



MEETING AGENDA – MAY 31, 2016

BOARD ROOM
4000 EAST RIVER ROAD NE
ROCHESTER, MN 55906

4:00 PM

Call to Order

- 1. Motion to adjourn the May 12, 2016 meeting.**
- 2. Approval of Agenda**
- 3. Approval of Minutes**
 1. Public Utility Board - Regular Meeting - Apr 26, 2016 4:00 PM
 2. Public Utility Board - Special Meeting - May 12, 2016 4:00 PM
- 4. Approval of Accounts Payable**

A/P Board Listing
- 5. Recognition: MMUA Scholarship Winner: Abby Anderson**

NEW BUSINESS

Open Comment Period

(This agenda section is for the purpose of allowing citizens to address the Utility Board. Comments are limited to 4 minutes, total comment period limited to 15 minutes. Any speakers not having the opportunity to be heard will be the first to present at the next Board meeting.)

- 6. Informational**
 1. Downtown Electric Planning Study
 2. Water Engineering & Operations Report
- 7. Consideration Of Bids**
 1. Wire Puller & Tensioner
Resolution: Wire Puller & Tensioner
 2. Lake Zumbro Dam Powerhouse Improvements
Resolution: Lake Zumbro Dam Powerhouse Improvements
- 8. Regular Agenda**

1. Westside Energy Station Project Sustainable Energy Options
Resolution: Westside Energy Station Project
 2. Westside Energy Station Project General Arrangement Modifications
Resolution: Westside Energy Station Project General Arrangement Modifications
 3. Customer Care Solution
Resolution: Customer Care Solution
 4. Termination of Solar Purchase Power Agreement
Resolution: Termination of Solar Purchase Power Agreement
- 9. General Managers Report**
- 10. Division Reports & Metrics**
- 11. Other Business**
- 12. Adjourn**

The agenda and board packet for Utility Board meetings are available on-line at www.rpu.org and <http://rochestercitymn.ig2.com/Citizens/Default.aspx>



MEETING MINUTES – APRIL 26, 2016

BOARD ROOM
4000 EAST RIVER ROAD NE
ROCHESTER, MN 55906

4:00 PM

Call to Order

Attendee Name	Title	Status	Arrived
Michael Wojcik	Board Member	Present	
Dave Reichert	Board President	Present	
Mark Browning	Board Member	Present	
Melissa Graner Johnson	Board Member	Present	
Tim Haskin	Board Member	Excused	
Terry Adkins	City Attorney	Present	

1. Approval of Agenda

Motion to: approve the agenda with the following changes:

There was one change to the agenda; the audit presentation was moved to first on the agenda after recognitions.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Melissa Graner Johnson, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

2. Approval of Minutes as presented.

Public Utility Board - Regular Meeting - Mar 29, 2016 4:00 PM

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Melissa Graner Johnson, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

3. Approval of Accounts Payable

A/P Board Listing

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Mark Browning, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

4. Recognitions: Earl Kvittem & Ed Laughton

General Manager, Mark Kotschevar and the Board and congratulated Earl Kvittem for his 30 years and Ed Laughton for his 32 years of service to Rochester Public Utilities.

NEW BUSINESS

Open Comment Period

(This agenda section is for the purpose of allowing citizens to address the Utility Board. Comments are limited to 4 minutes, total comment period limited to 15 minutes. Any speakers not having the opportunity to be heard will be the first to present at the next Board meeting.)

President Reichert opened the meeting for public comment. The following people came forward to speak;

- Tom Williamson, 1511 Ridge Cliff Ln NE, Rochester, MN;
 - Commented on renewables & efficiency for the engine and building at the Westside Energy Station. He asked the Board to pass a resolution showing their support for RPU renewables.
 - Asked to consider the electrical and mechanical systems for the engine and engine building where the biggest load is.
 - In an email from Sargent & Lunde there was a suggested a list of costs that were not included in the packet. What are the energy requirements of base system and enhanced systems.
 - Would like questions reflected in the minutes.
- Rick Morris 408 20 St. SW Rochester, MN; Sierra club member.
 - Commented on the great job RPU does. In regards to sustainability and renewables for the West side Energy Station. On pg 5 there is a net zero goal. He would also like to see suggestions for enhanced plans for both engine and admin building and criteria for sustainability, a cost benefit analysis.
- Corey Klein- 500 Whitewater Way: what are we going to do to keep Rochester sustainable for future generations?

