

## FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

7/31/07

**SUBJECT:** Project Labor Agreement Resolution  
Emissions Reduction Project

**PREPARED BY:** Wally Schlink, Director of Power Resources

### ITEM DESCRIPTION:

The Emissions Reduction Project is reaching the phase where the purchase of major equipment is concluding, design activities are well underway and the pending major activity will be the selection of contractors through the sealed bid process that will erect the components for the project. Staff anticipates 3 major contracts will be bid and awarded which will be for the installation of foundations and other substructure work, the mechanical erection of the equipment and the electrical erection of the equipment.

In previous major projects, such as the Cascade Creek Combustion Turbine project, the City has entered into a Project Labor Agreement with the representative of craft labor to provide a quality installation and to assure that there is available a ready and adequate supply of highly trained and skilled craft workers and to facilitate the timely and efficient completion of such projects. This process has also been followed by other City departments on major projects particularly those which extend for a substantial period of time.

The initial step in the Project Labor Agreement is to issue a resolution by the governing body supporting the step of entering into a Project Labor Agreement and defining the value that said agreement provides to the projects and the citizens of the City.

Attached is a copy of the Settlement Agreement with the MCEA that defines our obligations to complete the project promptly, a draft copy of the Project Labor Agreement that will be included in the bid packages, a resolution which the Common Council will be requested to approve and a Utility Board resolution.

Staff will be at the Board meeting to answer any questions on this request.

### UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Board adopt the resolution and request the Common Council approve same and execute the resolution for the SLP Unit 4 Emission Reduction Project.

  
General Manager

7/26/07  
Date

**ROCHESTER PUBLIC UTILITIES**

## **SETTLEMENT AGREEMENT**

WHEREAS, on January 12, 2005, Minnesota Center for Environmental Advocacy ("MCEA") filed a petition for judicial review of the August 3, 2004 order of the Environmental Appeals Board of the United States Environmental Protection Agency ("EPA"), which denied MCEA's petition for review of the June 27, 2003 order of the Minnesota Pollution Control Agency ("MPCA") approving issuance of Air Emissions Permit Number 10900011-003 to the Rochester Public Utilities ("RPU");

WHEREAS, MCEA raises issues regarding whether MPCA and EPA erred by approving issuance of Air Emissions Permit Number 10900011-003 – a Prevention of Significant Deterioration pre-construction permit – without requiring application of the best available control technology ("BACT") to control emissions of sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and particulate matter at Unit 4 of RPU's Silver Lake Plant;

WHEREAS, MPCA, EPA, and RPU respond that Air Emissions Permit Number 10900011-003 was issued in compliance with all applicable statutes and regulations;

WHEREAS, MCEA's petition for judicial review was filed in the United States Court of Appeals for the Eighth Circuit and assigned docket number 05-1113 ("this Action");

WHEREAS, RPU has been committed to a proactive approach to ensure that the Silver Lake Plant not only provides low cost power to the City of Rochester but also protects public health and the environment;

WHEREAS, consistent with RPU's proactive approach on public health and the environment, RPU commissioned Utility Engineering Corporation to conduct a study of RPU's options for installing additional air emissions control technologies at the Silver Lake Plant Units 3 & 4;

WHEREAS, the results of the Utility Engineering Corporation study were presented at a public meeting on March 29, 2005, and RPU staff presented a recommendation to the RPU Board of Directors at the July 25, 2005 Board meeting;

WHEREAS, based on the RPU staff recommendations, the RPU Board of Directors resolved, at its July 25, 2005 meeting, to direct staff to proceed with the design, engineering and permitting of emissions control projects that will achieve reductions of emissions of SO<sub>2</sub>, NO<sub>x</sub>, and mercury from Silver Lake Plant Unit 4;

WHEREAS, installation and operation of such emissions control projects will result in substantial reductions in air emissions rates at Silver Lake Plant Unit 4;

