$493,215
x	5	Civic Theater	\$12,908	\$3,046	\$15,954	\$0	\$2,880	\$245,951	\$9,665	\$236,286
x	6	Fire Station #1	\$5,760	\$900	\$6,660	\$6,983	\$600	\$55,839	\$4,317	\$51,522
x	7	Fire Station #4	\$3,522	\$0	\$3,522	\$0	\$600	\$21,052	\$0	\$21,052
x	8	Graham Arena	\$36,601	\$3,165	\$39,766		\$2,040	\$586,165	\$14,533	\$571,632
x	9	Library	\$35,485	\$2,972	\$37,144	\$4,524	\$2,040	\$210,738	\$9,821	\$200,917
x	10	Northern Hills Golf Course	\$2,393	\$888	\$3,281	\$0	\$1,200	\$29,694	\$1,681	\$28,013
x	11	Park Operations	\$3,952	\$2,230	\$6,182	\$0	\$600	\$44,562	\$6,068	\$38,494
x	12	Quarry Hills Nature Center	\$1,990	\$673	\$2,663	\$0	\$600	\$24,179	\$737	\$23,442
x	13	Recreation Center	\$97,855	\$36,201	\$134,056	\$10,240	\$2,040	\$1,496,015	\$35,153	\$1,460,862
x	14	Soldiers Field	\$957	\$796	\$1,753	\$0	\$1,200	\$26,134	\$1,021	\$25,113
x	15	Traffic Operations	\$8,942	\$1,069	\$10,011	\$4,066	\$2,040	\$155,360	\$3,878	\$151,482
x	16	Traffic Signal Lights	\$29,307	\$2,000	\$31,307	\$0	\$600	\$892,017	\$142,935	\$749,082
x	17	Parking Ramp Lighting	\$59,478	\$8,877	\$68,355	\$0	\$600	\$383,545	\$37,593	\$345,952
x	18	Piussner House Lighting	\$2,407	\$386	\$2,793	\$0	\$600	\$20,182	\$3,306	\$16,876
x	19	Mayo Field Building Lighting	\$10,827	\$332	\$11,159	\$0	\$600	\$17,364	\$1,442	\$15,922
x	20	National Volleyball Center Lighting	\$14,169	\$4,555	\$18,724	\$0	\$600	\$150,496	\$14,472	\$136,024
<b>TOTAL SELECTED PROJECTS</b>			<b>\$331,075</b>	<b>\$85,156</b>	<b>\$614,918</b>	<b>\$39,600</b>	<b>\$25,320</b>	<b>\$6,906,378</b>	<b>\$346,116</b>	<b>\$5,660,262</b>

**Total Project Business Case Analysis (.05% inflation on rates per year)**  
**05/11/2006** **"12 YEAR"**

**Guaranteed Energy Savings Project**  
 Capital Expenditures \$6,006,378

HVAC Services \$39,600  
 Measurement and Verification \$25,320

HVAC Services \$29,703  
 Measurement and Verification \$13,670

**Funding**  
 Utility Savings \$531,075  
 Operational Savings \$85,156  
 Estimated Utility Rebate \$346,116

**Financing Terms**  
 Financing Term (Years) 12  
 Interest Rate (Not to Exceed) 4.19%

Principal \$6,006,378

Annual P&I Payments \$642,164

5% Escalation Year One

\$557,629

Annual Inflation Rate 0.0%  
 12 Year Positive Cash Flow \$7,267

**Projects**

12  
 4.19%

Fiscal Year	Project Cost			Project Funding				Net Effect On Budget	Cumulative Effect On Budget
	Loan Re-payment	JCI O&M Payment		Energy Savings	Operational Savings	Misc. Rebates			
2007	\$642,164	\$64,920		\$557,629	\$85,156	\$97,223		\$32,924	\$32,924
2008	\$642,164	\$43,373		\$557,629	\$85,156	\$62,223		\$19,471	\$52,395
2009	\$642,164	\$43,373		\$557,629	\$85,156	\$62,223		\$19,471	\$71,867
2010	\$642,164	\$43,373		\$557,629	\$85,156	\$62,223		\$19,471	\$91,338
2011	\$642,164	\$43,373		\$557,629	\$85,156	\$62,223		\$19,471	\$110,809
2012	\$642,164	\$14,080		\$557,629	\$85,156	\$0	\$0	(\$13,459)	\$97,350
2013	\$642,164	\$14,503		\$557,629	\$85,156	\$0	\$0	(\$13,882)	\$83,468
2014	\$642,164	\$14,938		\$557,629	\$85,156	\$0	\$0	(\$14,317)	\$69,152
2015	\$642,164	\$15,386		\$557,629	\$85,156	\$0	\$0	(\$14,765)	\$54,387
2016	\$642,164	\$15,847		\$557,629	\$85,156	\$0	\$0	(\$15,226)	\$39,161
2017	\$642,164	\$16,323		\$557,629	\$85,156	\$0	\$0	(\$15,702)	\$23,459
2018	\$642,164	\$16,812		\$557,629	\$85,156	\$0	\$0	(\$16,191)	\$7,267
<b>Total</b>	<b>\$7,705,970</b>	<b>\$346,300</b>		<b>\$6,691,550</b>	<b>\$1,021,872</b>	<b>\$346,116</b>		<b>\$7,267</b>	

51

Agenda Item													
	<p>Rochester Veterans Memorial Ass'n                      %William E. Lyke                      846 10<sup>th</sup> St NW                      Rochester, Mn. 55901                      Memorial Day Parade 5/29/06 9:15 AM to 11:30 AM                      Central Park to Soldiers Field</p> <p>Minnesota Red Ribbon Ride                      4457 3<sup>rd</sup> Avenue South                      Minneapolis Mn. 55419                      Bike Ride to fight AIDS 7/14&amp;15, 2006</p>												
D-8	<p>Approved the following Sound Amplification requests:</p> <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 20%; text-align: center;"><u>MAXIMUM SOUND OF 85 DECIBELS</u></th> <th style="width: 20%; text-align: center;"><u>WAIVE MAXIMUM ALLOWABLE 10:30 PM</u></th> </tr> </thead> <tbody> <tr> <td>Elks Lodge #1091 917 15th Ave SE Rochester, Mn, 55904 Classic Car Drive In Wednesday's from 5/24/06 to 10/4/06 4:00 PM to 9:30 PM</td> <td style="text-align: center; vertical-align: middle;">X</td> <td></td> </tr> <tr> <td>Hangar Bar &amp; Grill 7386 Airport View Dr SW Rochester, Mn. 55902 Gear Daddies Reunion Festival 5/27/06 3:00 PM to 10:30 PM</td> <td></td> <td style="text-align: center; vertical-align: middle;">X</td> </tr> <tr> <td>Zach Smoley &amp; Arthur Parks 1426 4th Ave SE #305 Rochester, Mn 55904 Blue Sea Entertainment Benefit 6/3/06 11:00 AM to 9:00 PM Foster Arends Park</td> <td></td> <td style="text-align: center; vertical-align: middle;">X</td> </tr> </tbody> </table>		<u>MAXIMUM SOUND OF 85 DECIBELS</u>	<u>WAIVE MAXIMUM ALLOWABLE 10:30 PM</u>	Elks Lodge #1091 917 15th Ave SE Rochester, Mn, 55904 Classic Car Drive In Wednesday's from 5/24/06 to 10/4/06 4:00 PM to 9:30 PM	X		Hangar Bar & Grill 7386 Airport View Dr SW Rochester, Mn. 55902 Gear Daddies Reunion Festival 5/27/06 3:00 PM to 10:30 PM		X	Zach Smoley & Arthur Parks 1426 4th Ave SE #305 Rochester, Mn 55904 Blue Sea Entertainment Benefit 6/3/06 11:00 AM to 9:00 PM Foster Arends Park		X
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D-9	Approved Accounts Payable in the amount of \$3,420,924.14 and Investment Purchases of \$5,025,450.88.												
D-10	Adopted Resolution No. 244-06 authorizing the agreement with Johnson Controls, Inc. to provide energy improvement to the city facilities and the Municipal Lease Agreement with CitiCapital to finance said improvements over 12 years.												
D-11	Adopted Resolution No. 245-06 approving the lease with United Way of Olmsted County for Public Open Space.												

# SUBCONTRACT

**No. S 193593**



Effective Date
Sept. 11, 2006

**between**

Contractor

and

Subcontractor

Name Johnson Controls, Inc.	Name City of Rochester through its Public Utility
Address 1801 67 <sup>th</sup> Avenue North	Address 4000 East River Road NE
City, State, ZIP Minneapolis, MN 55430	City, State, ZIP Rochester, MN 55906-2813

for

Project Name City of Rochester PC	JCI Contract No. 5240-0104	Address Various Locations
City, State, ZIP Rochester, MN 55901	Description Lighting Retrofit	

**NOTE: This Subcontract is governed by the provisions contained below and the Terms and Conditions attached/previously forwarded.**

**JOHNSON CONTROLS, INC.**

**SUBCONTRACTOR**

Name (typed) Dennis Kenison	Name (typed)	Name (typed) <b>SEE NEXT PAGE FOR SUBCONTRACTOR SIGNATURES</b>
Title Solutions Project Manager	Title	Title
Signature	Date	Signature
Date	Signature	Date

**Approval(s) for Johnson Controls, Inc.**

Name (typed) Leonard Fretland	Title NW Region Solutions Operations Manager	Name (typed) David X Werts	Title Regional Vice President
Signature	Date	Signature	Date

**WORK TO BE PERFORMED:** The parties agree that the materials to be furnished and work to be performed by Subcontract (the Work) shall include:

Lighting retrofit as quotes on a not to exceed basis per attached schedule. Work includes fixtures, supplies, materials, permits, disposal fees, labor and hazardous waste disposal. Cost of the work does not include a Payment and Performance Bond required for this work. Bond premium cost will be added to the not to exceed cost of the work via a change order to this agreement.