5. Informational

1. **Motion to:** accept the 2015 Annual Audit Results.

Aaron Worthman, CPA, Partner, Baker Tilly presented the results of the Audit report. The RPU Audit committee went through the results before the board meeting.

Worthman explained how the audit was done, looked at internal controls and processes and tested them to make sure they worked along with looking at financial reporting. Then give an opinion; which was a clean opinion, the highest mark available. Worthman also mentioned that Baker Tilly gives suggestions to management and they always take care of them immediately.

The Board thanked Bryan and the accounting staff for all of their efforts to complete the audit.

The Board accepted the financial audit report and placed it on file.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Melissa Graner Johnson, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

6. Consideration of Bids

Minutes Acceptance: Minutes of Apr 26, 2016 4:00 PM (Approval of Minutes)

1. Switchgear

Neil Stiller, Senior Electrical Engineer, introduced the proposal; there were 5 bids received and the low bidder was rejected. Crown Technical was the successful bidder.

Resolution: Switchgear

The board approved the resolution reading as follows:

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to reject the non-responsive bid from ABB Inc. and enter into a contract with Crown Technical Systems for:

Switchgear

The amount of the purchase order to not to exceed ONE MILLION NINETY-SEVEN THOUSAND, NINE HUNDRED SIXTY THREE AND 39/100 DOLLARS (\$1,097,963.39).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of April, 2016.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Mark Browning, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

2. Relay and Control Panels

Neil Stiller, Senior Electrical Engineer, summarized the project, Electrical Power Products was the responsive and responsible low bidder.

Resolution: Relay and Control Panel

The board approved the resolution reading as follows:

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the bid from Electrical Power Products and enter into a contract for:

Relay and Control Panels

The amount of the purchase order not to exceed ONE HUNDRED TWENTY-SEVEN THOUSAND, ONE HUNDRED NINETY EIGHT AND 00/100 DOLLARS (\$127,198.00), plus applicable tax.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of April, 2016.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Mark Browning, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

7. Regular Agenda

1. Addition of LED Security Lighting Rate

Mike Hepplemen, explained the request for the addition of LED Security Lighting rate tariff.

The HPS rate will be closed and replaced with the new LED light rate class.

Resolution: Addition of LED Security Lighting Rate

The board approved the resolution reading as follows:

BE IT RESOLVED by the Public Utility Board and the City Council of the City of Rochester, Minnesota, to approve the updated

RPU Rate Schedule with the addition of the LED Security Lighting Rates

and closing all rates under the HPS classification from new installations.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of March, 2016.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Melissa Graner Johnson, Board Member
SECONDER:	Michael Wojcik, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

2. Purchase of VMware NSX

Phil Teng, IS Manager, introduced the VMware purchase and explained that it was a budgeted cost.

Resolution: Purchase of VMware NSX

The board approved the resolution reading as follows:

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a purchase order with Works Computing, Inc. for

VMware NSX for VSphere

The amount of the purchase order to be ONE HUNDRED AND SIXTY FOUR THOUSAND FIVE HUNDRED TWENTY AND 84/100 DOLLARS (\$164,520.84).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of April, 2016.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Mark Browning, Board Member
SECONDER:	Michael Wojcik, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

3. Application for Service(s) Policy

Mary Tompkins, Manager of Customer Service summarized the Application for Services Policy. Its main purpose is identity verification. There needs to be a policy that allows verification of who our customers say they are and holds them accountable for their bill.

A landlord affidavit is also necessary so they are not held responsible for the bill in a default situation. This is only be used in rare situations.