WHEREAS, EPA in February 2005 issued a report, entitled "Control of Mercury Emissions from Coal Fired Electric Utility Boilers: An Update" and this report confirmed that flue gas desulfurization (FGD) technology identified for installation at Silver Lake Plant Unit 4 (spray drayer absorber and fabric filter baghouse) is capable of achieving a very high (over 95%) level of co-benefit mercury reduction for bituminous coal-fired boilers;

WHEREAS, RPU has a strong economic incentive to optimize NO<sub>x</sub> reductions achieved by the NO<sub>x</sub> emission reduction system required to be installed on Silver Lake Plant Unit 4 under this Settlement Agreement (the "Agreement") based on the NO<sub>x</sub> allowance deficit expected for that unit and the projected market price of NO<sub>x</sub> allowances;

WHEREAS, RPU also has a strong economic incentive to optimize the SO<sub>2</sub> and mercury reductions achieved by the installation of the pollution control equipment required to be installed on Silver Lake Plant Unit 4 under this Agreement to minimize the use of SO<sub>2</sub> and mercury allowances;

WHEREAS, at RPU's request, Utility Engineering contacted Cormetech and Haldor Topsoe regarding potential catalysts for a Selective Catalytic Reduction ("SCR") systems for the reduction of NO<sub>x</sub> emissions from Unit 4 of the Silver Lake Plant;

WHEREAS, Utility Engineering concluded that operation of a conventional SCR is not feasible at Silver Lake Plant Unit 4 due to the flue gas temperature and expected conversion of sulfur trioxide to ammonium sulfate and ammonium bisulfates;

WHEREAS, MCEA, MPCA, and RPU ("the Settling Parties") wish to resolve this matter;

WHEREAS, it is in the interest of the public, the Settling Parties, and judicial economy, to resolve this Action without further litigation;

WHEREAS, the Settling Parties consider this Settlement Agreement to be a just, fair, adequate and equitable resolution of this Action;

NOW, THEREFORE, the Settling Parties by and through their respective counsel, agree as follows:

**I. INSTALLATION AND OPERATION OF CONTROL TECHNOLOGIES**

1. RPU shall promptly take steps to obtain all approvals and authorizations needed to install and operate on Silver Lake Plant Unit 4:
  - a. A spray dryer absorber and fabric filter that is designed to achieve at least an 85% reduction in boiler exit emissions of SO<sub>2</sub> (the "FGD system"); and
  - b. A NO<sub>x</sub> emission reduction system that is designed to achieve at least a 0.15 lbs/MMBtu emission rate for NO<sub>x</sub> (the "NO<sub>x</sub> emission reductions system"). For purposes of this Agreement, a NO<sub>x</sub> emission reduction system may consist of a selective catalytic reduction system or, in the alternative, any combination of combustion and post-combustion technology or techniques for lowering NO<sub>x</sub>

emissions from Silver Lake Plant Unit 4, so long as the NO<sub>x</sub> controls are designed to achieve the 0.15 lbs/MMBtu emission rate for NO<sub>x</sub>.

2. By no later than July 1, 2010, subject to RPU receiving all needed approvals and authorizations, RPU shall install and commence operation of the FGD system on Silver Lake Plant Unit 4, consistent with technological limitations, manufacturer's specifications, and good engineering and maintenance practices.

3. By no later than July 1, 2009, subject to RPU receiving all needed approvals and authorizations, RPU shall install and commence operation of the NO<sub>x</sub> emission reductions system on Silver Lake Plant Unit 4, consistent with technological limitations, manufacturer's specifications, and good engineering and maintenance practices.

4. RPU shall operate the FGD system and NO<sub>x</sub> emission reductions system at Silver Lake Plant Unit 4 to achieve substantial co-benefit reductions of mercury, which could exceed 80 to 90%.