Scope of Work attachment No. 01 further describing the Work to be accomplished by Subcontractor, is attached to and incorporated into this subcontract.

**SUBCONTRACT PRICE**

Not to Exceed Nine Hundred Twenty Eight Thousand, Four Hundred      \$928,478.00 (NTE)  
Seventy Eight and 00/100's dollars- - - - -

**COMPLETION DATE:** Subcontractor agrees to complete the Work described in WORK TO BE PERFORMED above as follows:

June 30, 2007. Notwithstanding any other provision of this agreement otherwise, the completion date shall be extended a reasonable period of time for those sites where those subcontractor's access to the site is limited by others.

**CONTRACT DOCUMENTS:** The Contract Documents applicable to this project and the Work to be performed by Subcontractor consist of this Subcontract and all higher tier contracts (including but not limited to the Contract between the Owner and General Contractor) and all General, Supplementary and other Conditions together with the drawings, specifications and all addenda issued prior to the execution of this Subcontract. In the event of a conflict between the provisions of this Subcontract and any of the other Contract Documents, this Subcontract shall govern.

For Johnson Controls Home Office Information

Date 9/5/06	JCI Contract No. 5240-0104	Vendor No. 15739	Retention % 5%	Cost Code 505	Subcontract Amount NTE \$928,478.00	Service Order No.
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Return signed original document to Johnson Controls, Inc.

**SUBCONTRACTOR:**

Dated: \_\_\_\_\_

**ROCHESTER PUBLIC UTILITIES**

\_\_\_\_\_  
**Authorized Representative**

\_\_\_\_\_  
**General Manager**

**CITY OF ROCHESTER**

\_\_\_\_\_  
**Mayor**

**Attest:** \_\_\_\_\_  
**City Clerk**

**Reviewed By:** \_\_\_\_\_  
**City Attorney**

**SUBCONTRACT TERMS AND CONDITIONS**

**1. QUALITY OF WORK AND COMMENCEMENT:**

Subcontractor agrees that the quality of the Work to be performed under this Subcontract shall be of the same quality that is actually required of the Contractor in the performance of Contractor's work under applicable Contract Documents. Subcontractor also agrees to perform the Work with the same degree of skill and to assume the same risks, duties, and obligations as Contractor is obligated to assume pursuant to the Contract Documents. Subcontractor agrees to perform all Work and furnish and supply all equipment, supplies, and materials which may be required for the performance of the Work.

The commencement of the Work shall occur as directed by Contractor. Prior to commencement of the Work, Subcontractor shall meet with Contractor to review the construction schedule, payment procedures, and all other areas of Subcontractor's performance under this Subcontract. Subcontractor shall additionally participate in any such meeting required by the Contract Documents.

**2. COMPLETION DATE, SCHEDULING, AND COMPENSABLE DELAYS:**

If no Completion Date is otherwise specified in this Subcontract, the Subcontractor shall complete the Work as required by the Contract Documents. Contractor shall have the right to require that the Work be performed consistently with the progress of the work of the Contractor and of other contractors at the construction site. The scheduling of the Work shall be done in accordance with the method identified in the Contract Documents or, if none is identified, with the method specified by the Contractor. If no method is specified by the Contractor, any generally accepted method of critical path scheduling shall be acceptable. Subcontractor shall have no right to recover any additional compensation for delays except to the extent that: (a) such request is consistent with paragraph 18, Extra Compensation, of this Subcontract and this paragraph; (b) Contractor was advised in advance of the Subcontractor's schedule; and (c) the Subcontractor's schedule required by this paragraph was compiled and updated contemporaneously with the period of delay.

**3. PAYMENTS:**

The Subcontract Price shall represent Subcontractor's full compensation for performing the Work, subject to adjustments as otherwise provided for in this Subcontract. The Subcontract Price includes all state and federal taxes that may be due or charged by reason of performance of this Subcontract.

Contractor shall make periodic progress payments to the Subcontractor in accordance with the same terms and conditions, including retainage, as provided for payment of progress payments to Contractor under the Contract Documents. Application for progress payments must be in the hands of the Contractor in sufficient time to be included in Contractor's application for payment.

Progress payments shall be payable to Subcontractor by the Contractor only if and to the extent Contractor has received payment therefor. Payment shall be made by Contractor to Subcontractor as soon as practical after receipt by Contractor of payment. Payment to the Subcontractor is specifically agreed not to constitute or imply acceptance by the Contractor or Owner of any portion of Subcontractor's work. The Subcontractor shall furnish, if and when requested by the Contractor, partial release of liens and all claims and affidavits that all bills for material and labor have been paid.

Final payment of all remaining sums due Subcontractor shall be made in accordance with the same terms and conditions as provided for final payment to Contractor under the Contract Documents, provided however that Contractor has received final payment thereof and Owner has accepted in writing Subcontractor's work. Prior to issuance of final payment, Contractor may, at its option, require that Subcontractor furnish, in a form suitable to the Contractor, a general release of liens and all claims, together with such affidavits as required by the Contractor.

Contractor shall have the right to withhold and to recover any and all amounts necessary to cover costs that may be incurred by Contractor as a result of Subcontractor's unsatisfactory job progress, including costs associated with supplementation of Subcontractor's work forces; defective construction not remedied; disputed work; third-party claims filed or reasonable evidence that such claims may be filed; failure of Subcontractor to make timely payments for labor, equipment, and materials; reasonable evidence that the Subcontract cannot be completed for the unpaid balance of the Subcontract Amount; and retainage.

**4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE:**

Subcontractor represents that it has had full opportunity to review and has carefully examined all of the Contract Documents and the site. Subcontractor warrants that it has satisfied itself as to the character, quality and quantity of Work to be performed, the conditions that will be encountered at the site or otherwise affect the cost or difficulty of performing the Work, the materials and equipment and other items to be furnished, and all other requirements of Contract Documents and this Subcontract.

**5. INTENT OF SUBCONTRACT AND CONTRACT DOCUMENTS:**

This Subcontract and all Contract Documents shall be construed as a whole. They are complementary and what is called for by any one shall be as binding as if called for by all. Subcontractor agrees to assume towards Contractor, in connection with the Work covered by this Subcontract, all of the duties, obligations, and responsibilities which Contractor has assumed pursuant to and under the Contract Documents. The intent of the documents is to include all labor, materials, equipment, tools, plans, water, light, power and other items necessary for Subcontractor to provide a complete finished job. The titling and division of drawings and specifications by trades or other classifications is for convenience only and the fact that any part of the Work should or could probably have been shown or specified under some other title or division shall not relieve the Subcontractor of performing or furnishing the same nor entitle Subcontractor to extra compensation.

**6. CONFLICTS IN OR OMISSIONS FROM SUBCONTRACT OR CONTRACT DOCUMENTS:**

If Subcontractor believes that there is or may be any conflict between or omission from this Subcontract and the Contract Documents or if Subcontractor has any doubt as to the meaning thereof, Subcontractor shall immediately submit the matter to Contractor for written clarification. Any Work performed before receipt of such clarification shall be at Subcontractor's risk and expense. If any clarification of this Subcontract or other Contract Document is needed, Contractor will clarify the same by issuing a written order pursuant to the Changes clause, there shall be no increase in the Subcontract Price or extension of the time for completion on account of any misdescription in or omission from this Subcontract or Contract Documents of details of the Work which are clearly necessary to carry out the intent of the Contract Documents or which are customarily performed or furnished by contractors performing work similar to the Work described in the Subcontract for a complete finished job. Such misdescribed or omitted details shall be performed or furnished by Subcontractor at no cost to Contractor as if fully and clearly set forth in the Contract Documents.

**7. TEMPORARY FACILITIES:**

Unless otherwise specified or agreed, the Subcontractor shall provide all temporary sheds and offices needed by it and shall arrange for temporary connections and lines for water, electricity, telephone, gas, compressed air, steam, heat, and other similar services. All temporary services shall be secured and the use or consumption of such services and facilities shall be paid for by Subcontractor. Upon completion of the Work all temporary construction, signs and facilities shall be removed by Subcontractor.

**8. MATERIAL AND WORKMANSHIP:**

Unless otherwise specifically provided in the Subcontract, all material to be incorporated in the Work covered by this Subcontract shall be new, of the most suitable grade for the purpose intended and in compliance with the terms and conditions of the Contract Documents. All Work under this Subcontract shall be performed in a skillful and workmanlike manner. Contractor may, in writing, require Subcontractor to remove from the Work any employee of Subcontractor who Contractor deems incompetent, careless, or otherwise objectionable.