Terry Adkins has reviewed the policy and stated we are acting reasonably in enacting this policy.

There is a process for when to use the form in certain situations and alternatives to using a social security number.

The Board asked for further clarification on the policy and to have a consistent decision process with a supervisor administrating special situations.

The modified policy will be brought back to a future meeting for final approval.

Resolution: Application for Service(s) Policy

The board tabled the resolution and it will be brought back to a future meeting.

RESULT:	TABLED [UNANIMOUS]
	Next: 6/28/2016 4:00 PM
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

8. Informational

1. 5429 : Westside Energy Station Project- Informational Only

Wally Schlink asked the Board if they had any questions on the information that was presented.

- *Mr. Wojcik; p 38 table shows enhancements. Schlink replied that everything has been broken down into options and each has different criteria.*
 - *Tank building*
 - *Engine hall*
 - *Administration building*
- *There are estimates of KWH savings for each unit.*

- *The options will be brought back to the Board in May for decisions on categories including sound barrier & decibel level at the property line. Some things may need to be done during construction that can't be done later. Things such as landscaping etc can be added later.*
- *Some decisions have already been made, such as 100% LED lighting, and others don't make sense if the building isn't going to be used that often.*
- *Power resources will be relocated to the Westside location. This location will also serve as the COOP plan back up location, using large conference room for customer service back up.*

RESULT:	NO ACTION
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2. 2016 Hydro Renovation - Informational Only
Tony Dzubay, Manager of Power Resources, and Trish Bremer, Facilities Project Manager, updated the Board on the Hydro Renovation.
In 2019 there is a planned 100 year public tour/event. Mr. Dzubay said they will return to the board in May seeking approval for the project.
3. Electric Engineering & Operations Report for 2015
Randy Anderton, Senior Electrical Engineer, presented the Electric Engineering and Operations report to the Board.
4. Customer Care and SAP Enterprise Resource Update
Patty Hanson, Manager of Marketing & External Affairs, gave an informational presentation regarding the new customer care implementation. This will come back to the board with a recommendation in May for the approval of the 3 proposed contracts.

9. General Managers Report

Mark Kotschevar, General Manager, gave his report:

- RPU received the American Public Power Association (APPA) Reliable Public Power Provider (RP3) Diamond Award presented at this year's E & O conference. There were 4 areas on the application; reliability, safety, workforce development and system improvement. RPU received 100% on the application and received one of 5 Diamond awards given out this year.
- RPU received the Tree Line USA award for the 7th year in a row from the Arbor Day Foundation.
- Our annual Arbor day celebration was held on Friday April 29th. 50 trees were planted on 7th street NW.
- National drinking water week will be next week. There is an article in the Plugged In that contains a coupon for a free water bottle.
- RPU was chosen to participate in the U of M, Climate Smart Cities program; a collaboration with five German cities to seek climate-smart energy strategies. Mark Kotschevar and Mitzi Baker from the planning department will represent Rochester, along with, Duluth, Morris, Elk River and Warren.
- GIS received an award from ESRA. RPU won this award back in 2006.

10. Division Reports & Metrics

11. Other Business

12. Adjourn

Motion to: adjourn at 6:32 PM.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Melissa Graner Johnson, Board Member
AYES:	Michael Wojcik, Dave Reichert, Mark Browning, Melissa Graner Johnson
EXCUSED:	Tim Haskin

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Submitted by:

Secretary

Approved by the Board

Board President

Date

Minutes Acceptance: Minutes of Apr 26, 2016 4:00 PM (Approval of Minutes)



MEETING MINUTES – MAY 12, 2016

BOARD ROOM
4000 EAST RIVER ROAD NE
ROCHESTER, MN 55906

4:00 PM

I. Call to Order

Attendee Name	Title	Status	Arrived
Michael Wojcik	Board Member	Present	
Dave Reichert	Board President	Present	
Mark Browning	Board Member	Present	
Melissa Graner Johnson	Board Member	Present	
Tim Haskin	Board Member	Present	
Terry Adkins	City Attorney	Excused	

II. Consideration of Bids

1. Power Transformers

Neil Stiller, Senior Electrical Engineer, presented a background of the Power Transformers Bid.