5. RPU shall provide MCEA with an annual report of the SO<sub>2</sub>, NO<sub>x</sub>, and mercury emissions from Silver Lake Plant Unit 4 for calendar years 2010 through 2014. In the case of SO<sub>2</sub> and NO<sub>x</sub>, each annual report shall provide a quantification of the total emissions from Silver Lake Plant Unit 4 that are required to be measured and reported for that calendar year under the Clean Air Interstate Rule (CAIR), as published in 70 *Fed. Reg.* 25,162 (promulgating Final Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call) (May 12, 2005). In the case of mercury, each annual report shall provide a quantification of the total emissions from Silver Lake Plant Unit 4 that are required to be measured and reported for that calendar year under the Clean Air Mercury Rule (CAMR), as published in 70 *Fed. Reg.* 28,606 (promulgating final rule establishing "Standards

of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units”) (May 18, 2005). RPU shall submit each annual report to MCEA within 30 business days of the applicable submittal deadline for reporting SO<sub>2</sub>, NO<sub>x</sub>, and mercury emissions from Silver Lake Plant Unit 4, as set forth in the final rules for CAIR and CAMR for that particular calendar year.

6. RPU shall take all necessary steps to ensure that it receives all needed approvals and authorizations to comply with the dates established in Paragraphs 2 to 4 of Article I.

7. RPU shall take all necessary steps to ensure that the FGD and NO<sub>x</sub> emissions reduction systems are incorporated into the Title V Operating Permit for the Silver Lake Plant through a written notice or an application for a minor permit amendment in accordance with Minnesota Rule 7007.1150. RPU shall submit such notice or application for permit amendment within 30 business days from the execution of the contract for fabricating the FGD or the NO<sub>x</sub> emissions reduction system to be installed and operated pursuant to Paragraph 1 of Article I.

8. MCEA shall not oppose the efforts of RPU to obtain all necessary approvals and authorizations for the installation and operation of the FGD and NO<sub>x</sub> emissions reduction systems required under Paragraph 1, including those changes to the Title V Operating Permit for the Silver Lake Plant that are specified under Paragraph 7. Nothing in this Paragraph shall be construed to limit MCEA’s right to oppose any approvals or authorizations other than those necessary to comply with Paragraphs 1 and 7 of this Agreement.

## **II. ENFORCEMENT OF THIS SETTLEMENT AGREEMENT**

9. The Settling Parties agree that RPU’s commitments set forth in Article I of this agreement are enforceable obligations for which MCEA may seek specific performance pursuant to the terms of this Agreement.

10. If RPU fails to perform the technology control commitments set forth in Paragraph 1 of Article I pursuant to the dates established in Paragraphs 2 and 3 of Article I and MCEA prevails in a judicial action for specific performance, RPU shall be required to apply any savings realized through such delayed compliance to a supplemental environmental project selected by MCEA. RPU shall not be subject to a judicial action for specific performance if the delayed compliance resulted from a failure to receive a necessary approval or authorization in cases where RPU has taken all necessary steps to obtain such an approval or authorization, or if the delayed compliance resulted from other circumstances that the court deems to be beyond the control of RPU.

### **III. USE OF THIS SETTLEMENT AGREEMENT**

11. This Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any Settling Party.

12. This Agreement constitutes the entire agreement of the Settling Parties concerning the terms and obligations discussed herein and subject to this Action. No other agreement shall govern the rights and/or obligations of the Settling Parties with respect to the matters resolved by this Agreement, except in accordance with the terms stated herein.

### **IV. TERMINATION**

13. The Settling Parties agree jointly to move the Court to dismiss MCEA's Petition for Review with prejudice, but without costs within fourteen (14) days after the effective date of this Agreement.

### **V. RELEASE**

14. This Agreement constitutes a complete and final settlement of the claims asserted by MCEA in this Action.

## **VI. MUTUAL DRAFTING**

15. The Settling Parties agree that this Agreement was jointly drafted by them. Accordingly, the Settling Parties agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

## **VII. EFFECTIVE DATE**

16. The Settling Parties understand that RPU, as a division of the City of Rochester, conducts its operations subject to the oversight and authority of the City of Rochester Common Council pursuant to the City of Rochester Home Rule Charter.

17. This Settlement Agreement shall become effective upon the date it has been signed by the Settling Parties and upon approval of the City of Rochester Public Utility Board and Common Council.