**9. INSPECTION:**

All material and workmanship is subject to inspection and test by Contractor at all reasonable times and places. If the Work is found to be defective or non-conforming in any material respect due to the fault of Subcontractor, Subcontractor shall defray all expense of such examination and inspection and of satisfactory correction and reconstruction.



**SUBCONTRACT TERMS AND CONDITIONS**

**10. BONDS:**

Subcontractor shall furnish performance and payment bonds each in the penal sum of 100% of the Subcontractor Price with good and sufficient sureties acceptable to Contractor, dated as of the date of this Subcontract. Subcontractor shall have no right to any payment under this Subcontract until such bonds have been provided or until this requirement is affirmatively waived in writing by JCI. If not waived, Contractor shall reimburse Subcontractor for the cost of such bonds in addition to the Subcontract Price.

**11. INSURANCE:**

Subcontractor shall obtain and maintain the insurance required by this paragraph from qualified insurance carriers who are rated no less than A-VII by A. M. Best Company. Subcontractor shall name Contractor and any higher-tier contractor and Owner as an additional insured under the general liability and auto liability policies. All policies furnished by Subcontractor shall be primary and non-contributory. Subcontractor's insurance policy shall also provide contractual coverage for Subcontractor's indemnity obligation required by paragraph 5.3 of this Agreement. All policies, with the exception of Workers' Compensation, shall be on an occurrence form. The insurance provided by this paragraph shall not be cancelled unless Contractor is given thirty (30) days notice in advance of the cancellation date and Subcontractor has made arrangements for replacement insurance under this paragraph. Subcontractor shall furnish an insurance certificate which complies with this paragraph. Subcontractor shall maintain the following coverages with limits no less than the limits of liability specified in the Contract Documents or as stated in this paragraph, whichever is greater:

<b>COVERAGES</b>	<b>LIMITS OF LIABILITY</b>
Workmen's Compensation	Statutory
Employer's Liability	\$500,000/Each Accident \$500,000/Disease Each Employee \$500,000/Disease Policy Limit
Comprehensive General Liability Insurance, including Contractual Liability Coverage that includes coverage for the indemnity provision of paragraph 5.3 of this Subcontract	\$3,000,000 Each occurrence limit, general aggregate limit and products and completed operations aggregate limit Note 1, Note 2
Comprehensive Automobile Liability Insurance	\$1,000,000 Each occurrence, combined single limit Note 2

Note 1: This limit of liability can be satisfied by any combination of primary and excess (umbrella) liability insurance.

Note 2: Subcontractor shall name Contractor, higher tier Contractor's and Contractor's Customer as an additional insured under the general liability and automobile liability policies.

**12. RISK OF LOSS:**

Until the completion of the Work and its final acceptance by Contractor, Subcontractor shall bear the risk of any loss or destruction of or damage to the Work or any materials, equipment or other items incorporated or to be incorporated therein arising from any cause other than a cause against which the Owner undertakes to carry insurance. At all times, Subcontractor shall protect all Work and materials including but not limited to stored materials, equipment and other items incorporated or to be incorporated into the Work from damage, deterioration, contamination, corrosion and exposure. All reasonable requests by Contractor to Subcontractor to enclose or otherwise protect such property shall be promptly completed by Subcontractor at no cost to Contractor.

**13. INDEMNITY:**

Subcontractor hereby assumes exclusive responsibility for any and all personal injury, including death or property damage of whatever nature and however

caused which results from or arises out of Subcontractor's performance of the Work. Subcontractor agrees to defend, indemnify, and hold harmless (a) the Contractor and the Contractor's officers, directors, agents, employees, subsidiary and affiliated companies, and (b) any other contractor or Customer that Contractor is required to defend and indemnify, from and against all claims, demands, suits (regardless of legal theory), losses, including but not limited to economic, expenses and reasonable attorney's fees, and damages ("Claims") that: (a) are brought by a complaining party or entity who was employed by or had a contractual relationship with Subcontractor at the time of the alleged occurrence; or (b) that arise out of Subcontractor's performance of this Subcontract or the Work, including but not limited to the use (and loss of use) of any materials, tools, machinery, equipment, facilities or other personal or real property, regardless of owner and regardless of whether such Claim is caused, or alleged to have been caused, in part by the party seeking indemnity. A Claim shall be considered to "arise out of" the Subcontractor's performance of the Subcontract if the Claim, involves or relates to Work performed by the Subcontractor, regardless of whether the Claim expressly alleges any negligence, wrongdoing, breach of contract, error or improper performance by the Subcontractor. Subcontractor, however, is not required to indemnify Contractor or any person seeking indemnity for Claims based upon the sole alleged negligence of the person seeking indemnity.

In claims by any employee of Subcontractor or anyone employed by Subcontractor against any person indemnified pursuant to this paragraph, the obligation to indemnify pursuant to this paragraph shall not be limited in any way by any limitation on amount or type of damages, compensation, benefits payable by Subcontractor or anyone employed by Subcontractor under worker's compensation acts, disability benefit acts, or the other employee benefit acts.

**14. COMPLIANCE WITH APPLICABLE LAWS:**

Subcontractor shall comply with all applicable federal, state and local laws, ordinances, and codes and all lawful orders, rules and regulations, thereunder. Subcontractor shall, without additional expense to Contractor, obtain all licenses and permits required for the prosecution of the Work. Contractor makes no express or implied representations concerning the applicability of any prevailing wage requirements to the Work to be performed under this Subcontract, and Subcontractor shall be liable to Contractor for any prevailing wage assessments against Contractor in connection with Subcontractor's Work unless specifically waived in writing by Contractor.

**15. PATENT INDEMNITY:**

Subcontractor shall pay as part of the Subcontract Price for this Subcontract, all licenses, and fees for royalties, copyrights and patents for any and all equipment, software, materials, supplies or anything furnished by Subcontractor as part of the Work. Subcontractor shall defend and indemnify Contractor and its officers, agents and employees, against any claims, demands, and liability, including costs, attorney's fees and expenses, for infringement upon any Letters Patent of the United States, any violation of copyrights, or any violation of any royalty agreements arising out of the performance of this Subcontract, or out of the use, or disposal by or for the account of Contractor of supplies, materials, software, equipment, or services furnished by Subcontractor.

**16. LIENS:**

The Subcontractor shall defend, indemnify, hold harmless and protect Contractor's Customer, any higher tier contractor and the Contractor against all laborers', materialmen's and mechanics liens upon the buildings or premises on which the Work is located arising out of labor or material furnished by Subcontractor or any party acting for or under Subcontractor under this Subcontract. Subcontractor shall furnish Contractor, upon request, affidavits of status of accounts and releases of liens as may be deemed necessary by the Contractor. All amounts paid by Contractor under this Subcontract shall be deemed trust funds held by Subcontractor for the benefit of its subcontractors and suppliers.

Subcontractor and its Sub-subcontractors and suppliers shall provide Contractor with written notice of its intent to file a notice of lien against the real property of the owner or against funds held by the owner that are due the Contractor at least ten days before taking such action. The notice shall specify the amount claimed, exclusive of interest and attorney's fees. Upon receipt from Contractor of a bond from a good and sufficient surety assuring payment of amounts recovered by Subcontractor against Contractor under the Disputes paragraph of this

JCI Initials \_\_\_\_\_ Date \_\_\_\_\_

Sub Initials \_\_\_\_\_ Date \_\_\_\_\_

**SUBCONTRACT TERMS AND CONDITIONS**

Subcontract, not to exceed the amount stated in Subcontractor's notice, Subcontractor and its subcontractors and suppliers agree to dismiss with prejudice, withdraw or not file such lien claim. The cost of such surety bond shall be recoverable by Contractor under the Attorney's Fees paragraph of this Subcontract. Subcontractor further agrees to include this provision in each and every subcontract, purchase order or agreement for labor to be performed or material to be provided in connection with the Work and acknowledges that such requirement is a material provision of this Subcontract. If Subcontractor or its subcontractors or suppliers takes any action contrary to this paragraph, Contractor shall be entitled to recover liquidated damages of ten percent (10%) of the amount of the lien, which shall cover the cost of any bonds required from Contractor, interest on amounts withheld as a result of the lien, and attorney's fees incurred as a result of the defense against the lien. Subcontractor shall also be separately liable for any amounts covered by the lien that Contractor is required to pay.

**17. CHANGES:**

Contractor may at any time, by written orders and without notice to the sureties, modify, change, omit or add to the Work to be performed hereunder. If any such order affects the costs of, or the time required for, performance of this Subcontract, an equitable adjustment in the Subcontract Price or the time for completion shall be made. Such orders may be issued before agreement as to an equitable adjustment has been reached, and Subcontractor shall immediately proceed in accordance therewith notwithstanding any delay in reaching agreement. Neither the issuance nor performance of such an order shall prejudice the rights of either party to contest at any time the entitlement to, or the amount of, an equitable adjustment related to such order.

**18. EXTRA COMPENSATION:**

No claim by Subcontractor for any extra compensation in connection with this Subcontract shall be enforceable against Contractor unless Subcontractor's claim is based on a written order issued by Contractor pursuant to the Changes clause. Contractor will pay for extra work arising from changes upon the same terms and conditions as set forth in the Contract Documents, but only to the extent that Contractor is actually paid for the extra work.