Resolution: Power Transformers

The Board approved the resolution reading as follows:

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a purchase order with ABB Inc. and request Common Council approval of the third transformer for:

Power Transformers

The amount of the purchase order not to exceed TWO MILLION, ONE HUNDRED TEN THOUSAND, FOUR HUNDRED TWENTY FIVE AND 00/100 DOLLARS (\$2,110,425.00), plus applicable tax, subject to escalation and de-escalation.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 12th day of May, 2016.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Mark Browning, Board Member
AYES:	Wojcik, Reichert, Browning, Johnson, Haskin

III. Adjourn

Board Study Session immediately following meeting.

The agenda and board packet for Utility Board meetings are available on-line at www.rpu.org and <http://rochestercitymn.igq2.com/Citizens/Default.aspx>

Submitted by:

Minutes Acceptance: Minutes of May 12, 2016 4:00 PM (Approval of Minutes)

Special Meeting

Thursday, May 12, 2016

4:00 PM

Approved by the Board

Secretary

Board President

Date

Minutes Acceptance: Minutes of May 12, 2016 4:00 PM (Approval of Minutes)

ACCOUNTS PAYABLE

Meeting Date: 5/31/2016

SUBJECT: A/P Board Listing

PREPARED BY: Terri Engle

Please approve

ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 04/15/2016 To 05/12/2016
Consolidated & Summarized Below 1,000

1 **Greater than 50,000 :**

2			
3	SOUTHERN MN MUNICIPAL POWER A	April charges	6,902,489.11
4	MN DEPT OF REVENUE	March Sales and Use Tax	487,504.84
5	EPIC HOSTING LLC	Purc of Property from EPIC, WendlandUTZ	206,618.90
6	WORKS COMPUTING INC	VMware NSX for vSphere Software Lic	136,056.21
7	CONSTELLATION NEWENERGY-GAS D	March Gas SLP	126,860.54
8	CONSTRUCTION COLLABORATIVE DB	System Ops Remodeling	104,422.22
9	OLMSTED MEDICAL CENTER	CIP Conserve & Save Rebates	82,000.64
10	BORDER STATES ELECTRIC SUPPLY	Wire, AL, 15kV, 750 Str, 1/C, 220 Jacket	72,368.16
11	MINNESOTA ENERGY RESOURCES CO	March Gas SLP	62,491.66
12	COMMISSIONER OF TRANSPORTATIO	CIP Conserve & Save Rebates	61,298.00
13	CONSTELLATION NEWENERGY-GAS D	March Gas Cascade Creek	53,058.83
14			
15		Price Range Total:	8,295,169.11