## **VIII. NOTICE AND CORRESPONDENCE**

18. Any notice, including correspondence, required to be made with respect to this Agreement, shall be in writing, effective upon receipt, and sent to the following persons, or to such other person or persons as the Settling Parties may subsequently identify to the other parties:

**For Minnesota Center for Environmental Advocacy:**

Beth Goodpaster  
Minnesota Center for Environmental Advocacy  
26 East Exchange Street, Suite 206  
Saint Paul, MN 55101

**For Minnesota Pollution Control Agency:**

Kathleen Winters  
Assistant Attorney General  
State of Minnesota  
445 Minnesota Street, Suite 900  
Saint Paul, MN 55101-2127



For Rochester Public Utilities:

Sam Kalen

Stephen Fotis

VAN NESS FELDMAN, P.C.

1050 Thomas Jefferson Street, N.W., Seventh Floor

Washington, D.C. 20007

#### **IX. COUNTERPARTS**

19. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Settling Party shall have the same force and effect as if that Settling Party had signed all counterparts.

#### **X. REPRESENTATIVE AUTHORITY**

20. Each undersigned representative of the Parties to this Settlement Agreement certifies that he or she is fully authorized by the Settling Party he or she represents to enter into and execute the terms and conditions of the Settlement Agreement, and to legally bind such Settling Party to this Settlement Agreement. By the signatures below, the parties consent to entry of this Settlement Agreement.

Dated: 5/24/06

By: [Signature]

Charles N. Nauen #121216

William A Gengler #210626

David J. Zoll #0330681

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

100 Washington Avenue South

Suite 2200

Minneapolis, MN 55401

Telephone: (612) 339-6900

Facsimile: (612) 339-0981

**ATTORNEY FOR PETITIONER**

**MINNESOTA CENTER FOR**

**ENVIRONMENTAL ADVOCACY**

Dated: 5/24/06

By: [Signature]

Kathleen L. Winters

ASSISTANT ATTORNEY GENERAL

445 Minnesota Street, Suite 900

Saint Paul, MN 55101-2127

Telephone: (651) 297-8756

**ATTORNEY FOR RESPONDENT**

**MINNESOTA POLLUTION CONTROL**

**AGENCY**

Dated: 5/23/06

By: [Signature]

Sam Kalen

Stephen Fotis

Kyle Danish

VAN NESS FELDMAN, P.C.

1050 Thomas Jefferson Street, N.W.

Seventh Floor

Washington, D.C. 20007

Telephone: (202) 298-1826

Facsimile: (202) 338-2416

**ATTORNEY FOR INTERVENOR**

**ROCHESTER PUBLIC UTILITIES**

**Rochester Public Utilities**

**Silver Lake Plant Unit 4 Emissions Reduction  
Project Labor Agreement with**

**The Southeastern Minnesota Building  
and  
Construction Trades Council  
Affiliated with  
Building Trades Department,  
AFL-CIO**

**August 1, 2007**

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# **PROJECT LABOR AGREEMENT**

## **ARTICLE I**

### **PURPOSE**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between The City of Rochester Minnesota, a Minnesota municipal corporation, acting through its Public Utility Board (RPU), \_\_\_\_\_ its successors or assigns ("Project Contractor") and the Southeastern Minnesota Building and Construction Trades Council (hereinafter Council), acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement, hereinafter collectively called the "Union or Unions," with respect to the construction of the Silver Lake Plant Unit 4 Emissions Reduction Project, hereinafter "Project."

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in onsite construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to RPU alone is intended, the term "Project Contractor" is used.

The Parties to this Project Labor Agreement acknowledge that the construction of the Project is important to the City of Rochester for the reduction and control of emissions it will provide for the Silver Lake Plant Unit 4. The Parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor management cooperation and stability.

The Contractor(s) and the Union agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craftworkers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craftworkers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all Contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slowdown, interruption or other disruption of or interference with the work covered by this Agreement.