To the extent the previous paragraph may not apply, claims by Subcontractor shall be based on itemized costs, fully supported by original documentation submitted with such claims. Such claims shall be limited to actual costs incurred by Subcontractor related to the specific claim for labor and material; 15% overhead; and 10% profit. No total cost, modified total cost, or other methods of calculating quantum that do not segregate the costs specifically associated with each claim shall be permitted. Contractor's obligation to compensate Subcontractor for overtime work directed by Contractor and not required by the default of Subcontractor or Subcontractor's failure to maintain adequate progress of the work shall be limited to the premium time portion of overtime wages. Contractor's obligation to pay extra compensation under this paragraph shall arise if and only if Subcontractor fully performs all of its obligations under this Subcontract. No punitive damages shall be recoverable under any circumstances.

All claims for extra compensation must be submitted to Contractor by Subcontractor within (a) thirty (30) days following substantial completion of the changed Work or (b) at the time of Subcontractor's request for payment of retention, whichever occurs first. The exact amount of the claim shall be stated and may not be subsequently increased. Such claims shall also be accompanied by a written certification indicating that: such claims comply with this paragraph; the information contained in such claims is accurate, complete, and current as of the date of submission of the claim; and additional information relevant to the claim will be provided to Contractor as soon as such information becomes available. Any claim for extra compensation not made in accordance with these requirements will be deemed waived by Subcontractor.

**19. WARRANTY:**

Subcontractor warrants that all material furnished and all Work performed under this Subcontract will be free from defects in material and workmanship for a period of one year (or such longer period as may be specified elsewhere in the Contract Documents) after final acceptance of the Work by the Owner of the completed project. Subcontractor shall, at no cost to Contractor, promptly and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformity with the Subcontract requirements and remedy any damage

resulting therefrom. Subcontractor shall also assume any additional warranty responsibilities imposed by the Contract Documents.

**20. ASSIGNMENTS AND SUBCONTRACTING:**

No assignments by Subcontractor of this Subcontract or of any monies due or to become due hereunder shall be binding upon Contractor until Contractor's written consent thereto is obtained. Subcontractor shall not further subcontract portions of this Subcontract without written approval from Contractor.

**21. CLEAN-UP:**

Subcontractor shall keep its work and storage areas cleared of debris at all times and upon completion of the Work and before final acceptance shall leave the premises in a broom-clean, neat and workmanlike condition. Contractor may clean up the premises and charge to Subcontractor's account all costs for said cleanup. Contractor also reserves the right to allocate to Subcontractor cleanup backcharges that have been imposed upon Contractor under the Contract Documents without first complying with this paragraph and based upon Subcontractor's presence in areas for which cleanup backcharges have been assessed against Contractor.

**22. EXCUSABLE DELAYS AND SUSPENSION OF WORK:**

Subcontractor shall not be liable for delay in performance due to causes beyond its control and without its fault or negligence, provided it exercises due diligence in promptly notifying Contractor of conditions which will result in delay; such delay does not cause Contractor to become liable for any damages or penalty pursuant to the Contract Documents for said delay; and the Contractor was advised in advance of Subcontractor's schedule.

Contractor may direct in writing that the Subcontractor suspend, delay, or interrupt all or any part of the Work for such period of time Contractor determines to be appropriate or necessary. If the performance of the Work is so suspended, delayed, or interrupted for an unreasonable period of time, an adjustment shall be made for any increase in the cost of performance of this Subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption. However, no adjustment shall be made for any suspension, delay, or interruption to the extent that performance would have been suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an adjustment is provided under paragraph 17, Changes, or that would be prohibited by paragraph 18, Extra Compensation.

**23. CONTRACTOR DAMAGES:**

Contractor shall recover all damages, costs, and expenses, including compensation for direct and overhead costs, resulting from any breach of this Agreement by Subcontractor. To the extent that Contractor has been backcharged or otherwise has paid damages to the Owner or any higher-tier contractor as a result of alleged defaults or nonperformance by Subcontractor, such backcharges shall be presumed to be valid unless Subcontractor disputes the validity and amount of such backcharges within 10 days of the time that Subcontractor first becomes aware of such backcharges and agrees in writing to indemnify, defend, and hold Contractor harmless for any loss, costs, or expense incurred by Contractor, including interest on amounts held by the Owner or higher-tier contractor, as a result of such dispute.

In addition, as time is of the essence in the performance and completion of the Work provided herein, should the Subcontractor fail to complete the Work hereunder, within the time and manner specified, or within the time of such extensions as may be granted or approved by Contractor, or fail to make adequate and continuous progress so as to assure the timely completion of the Work, Subcontractor shall be liable to Contractor for any damages suffered by Contractor by reason of such delay, and Contractor shall and may deduct and retain the amount of such damages out of money which may be due or become due under this Contract. Upon advance notice to Subcontractor, but with or without Subcontractor's permission, Contractor shall have the right to supplement Subcontractor's forces so as to assure the timely completion of the Work and to deduct and retain the costs associated with such efforts from amounts due or that become due under this Subcontract or recover such amounts from Subcontractor as damages, whether or not this Subcontract has been terminated, for default or otherwise.

The provision of this article shall control unless Contractor and Subcontractor specifically agree in writing to a fixed and determined sum which shall be paid by

**SUBCONTRACT TERMS AND CONDITIONS**

Subcontractor to Contractor for each and every day of delay which sum shall be liquidated damages that Contractor will suffer by reason of the delay and not as a penalty.

**24. TERMINATION FOR DEFAULT:**

If the Subcontractor refuses or fails to prosecute the Work with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said Work within such time, or fails to comply with any order issued under the Changes clause or any demand issued under the Disputes clause, or otherwise breaches any material provision of this Subcontract, the Contractor may, without notice or opportunity to cure, terminate Subcontractor's right to proceed with all or any part of the Work. In such event the Contractor may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the contract or otherwise, and may take possession of and utilize in completing the Work such materials, appliances, and plant as may be on the site of the Work and necessary therefor. The rights and remedies of the Contractor provided in this clause are in addition to any other rights and remedies provided by law or under this Subcontract. Subcontractor is not entitled to any further payment until Contractor's work is completed and the costs for that work are known. Subcontractor is liable for all costs required to complete performance of the terminated work.

**25. TERMINATION FOR CONVENIENCE:**

The performance of Work under this Subcontract may be terminated for any reason by the Contractor in whole or in part at any time by written notice that specifically refers to this clause. A written notice that does not specifically refer to this clause shall be treated as a termination for default. However, a termination for default of Subcontractor that is later determined to be wrongful shall be treated as a termination for convenience. In the event of a termination for convenience the Subcontractor will stop work and follow the Contractor's instructions for winding down the job. In such event the Subcontractor will be entitled to payment for all Work satisfactorily completed on the basis of the Subcontractor's actual cost of performing such Work plus a reasonable overhead and profit. In no event shall Subcontractor be entitled to receive more than the percentage of Work satisfactorily completed multiplied by the Subcontract Price. The Subcontractor will not be entitled to payment for uncompleted Work, anticipated profit or unabsorbed overhead. If Contractor has been terminated, the Subcontractor will also be bound by the termination provisions of the Contract Documents.

**26. NOTICE:**

Subcontractor shall provide written notices as required by the Contract Documents within such time and in such manner to permit Contractor to provide written notices in accordance with the Contract Documents.

**27. DISPUTES:**

If any dispute shall arise between Subcontractor and Contractor in connection with this Subcontract, the parties shall promptly attempt in good faith to settle the same by negotiation. Subcontractor shall give Contractor written notice of its intent to exercise its rights under the Disputes Clause at least 30 days prior to initiating any legal action. At any time, and at Contractor's election, the parties shall participate in mediation under the rules of the American Arbitration Association (AAA). The costs of the mediation shall be borne equally by the parties, and such costs shall not be recoverable by either party under the Attorney's Fees clause of this Subcontract.

All disputes not settled by negotiation or mediation shall be reserved until the final completion or termination of the Work and negotiation or mediation, at which time they shall be submitted to arbitration in accordance with the prevailing rules of the American Arbitration Association for the Construction Industry, except as modified in this paragraph. All disputes shall be decided by a single arbitrator. No discovery shall be permitted. The arbitrator shall issue a scheduling order within three months of the filing of the demand for arbitration, and no modifications shall be made except by the mutual consent of the parties. The decision of the arbitrator shall be issued within nine months of the date of filing of the demand for arbitration, and the arbitrator shall state in writing the factual and legal basis for the award. The award rendered by arbitrator shall be final and judgment may be entered upon it in accordance with the applicable law in any Court having jurisdiction thereof. Contractor may require Subcontractor to submit a dispute to Contractor in accordance with the dispute

provisions of the Contract Documents. Subcontractor's sole remedy shall be as set forth in the Contract Documents if so required by Contractor.