16

17 **5,000 to 50,000 :**

18			
19	BORDER STATES ELECTRIC SUPPLY	Meter, FM12S CL200 120V NET AMR	48,735.00
20	WRIGHT TREE SERVICE INC	2016 Hourly Tree Trimming~	45,655.99
21	S L CONTRACTING INC	Assistance with w/m break repair	44,983.15
22	WENCK ASSOCIATES, INC	Westside Permitting Activities	43,208.55
23	BILLTRUST dba	Credit Card/Billing/Mailing/IVR Services	39,172.72
24	FRANKLIN ENERGY SERVICES LLC	DSM / CIP Services 2016	34,059.37
25	WORKS COMPUTING INC	Subscription for VMware NSX vSphere	34,014.05
26	PEOPLES ENERGY COOPERATIVE (P	Compensation April 2016	29,625.70
27	NELSON AUTO CENTER	2016 GMC Sierra 2500 (V581)	28,888.30
28	NELSON AUTO CENTER	2016 GMC Sierra 1500 (V583)	26,989.97
29	THE JAMES LEFFEL & CO.	Hydro Unit 2 Repairs	25,730.16
30	WORKS COMPUTING INC	NSX Implementation Consulting/Trng	25,585.88
31	WORKS COMPUTING INC	NSX Post-Implementation Consulting/Trng	25,585.87
32	THE ENERGY AUTHORITY INC	April Monthly Resource Mgmt Fee	25,308.97
33	ALVIN E BENIKE INC (P)	Construction of Well house #41	23,878.18
34	STUART C IRBY CO INC	Wire, AL, 15kV, 1/0 Solid, 1/C, Jacketed	22,074.40
35	SCHWEITZER ENGINEERING LAB IN	Fault Indicator, Overhead	21,300.00
36	STUART C IRBY CO INC	Trans, PM, 3ph, 1500kVA, 13.8/8, 480/277	20,818.00
37	AMER PUBLIC POWER ASSN	APPA Dues	20,728.21
38	BLUESPIRE STRATEGIC MARKETING	2016 RPU Plugged In Contract	20,518.77
39	MASTEC NORTH AMERICA INC	2015 Directional Boring/Misc Excavation	20,361.08
40	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 105' H6	18,130.00
41	BADGER METER INC (P)	HRE Badger M-25 100W Itron ERT Integral	17,922.00
42	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 90' H6	17,511.00
43	ADAMSON MOTORS - PAT ADAMSON	CIP Conserve & Save Rebates	17,182.00
44	CITY OF ROCHESTER	W/C	16,083.37
45	VISION COMPANIES LLC (P)	Org. Strategy	15,937.50
46	BERGERSON CASWELL INC	Pump Unit Replacement Well #35	15,600.00
47	U S ALLIANCE GROUP	April Credit Card Processing	15,596.44
48	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole Engineered 85 ft	15,288.00
49	LEXMARK ENTERPRISE SOFTWARE U	ImageNow Upgrade	15,000.00
50	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 95' H5	14,592.00
51	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 105' H2	13,639.00
52	VIKING ELECTRIC SUPPLY INC	Circuit breaker, Masterpact	13,515.00
53	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 95' H2	12,948.00

ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 04/15/2016 To 05/12/2016
Consolidated & Summarized Below 1,000