## ARTICLE II

### SCOPE OF AGREEMENT

Section 1. This Project Agreement shall apply and is limited to the recognized and accepted historical definition of construction work under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: The installation of Emission Reduction Components including NOx Control, SO2 and PM Emissions and Mercury Control systems; Mechanical Equipment upgrades including Ash Handling, Compressed Air and Service Water Systems; Electrical Upgrades including 13.8 kV, Motors, Metering, Transformers, Medium- and Low-Voltage Switchgear, 480 V Power Panel, 480 V Motor Control Centers, Grounding and Cathodic Protection, Lighting, UPS and 125 VDC, Plant Communications, Black-plant Condition, Temporary Power and Lighting and Electrical Equipment Demolition; Instrumentation and Control Systems including the extension of the existing plant Emerson Delta V and Civil/Structural Components including Site Work, Building and Foundation Demolition, Asbestos Abatement, Foundations and Piling, Buildings and Structures and associated platforms and access.

It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement by executing the Letter of Assent (Attachment A) prior to commencing work. The Project Contractor shall ensure compliance with this Agreement by all Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national or local collective bargaining agreements, except the work of the International Union of Elevator Constructors on this Project shall be performed under the terms of its National Agreements, with the exception of Article V (Work Stoppages and Lockouts), IX (Disputes and Grievances) and X (Jurisdictional Disputes) of this Project Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor Contractors will be obligated to sign any other local or national agreement.

Section 2. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work or function which may occur at the Project site or be associated with the development of the Project.

Section 3. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 4. The Owner and the Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the

existence or non-existence of any agreements between such bidder and any party to this Agreement; provided however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 5. The provisions of this Project Agreement shall not apply to RPU (Owner), and nothing contained herein shall be construed to prohibit or restrict RPU (Owner) or Its employees from performing work not covered by this Project Agreement on the Project site. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 6. It is understood that the Owner, at its sole option, may terminate, delay or suspend any or all portions of the Project at any time.

Section 7. It is understood that the liability of an employer and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any Joint employer status between or among the Owner, Contractor(s), or any employer.

Section 8. It is understood and agreed that all Project work must be performed by employees of employers as defined by the terms of this Agreement.

### **ARTICLE III**

#### **UNION RECOGNITION**

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. The hiring of employees shall be governed by the procedures set forth in the Local Union Working Agreements. It is further agreed that there shall be no discrimination against any employee or applicant for employment based on his or her membership or non-membership in a Union or based on race, creed, color, sex, age or national origin of such employee or applicant.

Section 3. All employees covered by this Agreement shall be subject to the Union security provisions contained in the applicable Local Union Working Agreements.

## **ARTICLE IV**

### **UNION REPRESENTATION**

Section 1. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives fully comply with posted visitor and security and safety rules of the Project.

Section 2. Stewards. Each signatory Local Union shall have the right to designate a working journeyman as a Steward and shall notify the Construction Manager in writing of the identity of the designated Steward prior to the assumption of his or her duties as Steward. Such designated Steward shall not exercise any supervisory functions. There will be no non-working Stewards. Stewards will receive the regular rate of pay of their respective crafts.

## **ARTICLE V**

### **WAGES AND BENEFITS**

Section 1. The wage rates to be paid and the fringe benefits to be provided by the Employers on the Work shall be those specified by the appropriate current Local Union Working Agreements between the Union and the currently recognized Contractors' bargaining associations. Subject to the provisions contained in this Article, any future changes in hourly wage rates and fringe benefits will be placed into effect for the affected craftsmen on the Work when the new Local Union Working Agreement specifying such changes is executed by the Union and the Contractors' Bargaining Association, provided that such wages and benefits do not discriminate against the Work, and provided, further, that under no circumstance shall wages and benefits be applied retroactively to any employees on the Work unless included in the Collective Bargaining Settlement.

Section 2. Local Union Working Agreements, including local union referral procedures shall be applicable on the Work except to the extent provisions thereof are inconsistent with the provisions of this Agreement. In such an event, this Agreement takes precedence over the current Local Union Working Agreements.