Contractor may, however, at any time issue a written demand regarding the matter in dispute. Such a demand need not refer to the Disputes clause. If an order that refers to the Changes clause does not acknowledge that Subcontractor is entitled to an equitable adjustment for the Work required, it shall be treated as a demand under the Disputes clause. A demand shall not be construed as an admission by Contractor that Subcontractor is entitled to extra compensation or an extension of time on account thereof, and Subcontractor shall only be entitled to extra compensation or an extension of time to the extent permitted by the other provisions of this Subcontract. Upon receipt of any such demand, Subcontractor shall immediately proceed in accordance therewith.

Subcontractor further agrees to include a provision in all subcontracts, purchase orders, or agreements to provide labor or material in connection with the Work that requires all disputes related to such subcontract, purchase order, or agreement to provide labor or material in connection with the Work to be resolved by arbitration in accordance with the rules of the American Arbitration Association (AAA). Subcontractor authorizes Contractor to demand arbitration on its behalf against any subcontractor or supplier who claims that amounts are due for labor or material provided in connection with the Work. Subcontractor acknowledges that this is a material provision of this Subcontract.

**28. INDEPENDENT CONTRACTOR:**

Nothing in this Subcontract shall be construed as reserving or granting to Contractor any right to exercise any control over to direct in any respect the conduct or management of this business or operations of Subcontract. The entire control and direction of such business and operations shall be and shall remain in Subcontract. Neither Subcontractor nor any person performing any duties or engaged in any work on behalf of Subcontractor shall be deemed an employee or agent of Contractor.

**29. SAFETY:**

At all times, Subcontractor shall use suitable precautions to prevent injury to workmen and others on or about the site and shall comply with all safety regulations required by the Occupational Safety and Health Act or by the Contractor or the Owner.

**30. EQUAL EMPLOYMENT OPPORTUNITY:**

The provisions of Executive Order 11246 and the Equal Employment Opportunity clause, section 60-4.3 (a) of 41 CFR, concerning equal opportunity obligations of federal contractors and subcontractors; Executive Order 11701 and the Affirmative Action clause, section 60-250.4 of 41 CFR, concerning affirmative action obligations of federal contractors and subcontractors; and Executive Order 11758 and the Affirmative Action clause, section 60-741.4 or 41 CFR, concerning affirmative action obligations for handicapped workers of federal contractors and subcontractors are all incorporated by reference and made a part of this Subcontract.

**31. ATTORNEY'S FEES:**

If either party is required to commence legal proceedings to enforce any provisions of this Subcontract or to protect its interests in any manner arising under this Subcontract, the party prevailing in such proceedings shall be entitled to reimbursement for all reasonable costs and expenses, including attorney's fees, incurred in such proceeding. A prevailing party is a party that recovers at least 75% of its total claims or that is required to pay or no more than 25% of the claims made against it.

**32. WARRANTY OF AUTHORITY:**

Each party executing this Subcontract warrants and represents that it has full power and authority to enter into this Subcontract and to bind itself to performance hereunder. Each party further warrants and represents that the individual signing this Subcontract is an officer (if a corporate party) or a principal of the party for which he or she signs, or has been granted or delegated all requisite power and authority to bind the party on behalf of which he or she signs. This Subcontract is

**SUBCONTRACT TERMS AND CONDITIONS**

not binding on Contractor unless executed by an authorized representative (or representatives if the Contract Sum is over \$3,000.00) of Contractor.

This representation and warranty of authority shall apply with equal force to each and every document executed by either party subsequent to this Subcontract, in connection with the Work to be performed under this Subcontract.

**33. ETHICS AND COMPLIANCE**

Subcontractor agrees to abide by the Johnson Controls Ethics Policy or a similar Subcontractor ethics policy, which is incorporated by reference as part of this Subcontract, and to cooperate with JCI in the execution of responsibilities under such ethics policies and under JCI's corporate compliance procedure. This is a material provision of this Subcontract.

**34. ENTIRE CONTRACT:**

This subcontract shall constitute the entire and only agreement between the parties relating to the subject matter hereof, superseding any previous agreements or understandings. There are no agreements, understandings, or covenants between the parties of any kind, expressed or implied, oral or otherwise, pertaining to the Work hereunder which have not been set forth or specified herein. This subcontract cannot be modified except by an instrument in writing signed by an authorized representative of each party.

**35. HAZARDOUS MATERIALS.**

Contractor shall not be required to perform any identification, abatement, cleanup, control, or removal of asbestos or hazardous materials. Should Subcontractor become aware of or suspect the presence of asbestos or hazardous materials, Subcontractor shall stop work in the affected area immediately and notify Contractor. Should Subcontractor fail to stop work, the Subcontractor shall be responsible for doing whatever is necessary to correct the condition in accordance with all applicable statutes and regulations. Subcontractor agrees to assume responsibility for any claims arising out of or relating to the disturbance of asbestos or hazardous materials in the Customer's building resulting from the actions or inactions of Subcontractor.

**36. OWNER PREMISES OCCUPIED:**

Subcontractor shall use suitable precautions when performing the work in an owner occupied facility. Subcontractor shall avoid interference with owner's sales process or reducing customers access to products. Subcontractor shall comply with all owner requirements regarding conduct of operations and access timing and limitations. Subcontractor shall immediately advise contractor when any of the conditions noted herein limit subcontractors ability to perform work as planned.

**37. CONFIDENTIAL INFORMATION:**

All technical data, standards, specifications, designs, drawings and the like furnished to the Subcontractor by the Contractor shall be treated as the property of the Contractor, unless the Contractor otherwise informs the Subcontractor in writing. The Subcontractor shall not reproduce or copy any such materials in whole or in part except as required to perform the Work.

**38. PUBLICITY:**

The Subcontractor shall not issue any news releases or other public statements relating to this Subcontract, the Contract Documents or the Project without the express written consent of the Contractor.

**39. FORCE MAJEURE:**

Neither party hereto shall be liable for any losses or damages (collectively, "Losses") arising out of a failure to perform hereunder if said Losses or failure to perform are caused by an event outside the control of the party, including but not limited to, acts of God or of a public enemy, acts of the Government of the United States, or any other political subdivision or any department or regulatory agency, acts of any person engaged in subversive activity or sabotage, fire, flood, explosion, or epidemic (a "Force Majeure Event"). A party seeking relief under this paragraph shall immediately notify the other party in writing of the occurrence of the Force Majeure Event, the nature of the event, and the anticipated impact on the effected party's ability to perform its obligations. Each party shall use best efforts to minimize the impact and delay associated with the Force Majeure Event.

SCOPE OF WORK ATTACHMENT – SW 1

Rochester Performance Contract Scope of Work SW-01									
Building	FIM	Descript	Vendor	Bid/Quote	\$	Contract #	JCI PO#	IB #	Notes
Airport	14	Airport Lighting	Energy Solutions	Letter	88,888			505	No Hangers A & B
Art	3	Lighting	Energy Solutions	Letter	16,487			505	
City Hall	7	Lighting	Energy Solutions	Letter	46,733			505	
Civic Center	10	Lighting	Energy Solutions	Letter	0			***	
Civic Theater	5	Lighting	Energy Solutions	Letter	7,412			505	
Fire Station 1	4	Lighting	Energy Solutions	Letter	31,947			505	
Graham Arena	5	Lighting	Energy Solutions	Letter	134,204			505	
Library	6	Lighting	Energy Solutions	Letter	43,207			505	
Mayo Field	1	Lighting	Energy Solutions	Letter	13,071			505	
N. Hills Golf	3	Lighting	Energy Solutions	Letter	23,401			505	
Park Ops	6	Lighting	Energy Solutions	Letter	24,566			505	
Plummer Hs	1	Lighting	Energy Solutions	Letter	15,039			505	
Query Hills	2	Lighting	Energy Solutions	Letter	17,744			505	
Recreation Ctr	10	Lighting	Energy Solutions	Letter	217,626			505	
Recreation Ctr	12	New Marquee	Energy Solutions	Quote	86,941			505	
Soldier's Field	4	Lighting	Energy Solutions	Letter	10,805			505	
Traffic Ops	6	Lighting	Energy Solutions	Letter	18,944			505	
Volley Ball Ctr	1	Lighting	Energy Solutions	Letter	112,144			505	
Z	1	PCBs Recycle	Energy Solutions	Letter	23,000			505	
					928,478				



## Pledge of Indemnity Instructions

### INSTRUCTIONS FOR RII Insurance Company GENERAL INDEMNITY AGREEMENT

**PLEASE NOTE: The fully executed agreement must be in our hands prior to the execution of any bonds. Corrections, Use of "White Out", Correction Tape, and/or Erasures will make the Document UNACCEPTABLE. Please use blue ink.**

Each Indemnitor initials the bottom of Pages 1 through 8 where it says "Contractor's Initials".

**Page 4 of 8** - Under the section "Contractor" - If the Indemnitor is a Corporation, the officer signing for the corporation must be the President. The signature of the corporate officer is attested to by the Corporate Secretary and sealed with a corporate seal (if there is one). **Note: Please write in the FID# of Rochester Public Utilities (on the same line where the company name is typed, above the typed address line).**

The company signature must be acknowledged by a notary in the acknowledgment section provided on Page 6 of 8. **Important Note:** The notary may not also act as witness or attest a signature; **the witness and notary must be different persons.**

**\*\* If any of the company or individual names that have been inserted are incorrect, new Agreements must be prepared as any "whiteout" or erasures may invalidate the forms.**

**ONCE ALL SIGNATURES HAVE BEEN OBTAINED, PLEASE SEND US A FAXED COPY FOR OUR REVIEW.** We will then call you and let you know if the document is acceptable. If so, the original should be returned to us at this address:

GOLDLEAF FINANCIAL, LTD.  
ATTENTION: Becky Risa  
4046 W. Hwy. 7  
MONTEVIDEO, MN 56265  
Thank you!