54	IKEGPS INC	IKE 3 - GPS Survey Tool	12,768.00
55	BARR ENGINEERING COMPANY (P)	Water Sustainability Study Phase 3A	12,377.50
56	ALVIN E BENIKE INC (P)	Application#3-Final Pay Retention	11,939.09
57	CENTURYLINK	2016 Monthly Telecommunications	11,083.29
58	ULTEIG ENGINEERS INC	Douglas Trail Substation Design EPIC	11,046.00
59	STUART C IRBY CO INC	Alum Bus Tube, 4.00" Sch. 40, 6063	10,944.00
60	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 100' H5	10,707.00
61	WELLS FARGO BANK ACCT ANALYSI	2016 Banking Services	10,151.76
62	BROWN C O INS AGENCY INC	Agency Fee-Renew Policy League of MN Cit	10,000.00
63	CONSTRUCTION COLLABORATIVE DB	Meter Shop Renovation	9,994.00
64	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 115' H6	9,196.00
65	BURNS & MCDONNELL INC	RFP Development for Recip Engine ECP	9,024.75
66	DAKOTA SUPPLY GROUP	Luminaire, 108W LED, PC 120-277V, Gray	8,558.55
67	DAKOTA SUPPLY GROUP	Conduit, HDPE, 2.00, Empty	8,446.37
68	BARR ENGINEERING COMPANY (P)	Engineering Svs for Hydro Unit 2 Repair	8,418.86
69	AMER PUBLIC POWER ASSN	DEED Program Annual Dues	8,291.28
70	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 95'	7,997.00
71	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 95' H6	7,986.00
72	WESCO DISTRIBUTION INC	P/C, 120V-305V, 20 yr	7,888.98
73	ALL SYSTEMS INSTALLATION INC	System Ops wiring - Stage 3	7,874.00
74	SCHWAB VOLLHABER LUBRATT CORP	VFD, 200HP 460V 240A	7,793.00
75	MN POLLUTION CONTROL AGENCY	2016 SLP Annual Air Emmissions Fee	7,489.99
76	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 110' H3	7,200.00
77	JF BRENNAN CO INC	Hydro facility repairs	7,184.14
78	TELVENT USA LLC	GIS-Designer Onsite Traning	7,110.00
79	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 95' H4	7,100.00
80	HY VEE NORTH	Arbor Day 2016 Non-taxable	7,091.82
81	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 105' H3	7,007.00
82	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 95' H2	6,614.00
83	SPECTRUM REACH	Arbor Day TV Spot	6,592.00
84	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 90' H2	6,392.00
85	SOLAR BEE	Submersible Elec-powered portable Water Mixer	6,375.00
86	CALVARY BAPTIST CHURCH	CIP Conserve & Save Rebates	6,368.00
87	COURTESY CORPORATION OF ROCHE	CIP Conserve & Save Rebates	6,362.00
88	READY MIX CONCRETE COMPANY LL	Q6 foundation	6,348.38
89	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 95' H1	6,271.00
90	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 90' H4	6,119.00
91	BORDER STATES ELECTRIC SUPPLY	Arc flash hood	6,113.24
92	SHI INTERNATIONAL CORP (P)	SAMx Mobile Pass	6,093.91
93	NALCO COMPANY	DI Vessels, Anion, CC	6,059.81
94	SOLAR BEE	Submersible Elec-powered portable Water Mixer	5,980.00
95	ARNOLDS SUPPLY & KLEENIT CO (2016 SC Monthly Cleaning Services	5,887.74
96	CHS ROCHESTER	April Fuel	5,778.78
97	STUART C IRBY CO INC	Metal Sec. Encl, 3ph, 30" x 67" x 22"	5,770.00
98	USIC LOCATING SERVICES INC	2016 Locating Services	5,768.12
99	KATS COMPANY LLC	Service Assured - Water	5,760.00
100	MINNESOTA ENERGY RESOURCES CO	March Gas Cascade Creek	5,706.68
101	PAAPE ENERGY SERVICE INC	AHU 2 VFD Install	5,660.00
102	ADAPTASPACE INC.	Delivery/Install Genesis Consoles for System Operatc	5,643.00
103	TRINITY MEYER UTILITY STRUCTU	Steel Transmission Pole 90' H2	5,553.00
104	KRENZ & CO INC	Horizontal airflow fan	5,446.00
105	HOLLEY KEITH	Customer Refunds 300000501084	5,269.35
106	WENDLAND UTZ, LTD	Down Payment for Epic Early Work Agreemen t	5,000.00
107			

Attachment: AP Board CRMO (5616 : A/P Board Listing)

ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 04/15/2016 To 05/12/2016
Consolidated & Summarized Below 1,000