Section 3. National Agreements by and between any of the parties signatory hereto, including work rules, which apply to general construction work, will also be applicable at the jobsite except to the extent that provisions thereof are inconsistent with the provisions of this Agreement.

Section 4. Each Union shall cooperate with the Owner to obtain acceptance of this Agreement by the trustee for its fringe benefit funds and have the trustee acknowledge that RPU is a "Construction" Employer pursuant to rules and regulations adopted by the fringe benefit funds.



## ARTICLE VI

### HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

Section 1. The regular 40 hour work week will start on Monday and conclude on Friday. Eight (8) consecutive hours, exclusive of a one-half (1/2) hour lunch period, between 7:00 a.m. and 5:00 p.m. shall constitute a normal work day. The starting time of the Work may be changed within these hours by the Employer upon notification to the Union to take advantage of daylight hours, weather conditions, shift or traffic conditions. It is understood that all work performed in excess of 8 hours per day shall be considered overtime. It is understood that all work performed outside the established 8 hour workday shall be considered overtime. If Employee fails to report to work at scheduled shift start, then Employee is entitled to work only the remaining time of an 8 hour shift.

Section 2. At the scheduled starting time, all employees shall be at the place where they pick up their tools or receive instructions from their foreman. They shall remain at their place of work under the supervision of the Employer until the scheduled quitting time. There shall be no practices that result in starting work late in the morning or after lunch or in stopping work early at lunch or prior to the scheduled quitting time. One (1) coffee break will be limited to 10 minutes and shall be taken in close proximity to the employee's work station. The parties are in accord that the intent of the Agreement is a "fair day's work for a fair day's pay" and the Work should be managed in such a manner to enable the Employer to maintain and increase efficiency consistent with fair labor standards.

Section 3. When employees leave Work on their own accord at other than normal quitting time, it is their responsibility to notify the Employer. Employees will be paid only for actual hours worked.

Section 4. The Employer shall determine the recording devices, checking systems, brassing or other methods of keeping time records on the Work.

Section 5. An effort will be made to keep overtime work to a minimum; but when such work is judged necessary, it will be worked at the direction and discretion of the Employer.

Section 6. All overtime to be paid at time and one-half except on Sundays and Holidays which will be paid as specified in Local Union Bargaining Agreements.

Section 7. All employees shall be paid for actual time worked. The Employer shall have sole responsibility to determine availability of work due to weather conditions.

Section 8. Shift work may be performed at the option of the Employer. In the event the second or third shift of any regular work day shall extend into a holiday, employees shall be paid at regular shift rates. The first or day shift shall work a regular 8 hour shift for 8 hours pay. If two (2) shifts are worked, the second shift shall be 7 1/2 hours for 8 hours pay. If three (3) shifts are worked, the third shift shall be 7 hours for which the Employee shall receive 8 hours pay.

Section 9. Uniform holidays for this Agreement are as follows: New Year's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving, the Friday after Thanksgiving, Christmas Eve Day and Christmas Day. If any of these holidays fall on a Saturday or Sunday, the preceding day, Friday, or the following day, Monday, shall be considered to be a legal holiday. A holiday shall be a 24-hour period commencing with the established starting time of the day shift on the date of the holiday.

## **ARTICLE VII**

### **MANAGEMENT'S RIGHTS**

The Project Contractor, and Contractors of whatever tier, retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools or other labor saving devices. There shall be no limitations on the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

## **ARTICLE VIII**

### **WORK STOPPAGES AND LOCKOUTS**

Section 1. During the term of this Agreement, there shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Council, a Local Union or any employee and there shall be no lockout by the Contractor. Failure of the Council, Local Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Council and Local Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than 90 days.

