

FOR BOARD ACTION

Agenda Item # 6.c.

Meeting Date: 5/27/08

SUBJECT: Agreement for Services with Mayo Foundation

PREPARED BY: Walt Lorber, Director of Core Services

A significant portion of RPU employee on-the-job injuries are related to strains and joint wear. The Mayo Work Rehabilitation Center has worked with RPU's injured employees in the past in various strengthening programs. While such intervention is valuable in returning the employee to the work force, it is after-the-fact and does not address the general conditioning needs of other employees in positions of similar physical requirements.

The attached agreement with Mayo includes physical and occupational therapy services provided on site, with an initial focus on RPU linemen. A therapist will provide:

- A survey and observation of field employees
- Data analysis and document review
- Analysis of job tasks and associated physical demands
- Educational presentations
- Action plan, including development of recommended ergonomic changes and exercises

The 2008 safety budget includes \$10,000 for this pilot program.

UTILITY BOARD ACTION REQUESTED:

The Public Utility Board is requested to approve a contract agreement with Mayo Foundation for physical and occupational therapy services at a cost not to exceed the annual budget for such services and that the Mayor and City Clerk execute the document.



General Manager

5-27-08
Date

ROCHESTER PUBLIC UTILITIES

AGREEMENT FOR SERVICES

This **AGREEMENT FOR SERVICES** (the “**Agreement**”) is made and entered into as of this ____ day of _____, 2008, by and between Mayo Foundation (“**Mayo**”), a Minnesota nonprofit corporation and the City of Rochester, doing business as Rochester Public Utilities (“**Facility**”).

RECITALS

- FIRST:** Mayo is a provider of physical therapy and occupational therapy services.
- SECOND:** Facility is interested in developing and implementing an injury prevention program for its employees who are employed as linemen (“**Program**”);
- THIRD:** The parties desire an arrangement where Mayo will assist Facility in developing an injury prevention program for use by Facility’s employees.

AGREEMENT

- 1. Observation by Mayo.** Mayo agrees to provide a physical therapist employed by Mayo (“**Physical Therapist**” or “**Occupational Therapist**”) to observe Facility employees working as linemen for the Facility to determine the employees’ job tasks, physical demands of their job tasks, movement patterns, postures and body mechanics used, ergonomic needs, and educational needs
- 2. Program.** The Physical Therapist or Occupational Therapist shall make recommendations as to employee job tasks, ergonomics, work related postures and body mechanics, stretches the employees of the Facility may use prior to the start of a work shift, when the employees rotate to a different assignment, when the employees return from breaks, and after work is completed, and recommendations for a strengthening program employees can follow independently after work hours. The Physical Therapist or Occupational Therapist shall also include in the Program to Facility’s staff educational programming as to why stretching, changes in posture and body mechanics, and strengthening exercises are important for them to perform. Facility shall inform its employees that participation in the Program is voluntary. The Facility will in collaboration with the therapist from the Mayo Work Rehabilitation Center collect and analyze work injury data, and employee satisfaction. The Physical Therapist or Occupational Therapist shall serve as a consultant to Facility as the Program continues.
- 3. Licensure.** The Physical Therapist or Occupational Therapist performing services under this Agreement shall hold appropriate licenses/registrations/certifications within the state in which services are provided.
- 4. Costs.** Facility will pay Mayo \$150.00 per hour for the services provided by the Physical Therapist or Occupational Therapist. Services shall include, but not be limited to, observation of Facility’s employees, development of recommended ergonomic changes,

job task design, work related postures and body mechanics, stretches the employees of the Facility may use, a strengthening program employees can follow independently after work hours, travel to and from Facility, and training of Facility's employees. A monthly bill for services will be submitted by Mayo to the Facility and will be payable within 30 days after receipt.