**PLEASE CALL WITH ANY QUESTIONS.  
1-888-294-6747**

# Agreement of Indemnity

RLI Insurance Company  
Peoria, Illinois 61615

THIS AGREEMENT of Indemnity, made and entered into this 28th day of September, 2006  
by City of Rochester, by and through its Public Utility  
(Insert full name of Contractor)  
4000 East River Road NE, Rochester, MN 55906-2813 (hereinafter called the Contractor) and  
the undersigned, (hereinafter called the Indemnitors, if any), and RLI Insurance Company, located in Peoria, Illinois, (hereinafter called  
Surety).

## WITNESSETH

WHEREAS, the Contractor, in the performance of contracts and the fulfillment of obligations, whether in its own name solely or jointly with others, may desire or be required to give or procure certain surety bonds, undertakings, or instruments of guarantee, and to renew, continue, or substitute the same from time to time, or to give or procure new bonds, undertakings, or instruments of guarantee with the same or different penalties and/or conditions in renewal, continuation, extension, or substitution thereof (any one or more of which are hereinafter called Bond or Bonds) or the Contractor or Indemnitors may request the Surety to refrain from cancelling said Bonds; and

WHEREAS, at the request of the Contractor and the Indemnitors and upon the express condition that this Agreement of Indemnity (the Agreement) should be given, the Surety has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said Bonds on behalf of the Contractor; and

WHEREAS, the Indemnitors have a substantial, material, and beneficial interest in the obtaining of the Bonds or in the Surety's refraining from cancelling said Bonds.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants set forth herein, the Contractor and Indemnitors for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, hereby covenant and agree with the Surety, its successors and assigns, as follows:

## PREMIUMS

FIRST: The Contractor and Indemnitors jointly and severally will pay to the Surety in such manner as may be agreed upon all premiums and charges of the Surety for the Bonds in accordance with its rate filings, its manual of rates, or as otherwise agreed upon until the Contractor or Indemnitors shall serve evidence satisfactory to the Surety of its discharge or release from the Bonds and all liability by reason thereof.

## INDEMNITY

SECOND: The Contractor and Indemnitors jointly and severally shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interest, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed or procured the execution of the Bonds, (2) By reason of the failure of the Contractor and Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement.

Payment by reason of the aforesaid causes shall be made to the Surety by the Contractor and Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor. Such payment shall be equal to the amount of the reserve set by the Surety or equal to such amount as the Surety, and its sole judgement, deems sufficient to protect it from loss or potential loss. In the event of any payment by the Surety, the Contractor and Indemnitors further agree that in any accounting between the Surety, the Contractor and Indemnitors, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be prima facie evidence of the fact and amount of the liability to Surety.

## ASSIGNMENT AND SECURITY INTEREST

THIRD: The Contractor and the Indemnitors (jointly and severally) hereby assign, transfer and set over, and grant a security interest to, the Surety, as collateral to secure the obligations in any and all of the paragraphs of this Agreement and any other indebtedness and liabilities of the Contractor and the Indemnitors to the Surety, whether currently in existence or hereafter arising and regardless of whether the same is currently contemplated, in the following (the Collateral):

- (a) all the rights of the Contractor and/or Indemnitors arising in any manner (whether directly or indirectly) from the Bond;
- (b) all the rights, title, and interest of the Contractor and/or Indemnitors in and to any and all machinery, equipment, goods, plants, tools, inventory and materials which are, or may hereafter be, about or upon the site or sites of any and all of the contractual work referred to in the Bonds or elsewhere, including materials purchased for or chargeable to any and all contracts referred to in the Bonds, materials which may be in process of construction, in transit, in storage elsewhere, or in transformation to any and all of said sites;
- (c) all the rights, title and interest of the Contractor and/or Indemnitors in and to any and all subcontracts let or to be let in connection with any and all contracts referred to in the Bonds, and in and to all surety bonds supporting such subcontracts;
- (d) all actions, causes of actions, claims and demands whatsoever which the Contractor and/or Indemnitors may have or acquire against any subcontractor, laborer or material man, or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools or other equipment in connection with or on account of any and all contracts referred to in the Bonds; and against any surety or sureties of any subcontractor, due on account of any and all contracts referred to in the Bonds and all other contracts whether bonded or not in which the Contractor or Indemnitors has an interest;
- (e) all accounts and accounts receivable, and all actions, causes of actions, claims and demands whatsoever which the Contractor and/or Indemnitors may have or acquire against, any obligee, general contractor, subcontractor, intermediary, owner or other responsible party with regard to the contractual work or obligation referred to in the Bonds or elsewhere.

Notwithstanding the foregoing, the assignment, transfer and security interest granted hereunder shall only be effective and valid upon the occurrence of any one or more of the following:

- (1) any abandonment, forfeiture or breach of any contracts or obligations referred to in the Bonds or of any breach of any said Bonds;
- (2) any breach of the provisions of any of the paragraphs of this Agreement;
- (3) a default in discharging such other indebtedness or liabilities when due;
- (4) any assignment by the Contractor and/or Indemnitor(s) for the benefit of creditors, or of the appointment, or of any application for the appointment, of a receiver or trustee for the Contractor and/or Indemnitor(s) whether insolvent or not;
- (5) any proceeding which deprives the Contractor or Indemnitor(s) of the use of any of the machinery, equipment, goods, plant, tools, inventory and materials comprising any part or all of the Collateral; and/or
- (6) the Contractor and/or Indemnitor(s) dying, absconding, disappearing, incompetency, being convicted of a felony, or imprisoned if Contractor and/or Indemnitor is an individual.

#### TRUST FUND

FOURTH: If any of the Bonds are executed in connection with a contract or obligation, or any part thereof, the Contractor and Indemnitors covenant and agree that all payments received for or on account of said contract or obligation shall be held as a trust fund in which the Surety has an interest, for the payment of debts incurred in the performance of the contract or obligation and for labor, materials, and services furnished in the prosecution of the work provided in said contract or obligation or any authorized extension or modification thereof; and, further, it is expressly understood and declared that all monies due and to become due under any contract/contracts or obligations covered by the Bonds are trust funds, whether in the possession of the Contractor or Indemnitors or otherwise, for the benefit of and for payment of all such obligations in connection with any such contract/contracts or obligations for which the Surety would be liable under any of said Bonds, which said trust also inures to the benefit of the Surety for any liability or loss it may have or sustain under any said Bonds, and this Agreement and declaration shall also constitute notice of such trust.

#### SECURITY AGREEMENT

FIFTH: That this Agreement shall constitute a Security Agreement and the grant of a security interest in the Collateral to the Surety and also a financing statement, both in accordance with the provisions of the Uniform Commercial Code (the "Code"), in every jurisdiction where such Code is in effect, and may be so used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under this Agreement or under law, or in equity. A photocopy or facsimile of this Security Agreement may be filed for recording in lieu of a financing statement(s) in each and every jurisdiction where the Code so permits. The Surety is hereby appointed as the attorney in fact to execute and file such additional instruments and financing statements on behalf of the Contractor and Indemnitors as may be reasonably necessary to perfect the foregoing security interest.

#### TAKEOVER

SIXTH: In the event of any breach or default asserted by the obligee on any said Bonds, or where the Contractor has abandoned work on or forfeited any contract or contracts or obligations covered by any said Bonds, or has failed to pay obligations incurred in connection therewith, or in the event of the death, disappearance, Contractor's conviction for a felony, imprisonment, incompetency, insolvency, or bankruptcy of the Contractor, or the appointment of a receiver or trustee for the Contractor, or the property of the Contractor, or in the event of an assignment for the benefit of creditors of the Contractor, or if any action is taken by or against the Contractor under or by virtue of the National Bankruptcy Act, or should reorganization or arrangement proceedings be filed by or against the Contractor under said Act, or if any action is taken by or against the Contractor under the insolvency laws of any state, possession, or territory of the United States, the Surety shall have the right, at its option and in its sole discretion, without any obligation, and is hereby authorized, with or without exercising any other right or option conferred upon it by law or in the terms of this Agreement, to take possession of any part or all of the work under any contract or contracts or obligations covered by any said Bonds, and at the expense of the Contractor and Indemnitors to complete or arrange for the completion of the same, and the Contractor and Indemnitors shall promptly upon demand pay to the Surety all losses, and expenses so incurred.

#### CHANGES

SEVENTH: The Surety is authorized and empowered, at its sole option and without obligation, without notice to or knowledge of the Indemnitors to assent to any change whatsoever in the Bonds, and/or any contracts or obligations referred to in the Bonds, and/or in the general conditions, plans and/or specifications accompanying any contracts, including, but not limited to, any change in the time for the completion of any contracts and to payments or advances thereunder before the same may be due, and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions or renewals of the Bonds and to execute any substitute or substitutes therefor, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties, it being expressly understood and agreed that the Indemnitors shall remain bound under the terms of this Agreement even though any such assent by the Surety does or might substantially increase the liability of said Indemnitors.