Section 3. Neither the Council nor any Local Union shall be liable for acts of employees for whom it has no responsibility. The Building Trades Council Business Manager will immediately instruct, order and use the best efforts of his office to cause the Local Union

or Unions to cease any violations of this Article. By complying with this obligation, the Building Trades Council shall not be liable for unauthorized acts of a Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his or her office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

## ARTICLE IX

### DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously and without interruptions, delays or work stoppages.

Section 2. The Contractors, Unions and Employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance/arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

#### Step 1

(a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job Steward, shall, within 5 working days after occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the local union or the job Steward, the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within 3 working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than 24 hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within 48 hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within 3 working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

#### Step 2

The Business Manager of the Council and the involved Contractor shall meet within 7 working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within 7 calendar days thereafter.

#### Step 3

(a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within 7 calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) arbitrators residing in the State of Minnesota from which the Arbitrator shall be selected by the parties alternatively striking names from the list. The first strike shall be determined by the toss of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the prevailing party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended by written consent of the parties involved at the particular step where extension is needed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

## ARTICLE X

### JURISDICTIONAL DISPUTES

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the

Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All Jurisdictional disputes on this Project between or among Building and Construction Trades Unions and employees party to this Agreement shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions party to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage or slow-down of any nature and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate representative of the Council and local union prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

## **ARTICLE XI**

### **SUBCONTRACTING**

The Project Contractor agrees that neither it nor any of its Contractors or Subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any Contractor or Subcontractor working on the Project shall, as a condition to working on said Project, become signatory and perform all work under the terms of this Agreement.

## **ARTICLE XII**

### **SAVINGS AND SEPARABILITY**

It is not the intention of Owner, Contractors or the Union parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractors and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by Court or competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

## ARTICLE XIII

### DURATION OF THE AGREEMENT

The Project Labor Agreement shall be effective August 1, 2007 and shall continue in effect for the duration of the Project construction work described in Articles I and II hereof. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Schedule A attached to this Project Agreement shall continue in full force and effect until the Contractor and Union parties to the Collective Bargaining Agreements, which are the basis for such Schedule A, notify the Construction Manager in writing of the mutually agreed upon changes in those provisions of such Agreements which are applicable to the Project and their effective date(s), which shall become the effective date(s) under this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiations of such Local Collective Bargaining Agreements and the resulting Schedule A, nor shall there be a lock-out on the Project affecting the Union during the course of such negotiations.

In witness whereof, the parties have caused this Agreement to be executed and effective as of the day and year above written.

For the Southeastern Minnesota Building  
And Construction Trades Union

For the Project Owner

\_\_\_\_\_  
Wesley Craig  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Wally Schlink  
Director of Power Resources

\_\_\_\_\_  
Date

Schedule A: Letter of Assent

LETTER OF ASSENT  
ROCHESTER PUBLIC UTILITIES

This is to certify that the undersigned Contractor has examined a copy of the Labor Agreement between Rochester Public Utilities and the Southeastern Minnesota Building and Construction Trades Council, ALF-CIO, and their affiliated Local Unions and other pertinent Local Unions.

The undersigned Contractor hereby agrees to comply with all the terms and conditions of the aforementioned Agreements. It is understood that the signing of this Letter of Assent shall be as binding on the undersigned Contractor as though he has signed the above referred to Agreements.

This Letter of Assent shall become effective and binding upon the undersigned Contractor and said Building and Construction Trades Council and said other pertinent Local Unions this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ and shall remain in effect as set forth above.

FOR THE CONTRACTOR:

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Date Signed

RESOLUTION NO. \_\_\_\_\_

WHEREAS, the City of Rochester finds that project labor agreements with unions representing experienced and skilled construction workers have generally proven to be of economic benefit to property owners, including states and their subdivisions and state and local governmental agencies, for their major construction, alteration or repair projects, particularly those which extend for a substantial period of time, involve a substantial number of contractors and subcontractors and/or a substantial number of trades and craft workers, and have a substantial dollar value, and/or are designed to meet the needs or special circumstances of a specific project; and,

WHEREAS, project labor agreements with such unions facilitate the timely and efficient completion of such projects by:

- (a) making available a ready and adequate supply of highly trained and skilled craft workers;
- (b) permitting public owners and contractors to accurately determine project labor costs at the outset and to establish uniform working conditions for all construction crafts for the duration of the project;
- (c) allowing for the negotiation of specialized terms and conditions which because of the particular circumstances relating to a specific project, may be required for the effective construction of the project;
- (d) providing a negotiated commitment which is a legally enforceable means of assuring labor stability and labor peace over the life of the project;
- (e) avoiding work stoppage following expiration of a collective bargaining agreement between a union and an employer performing work on the project; and



(f) facilitating equal employment opportunities on the project; and,

WHEREAS, previous City of Rochester projects of similar size have been performed by both union and non-union contractors, and have resulted in actual or potential conflicts between workers with resultant added administrative costs and project delays; and,

WHEREAS, in view of the benefits described above, the use of such project labor agreements generally results in cost savings for the construction of the project; and,

WHEREAS, the development of the Silver Lake Power Plant Unit 4 Emissions Reduction Project at the earliest possible date and no later than a date certain is in the best interests of the public and the City of Rochester in order to provide low cost power to the city of Rochester and protect the public health and environment as fully outlined in the Air Permit Settlement Agreement: Silver Lake Plant Unit 4 (Air Emission Permit Number 10900011-003) passed by the Public Utility Board of the City of Rochester, Minnesota on May 30<sup>th</sup> 2006, a copy of which is attached and incorporated herein; and,

WHEREAS, the City of Rochester finds the use of such a project labor agreement for construction of the Silver Lake Power Plant Unit 4 Emissions Reduction Project is in the necessary and best interests of the public and the City of Rochester in order to meet the construction time schedules for the project; to ensure that the project will be completed with highly qualified workers; to ensure that the project will meet the highest standards of safety and quality; to ensure that there are peaceful, orderly, and mutually binding procedures for resolving labor issues; to avoid labor disputes or conflicts, and to promote overall stability throughout the duration of the project by providing legally enforceable guarantees that the project will be carried out in an orderly and timely manner without strikes, lockouts, or

slowdowns, all of which allow the City of Rochester to more accurately predict the cost, and to reduce the cost, of the Silver Lake Power Plant Unit 4 Emissions Reduction Project.

NOW, THEREFORE, BE IT RESOLVED by the City of Rochester that:

1. For all the foregoing reasons, the City of Rochester designates itself as the project manager for the Silver Lake Power Plant Unit 4 Emissions Reduction Project.
2. The City of Rochester is authorized and directed to negotiate a mutually acceptable project labor agreement with the appropriate union, group or unions or trades council, containing the following minimum requirements:
  - (a) All contractors and subcontractors on the project shall agree to abide by the terms and conditions of the project labor agreement for this project;
  - (b) There shall be no strikes; slowdowns or picketing, and no lockouts, during the project;
  - (c) Unresolved disputes relating to the terms of the project labor agreement, including jurisdictional disputes, shall be resolved by binding arbitration without resort to strikes, slowdowns, picketing, or lockouts; and
  - (d) All project work shall conform to the goals for minority business enterprise and women business enterprise participation in construction contractors established by applicable provisions of law.
3. The City of Rochester shall, upon the successful negotiation of said project labor agreement, submit that agreement to the City of Rochester Common Council for its review and approval.

4. The project labor agreement, if approved, including the requirement that all successful bidders, and any and all levels of subcontractors, as a condition of being awarded a contract or subcontract, will agree to abide by the terms of said project labor agreement, by and between the City of Rochester and the appropriate trades council, and will be bound by the provisions of that agreement, with respect to the performance of all work on this project, in the same manner as any other provisions the contract shall be made a part of the bid specifications for the project.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: \_\_\_\_\_  
CITY CLERK

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to adopt a Project Labor Agreement, and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Local Government/Agency Resolution  
Concerning Adoption of Project Labor Agreement for  
Silver Lake Plant Unit 4 Emissions Reduction Project

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31<sup>st</sup> day of July, 2007.

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President

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Secretary