5. **Insurance.** Both Mayo and the Facility agree to maintain appropriate general liability insurance (or self-insurance) to cover each party's own liability and the liability of its employees, contractors and agents providing coverage for occurrences during the term of this Agreement with limits no less than \$1 million per occurrence and \$3 million annual aggregate. Mayo shall also assure that its staff providing services under this Agreement maintain appropriate professional liability insurance (of self-insurance) providing coverage for occurrences during the term of this Agreement with limits no less than \$1 million per occurrence and \$3 million annual aggregate. Upon request, each party will provide the other party with proof of the required insurance or self-insurance.
6. **Liability.** Each party shall remain responsible, and shall indemnify and hold the other party harmless, for liabilities arising from its acts or omissions, and the acts or omissions of its employees and agents.
7. **Term.** The term of this Agreement shall be for the one-year period from June 1, 2008, through May 31, 2009, unless terminated earlier as provided herein. Either party may terminate this Agreement upon thirty (30) calendar days prior written notice to the other party. Upon completion of the initial term, this Agreement shall be automatically renewed from year to year thereafter until terminated by either party by written notice provided at least ninety (90) days prior to the commencement of the ensuing year.
8. **Amendment.** This Agreement may not be amended or modified except by a writing signed by both parties and identified as an amendment to this Agreement.
9. **Use of Name.** The Facility may not use the name of Mayo, Mayo Clinic, Mayo Foundation, or any of Mayo's trademarks, trade names, or names in any advertising, publicity, or otherwise without prior written approval of Mayo. Mayo shall not use the name of the Facility or any of Facility's trademarks, trade names, or names in any advertising, publicity, or otherwise without prior written approval of the Facility.
10. **Entire Agreement.** This Agreement constitutes the final, complete and exclusive agreement between the parties with respect to its subject matter and supersedes all past and contemporaneous agreements, promises, and understandings, whether oral or written, between the parties.
11. **No Assignment.** Neither party may assign its rights hereunder to any third party without the prior written consent of the other party; provided, that a party may assign its rights without the prior written consent of the other party to any affiliate or other entity that controls, is controlled by or is under common control with such party. Any purported assignment in violation of this clause is void. Such written consent, if given, shall not in

any manner relieve the assignor from liability for the performance of this Agreement by its assignee.

12. **Independent Contractor.** It is mutually understood and agreed that the relationship between the parties is that of independent contractors. Neither party is the agent, employee, or servant of the other. Except as specifically set forth herein, neither party shall have nor exercise any control or direction over the methods by which the other party performs work or obligations under this Agreement. Further, nothing in this Agreement is intended to create any partnership, joint venture, lease, or equity relationship, expressly or by implication, between the parties.
13. **Governing Law.** This Agreement, and all questions arising in connection with it, shall be governed and construed in accordance with the laws of the State of Minnesota.
14. **Notices.** All notices and other business communications between the parties related to this Agreement shall be in writing, sent by certified mail, addressed as follows:

If to Mayo: Mayo Work Rehabilitation Center
41st Street Professional Building
Rochester, MN 55905

With a copy to: Mayo Clinic Legal Department
Attn: General Counsel
200 First Street SW
Rochester, MN 55905
Facsimile: (507) 284-0929

If to Facility: Rochester Public Utilities
Attn: Director of Corporate Services
4000 East River Road Ne
Rochester, MN 55906
Facsimile: (507) 280-1692

Notices sent by certified mail shall be deemed delivered on the third day following the date of mailing. Either party may change its address or facsimile number by giving written notice in compliance with this section.

15. **Waiver.** The failure of either party to complain of any default by the other party or to enforce any of such party's rights, no matter how long such failure may continue, will not constitute a waiver of the party's rights under this Agreement. The waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other provision. No part of this Agreement may be waived except by the further written agreement of the parties.

MAYO FOUNDATION

Its: _____
Date: _____

Its: _____
Date: _____

CITY OF ROCHESTER

Its: Mayor
Date: _____

Attest:

Its City Clerk

Reviewed:

Its City Attorney

ROCHESTER PUBLIC UTILITIES

Its General Manager
Date: _____



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Board approves a contract agreement between Mayo Foundation and the City of Rochester, Minnesota, and that the Mayor and the City Clerk are authorized to execute the agreement for

Physical and Occupational Therapy Services

The cost not to exceed the annual Rochester Public Utilities budget for such services, with billings at Mayo's standard hourly rate.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of May 2008.

President

Secretary