EIGHTH: In the event of any claim or demand being made by the Surety against the Indemnitors, or any one or more of the parties so designated, by reason of the execution of a Bond or Bonds, the Company is hereby expressly authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others, and we hereby expressly waive the right to be discharged and released by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

NINTH: The liability of the Indemnitors hereunder shall not be affected by the failure of the Principal to sign any such Bond, nor by any claim that other indemnity or security was to have been obtained, nor by the release of any Indemnity, or the return or exchange of any collateral that may have been obtained and if any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other party.

#### ADVANCES

TENTH: The Surety is authorized and empowered, at its sole discretion and without any obligation, to guarantee loans, to advance or lend to the Contractor any money, which the Surety may see fit, for the purpose of any contracts or obligations referred to in, or guaranteed by the Bonds; and all money expended in the completion of such contracts or obligations by the Surety, or lent or advanced from time to time to the Contractor, or guaranteed by the Surety for the purposes of any such contracts or obligations, and all costs, and expenses incurred by the Surety in relation thereto, unless repaid with legal interest by the Contractor to the Surety when due, shall be presumed to be a loss by the Surety for which the Contractor and Indemnitors shall be responsible, notwithstanding that said money or any part thereof should not be so used by the Contractor.

#### BOOKS AND RECORDS

ELEVENTH: At any time, and until such time as the liability of the Surety under any and all said Bonds is terminated, the Surety shall have the right to reasonable access to the books, records, and accounts of the Contractor and Indemnitors; and any bank depository, material man, supply house, or other person, firm, or corporation when requested by the Surety is hereby authorized to furnish the Surety any information requested including, but not limited to, the status of the work under contracts being performed by the Contractor, the condition of the performance of such contracts and payments of accounts.

#### DECLINE EXECUTION

TWELFTH: Unless otherwise specifically agreed in writing, the Surety may decline to execute any Bond and the Contractor and Indemnitors agree to make no claim to the contrary in consideration of the Surety's receiving this Agreement; and if the Surety shall execute a Bid or Proposal Bond, it shall have the right to decline to execute any and all of the Bonds that may be required in connection with any award that may be made under the proposal for which the Bid or Proposal Bond is given and such declination shall not diminish or alter the liability of the Contractor and/or the Indemnitors that may arise by reason of having executed the Bid or Proposal Bond.

#### NOTICE OF EXECUTION

THIRTEENTH: The Indemnitors hereby waive notice of the execution of said Bonds and of the acceptance of this Agreement, and the Contractor and Indemnitors hereby waive all notice of any default, or any other act or acts giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability on their part hereunder, to the end and effect that, the Contractor and Indemnitors shall be and continue liable hereunder, notwithstanding any notice of any kind to which they might have been or be entitled, and notwithstanding any defenses they might have been entitled to make.



HOMESTEAD

FOURTEENTH: The Contractor and Indemnitors hereby waive, so far as their respective obligations under this Agreement are concerned, all right to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any State, Territory, or Possession.

SETTLEMENTS

FIFTEENTH: The Surety shall have the right to adjust, settle or compromise any claim, demand, suit or judgment upon the Bonds, unless the Contractor and Indemnitors shall request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgment, and shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount to be determined at the Surety's sole discretion, to be used in paying any judgment or judgments rendered or that may be rendered, with interest, cost, expenses and attorneys' fees, including those of the Surety.

SIXTEENTH: The Contractor and Indemnitors agree that their liability shall be construed as the liability of a compensated Surety, as broadly as the liability of the Surety is construed toward its obligee.

SEVENTEENTH: The word Contractor and indemnitors, or personal pronouns used to refer to said word, shall apply regardless of number or gender, and to individuals, partnerships or corporations, as the circumstances require.

SURETIES

EIGHTEENTH: In the event the Surety procures the execution of the Bonds by other sureties, or executes the Bonds with co-sureties, or reinsures any portion of said Bonds with reinsuring sureties, then all the terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and reinsuring sureties, as their interests may appear.

SUITS

NINETEENTH: Separate suits may be brought hereunder as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether theretofore or thereafter arising.

OTHER INDEMNITY

TWENTIETH: That the Contractor and Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Contractor and Indemnitors, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the Contractor and Indemnitors or others, it being expressly understood and agreed by the Contractor and Indemnitors that any and all other rights which the Surety may have or acquire against the Contractor and Indemnitors and/or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

INVALIDITY

TWENTY-FIRST: In case any of the parties mentioned in this Agreement fail to execute the same, or in case the execution hereof by any of the parties be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any of the parties executing the same, but each and every party so executing shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not existed. It is understood and agreed by the Contractor and Indemnitors that the rights, powers, and remedies given the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all other rights, powers, and remedies which the Surety may have or acquire against the Indemnitors or others whether by the terms of any other agreement or by operation of law or otherwise.

If any provision or provisions of this Agreement be void or unenforceable under any law governing its construction or enforcement, this Agreement shall not be voided or vitiated thereby, but shall be construed and enforced with the same effect as though such provision or provisions were omitted.

ATTORNEY IN FACT

TWENTY-SECOND: The Contractor and Indemnitors hereby irrevocably nominate, constitute, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Contractor and Indemnitors assigned, transferred and set over to the Surety in this Agreement, and in the name of the Contractor and Indemnitors to make, execute, and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect not only to the intent and meaning of the within assignments, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Contractor and Indemnitors hereby ratify and confirm all acts and actions taken and done by the Surety as such attorney in fact.

TERMINATION

TWENTY-THIRD: This Agreement may be terminated by the Contractor and Indemnitors upon twenty days' written notice sent by registered mail to the Surety at 9025 N. Lindbergh Dr. Peoria, Illinois 61615; but any such notice of termination shall not operate to modify, bar, or discharge the Contractor and Indemnitors as to the Bonds that may have been theretofore executed.

TWENTY-FOURTH: This Agreement may not be changed or modified orally. No change or modification shall be effective unless made by written addendum executed to form a part hereof.

TWENTY-FIFTH: THE CONTRACTOR AND INDEMNITORS HEREBY ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO COVER WHATEVER BONDS (WHETHER OR NOT COVERED BY ANY OTHER AGREEMENT OF INDEMNITY SIGNED AT ANY TIME BY ANY ONE OR MORE OF THE INDEMNITORS - ALL OTHER AGREEMENTS OF INDEMNITY OF ANY KIND BEING SUPPLEMENTAL TO THIS), MAY BE EXECUTED BY THE SURETY ON BEHALF OF THE CONTRACTOR AND INDEMNITORS, OR ANY ONE OF THEM (WHETHER CONTRACTING ALONE OR AS A JOINT OR CO-ADVENTURER), FROM TIME TO TIME, AND OVER AN INDEFINITE PERIOD OF YEARS, UNTIL THIS AGREEMENT SHALL BE CANCELED IN ACCORDANCE WITH THE TERMS HEREOF.

TWENTY-SIXTH: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TWENTY-SEVENTH: Hereof is set forth on the Signature Page Addendum attached hereto, which together with the Acknowledgement Page constitutes a part of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

ATTEST

RLI Insurance Company  
(Surety)

By \_\_\_\_\_

By \_\_\_\_\_ (Seal if required)

Print Name and Title \_\_\_\_\_

Print Name and Title \_\_\_\_\_

**Contractor**

City of Rochester, by and through its Public Utility 41-1807014  
Name & Social Security/FIN # of Contractor (Please print or type)

ATTEST

4000 East River Road NE, Rochester, MN 55905-2813  
Address, City, State & Zip of Contractor (Please print or type)

By \_\_\_\_\_

By \_\_\_\_\_ (Seal if required)

Print Name and Title Judy K. Scherr City Clerk

Print Name and Title Ardell E. Brade Mayor

**WITNESS SIGNATURE:**

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

**Corporate Indemnitors**

ATTEST

\_\_\_\_\_  
Name of Corporate Indemnitor and FIN # (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Corporate Indemnitor (Please print or type)

By \_\_\_\_\_

By \_\_\_\_\_ (Seal if required)

Print Name and Title \_\_\_\_\_

Print Name and Title \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Name of Corporate Indemnitor and FIN # (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Corporate Indemnitor (Please print or type)

By \_\_\_\_\_

By \_\_\_\_\_ (Seal if required)

Print Name and Title \_\_\_\_\_

Print Name and Title \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Name of Corporate Indemnitor and FIN # (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Corporate Indemnitor (Please print or type)

By \_\_\_\_\_

By \_\_\_\_\_ (Seal if required)

Print Name and Title \_\_\_\_\_

Print Name and Title \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Name of Corporate Indemnitor and FIN # (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Corporate Indemnitor (Please print or type)

By \_\_\_\_\_

By \_\_\_\_\_ (Seal if required)

Print Name and Title \_\_\_\_\_

Print Name and Title \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Name of Corporate Indemnitor and FIN # (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Corporate Indemnitor (Please print or type)

By \_\_\_\_\_

By \_\_\_\_\_ (Seal if required)

Print Name and Title \_\_\_\_\_

Print Name and Title \_\_\_\_\_

Individual Indemnitors

WITNESS SIGNATURE:

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_  
Name & Social Security # of Individual Indemnitor (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Individual Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

WITNESS SIGNATURE:

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_  
Name & Social Security # of Individual Indemnitor (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Individual Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

WITNESS SIGNATURE:

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_  
Name & Social Security # of Individual Indemnitor (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Individual Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

WITNESS SIGNATURE:

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_  
Name & Social Security # of Individual Indemnitor (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Individual Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

WITNESS SIGNATURE:

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_  
Name & Social Security # of Individual Indemnitor (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Individual Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

WITNESS SIGNATURE:

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

\_\_\_\_\_  
Name & Social Security # of Individual Indemnitor (Please print or type)

\_\_\_\_\_  
Address, City, State & Zip of Individual Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

Partnership Indemnitors

WITNESS SIGNATURE:

Name of Partnership Indemnitor (Please print or type)

Address, City, State & Zip of Partnership Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Partner Name \_\_\_\_\_

Print Name \_\_\_\_\_

Name of Partnership Indemnitor (Please print or type)

Address, City, State & Zip of Partnership Indemnitor (Please print or type)

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Partner Name \_\_\_\_\_

Print Name \_\_\_\_\_

IMPORTANT: ALL SIGNATURES MUST BE ACKNOWLEDGED ON THE ATTACHED FORM(S).

State of Minnesota  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me personally came  
\_\_\_\_\_ Arnell F. Brade

to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_  
that he is the Mayor of the City of Rochester by and through its Public Utility \_\_\_\_\_ the corporation  
which executed the attached Agreement of Indemnity; that he knows the seal of the said corporation; that the seal affixed to the said  
Agreement of Indemnity is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that  
he signed his name to the said Agreement of Indemnity by like order.

Notary Public

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_  
that he is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation  
which executed the attached Agreement of Indemnity; that he knows the seal of the said corporation; that the seal affixed to the said  
Agreement of Indemnity is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that  
he signed his name to the said Agreement of Indemnity by like order.

Notary Public

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_  
that he is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation  
which executed the attached Agreement of Indemnity; that he knows the seal of the said corporation; that the seal affixed to the said  
Agreement of Indemnity is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that  
he signed his name to the said Agreement of Indemnity by like order.

Notary Public

CORPORATION ACKNOWLEDGEMENT

CORPORATION ACKNOWLEDGEMENT

CORPORATION ACKNOWLEDGEMENT

CORPORATION ACKNOWLEDGMENT

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_

to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_

that he is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation  
which executed the attached Agreement of Indemnity; that he knows the seal of the said corporation; that the seal affixed to the said  
Agreement of Indemnity is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that  
he signed his name to the said Agreement of Indemnity by like order.

\_\_\_\_\_  
Notary Public

CORPORATION ACKNOWLEDGMENT

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_

to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_

that he is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation  
which executed the attached Agreement of Indemnity; that he knows the seal of the said corporation; that the seal affixed to the said  
Agreement of Indemnity is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that  
he signed his name to the said Agreement of Indemnity by like order.

\_\_\_\_\_  
Notary Public

PARTNERSHIP ACKNOWLEDGMENT

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_

to me known, to be a partner of the partnership of \_\_\_\_\_  
who acknowledged to me that he/she is duly authorized to execute this Agreement on behalf of and as the act of the partnership, and  
that he/she has executed this Agreement on behalf of and as the act of the partnership.

\_\_\_\_\_  
Notary Public

PARTNERSHIP ACKNOWLEDGMENT

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_

to me known, to be a partner of the partnership of \_\_\_\_\_  
who acknowledged to me that he/she is duly authorized to execute this Agreement on behalf of and as the act of the partnership, and  
that he/she has executed this Agreement on behalf of and as the act of the partnership.

\_\_\_\_\_  
Notary Public

INDIVIDUAL ACKNOWLEDGMENT

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_

to me known, and known to me to be the individual who executed the attached Agreement of Indemnity, and acknowledged that he  
executed the same.

\_\_\_\_\_  
Notary Public

INDIVIDUAL ACKNOWLEDGMENT

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_

to me known, and known to me to be the individual who executed the attached Agreement of Indemnity, and acknowledged that he  
executed the same.

\_\_\_\_\_  
Notary Public

INDIVIDUAL ACKNOWLEDGMENT INDIVIDUAL ACKNOWLEDGMENT INDIVIDUAL ACKNOWLEDGMENT INDIVIDUAL ACKNOWLEDGMENT INDIVIDUAL ACKNOWLEDGMENT

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_ to me known, and known to me to be the the individual who executed the attached Agreement of Indemnity, and acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_ to me known, and known to me to be the the individual who executed the attached Agreement of Indemnity, and acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_ to me known, and known to me to be the the individual who executed the attached Agreement of Indemnity, and acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_ to me known, and known to me to be the the individual who executed the attached Agreement of Indemnity, and acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

State of \_\_\_\_\_  
County of \_\_\_\_\_ ss:  
On the \_\_\_\_\_ day of \_\_\_\_\_, before me personally came

\_\_\_\_\_ to me known, and known to me to be the the individual who executed the attached Agreement of Indemnity, and acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public

## CERTIFIED CORPORATE RESOLUTION

**THE UNDERSIGNED**, Judy K. Scherr, being the duly appointed City Clerk of CITY OF ROCHESTER BY AND THROUGH ITS PUBLIC UTILITY ("Corporation"), a municipal corporation under the authority of the Rochester City Council and the laws of State of Minnesota, does hereby certify that, at a meeting of the Board of Directors of the Corporation, duly called and held on the \_\_\_\_ day of \_\_\_\_\_, 2006, in the office of the Corporation and at which a quorum of Directors was present, the Board of Directors of the Corporation passed the following Resolutions *verbatim*, which appear by the records of the Corporation and which were unanimously adopted in accordance with the Charter, Regulations and By-Laws of the Corporation:

**"WHEREAS**, the Corporation is materially interested in a certain Subcontract with Johnson Controls, Inc., bearing Contract No. S193593 and having an effective date of September 11, 2006, and employees or agents of the Corporation heretofore have applied to RLI Insurance Company ("Surety") for purposes of obtaining surety bonds in connection with said subcontract;

**WHEREAS**, the Mayor and City Clerk of the Corporation have executed or propose to execute a certain General Indemnity Agreement (the "Indemnity Agreement"), protecting and indemnifying Surety in connection with any bonds issued by the Surety on behalf of the Corporation as Principal (as more fully described in the Indemnity Agreement), the form, terms and conditions of which have been fully considered and approved by the Directors (a form of the Indemnity Agreement being attached hereto and incorporated hereby);

**NOW, THEREFORE, BE IT RESOLVED:** That the form and all the terms and conditions of that certain General Indemnity Agreement by and between the Corporation and the Surety, and all exhibits and documents ancillary thereto, are hereby, in all respects, approved.

**BE IT FURTHER RESOLVED:** That the Corporation has such an interest in such suretyship as to empower it to enter into the Indemnity Agreement, and the Corporation hereby warrants same to Surety.

**BE IT FURTHER RESOLVED:** That the signatures of the Mayor and City Clerk of the Corporation on the Indemnity Agreement, and each of them, are approved, ratified and confirmed as duly authorized actions of the Corporation, and they are authorized to deliver such Indemnity Agreement to Surety in final form, and such officers are authorized to approve such modifications and amendments to the Indemnity Agreement as may, in their judgment, be necessary or desirable.

**BE IT FURTHER RESOLVED:** That the authority hereby conferred on the Mayor and City Clerk of the Corporation shall be deemed retroactive, and any and all acts and deeds authorized or contemplated by the foregoing resolutions as performed by said persons, and each of them, prior to the date hereof, are hereby approved, ratified and confirmed.

**BE IT FURTHER RESOLVED:** That the authority granted the Mayor and City Clerk of the Corporation under the foregoing resolutions shall be deemed to include, in the case of each resolution, authority to perform such further acts and deeds as may be necessary, convenient or appropriate, in the judgment of such persons, to carry out the transactions contemplated thereby, to execute and deliver any and all documents contemplated therein, and all such acts and deeds previously performed by said persons in contemplation of these resolutions be and they hereby are approved, ratified and adopted."

**IN WITNESS WHEREOF**, I have hereunto set my hand and the corporate seal of the Corporation, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM AND IN CONFIRMATION THAT SAID ACTIONS ARE WITHIN THE AUTHORITY OF THE CORPORATION:**

Date : \_\_\_\_\_

\_\_\_\_\_  
Attorneys for the Corporation



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve Sub Contract Agreement (S193593) between Johnson Controls, Inc. and the City of Rochester acting through its Public Utility Board for lighting retrofit services to include fixtures, supplies, materials, permits, disposal fees, labor and hazardous waste disposal not to exceed \$928,478.00, and request the Mayor and the City Clerk to execute the Agreement.

BE IT FURTHER RESOLVED that the Board approve the purchase of the Payment and Performance Bond for the approximate price of \$13,560 and the general indemnity agreement. JCI will reimburse RPU for the cost of the bonds.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26<sup>th</sup> day of September, 2006.

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President

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Secretary