108		Price Range Total:	1,247,766.02
109			
110	<u>1,000 to 5,000 :</u>		
111			
112	PITNEY BOWES PURCHASE POWER	postage	4,995.00
113	STUART C IRBY CO INC	Trans, PM, 3ph, 112.5kVA,13.8/8,208/120	4,985.00
114	CHS ROCHESTER	March Fuel Card Purchases	4,880.51
115	BORDER STATES ELECTRIC SUPPLY	AGS Suspension, 556, Body & Insert	4,770.75
116	BORDER STATES ELECTRIC SUPPLY	Junction, LB, 200A, 5 Pos, w/Strap	4,697.80
117	BADGER METER INC (P)	Meter, Bare 5/8x3/4" Badger Disc	4,696.80
118	VERIZON WIRELESS	2016 Cell & Ipad Monthly Service	4,660.02
119	BOLTON AND MENK (P)	AT&T Willow Antenna Review~	4,320.00
120	BOLTON AND MENK (P)	AT&T Baihly Antenna Modification~	4,320.00
121	ALL SYSTEMS INSTALLATION INC	System Ops camera and access upgrades	3,970.41
122	BOB THE BUG MAN LLC	spraying of water sites for bugs	3,910.40
123	HALO BRANDED SOLUTIONS	Conserve & Save LED Nightlights	3,890.25
124	ULTEIG ENGINEERS INC	RTAC Configuration Chester Sub	3,866.58
125	HIMEC INC (P)	Eyewash Station Back Up Control Center	3,865.00
126	FORBROOK LANDSCAPING SERVICES	Landscape restore work at Site 1	3,761.99
127	WRIGHT TREE SERVICE INC	2015 Hourly Tree Contract~	3,672.66
128	SHI INTERNATIONAL CORP (P)	SafeWord Mobilepass Licenses	3,633.75
129	BORDER STATES ELECTRIC SUPPLY	Grd Sleeve, 3ph Sect. Encl, 18 x 67 x 23	3,630.00
130	THE FENCE PROS LLC (P)	Temp fence - Broadway Construction	3,500.00
131	SCHMIDT GOODMAN OFFICE PRODUC	Cabinet, 18" x 42" x 28"	3,477.84
132	ARNOLDS SUPPLY & KLEENIT CO (2016 SLP Alternates	3,473.44
133	IHEART MEDIA dba	Arbor Day Advertising	3,292.00
134	TWIN CITY SECURITY INC	Security Services Apr-Oct 2016	3,174.18
135	M P W INDUSTRIAL SERVICES	Purolite C150 strong acid cation	3,120.00
136	MN PIPE & EQUIPMENT	Bolt & gasket pack/ Fire hyd	3,019.67
137	ROCHESTER CENTRAL LUTHERAN SC	CIP Conserve & Save Rebates	3,000.00
138	KATS COMPANY LLC	Replace galvanized service cb to house 8	3,000.00
139	TRINITY MEYER UTILITY STRUCTU	Anchor Bolts to Engineer Pole	2,950.00
140	WESCO DISTRIBUTION INC	Armor Rod, 556.5 AGS Suspension	2,709.00
141	WORKS COMPUTING INC	VMware vSphere 6 Standard Software Lic	2,650.68
142	CHS ROCHESTER	April Fuel	2,627.49
143	HI LINE UTILITY SUPPLY CO (P)	Pull Tape, Printed, .750" x 3000'	2,588.30
144	HALO BRANDED SOLUTIONS	Conserve & Save Magnets Residential Cust	2,586.38
145	STUART C IRBY CO INC	Arrester, 10kV, Dist, Elbow MOV	2,558.00
146	METERING & TECHNOLOGY SOLUTIO	100W ERTS w/out backing plate	2,550.00
147	WESCO DISTRIBUTION INC	Arrester, 10kV, Dist, Parking Stand	2,547.00
148	DOWCO VALVE COMPANY INC	Valve repair SLP (3)	2,523.32
149	CHS ROCHESTER	March Fuel Card Purchases	2,504.35
150	FIRST STUDENT INC	2016 busing for Arbor Day	2,462.86
151	D P C INDUSTRIES INC	2016 Carus 8500 Aqua Mag F35	2,430.90
152	ASHLAND PLACE	CIP Conserve & Save Rebates	2,375.00
153	D P C INDUSTRIES INC	2016 Chlorine, 150 lb Cyl	2,329.00
154	TOTAL TOOL SUPPLY INC (P)	Greenlee 18V cable cutter repair	2,284.42
155	ALL SYSTEMS INSTALLATION INC	Security Support for S2 System	2,281.78
156	SCHMIDT GOODMAN OFFICE PRODUC	Fixed pedestal, 2-file	2,228.85
157	BORDER STATES ELECTRIC SUPPLY	Terminator Cover, for Porc Terminators	2,226.93
158	GRAMERCY PARK COOP	CIP Conserve & Save Rebates	2,225.00
159	STUART C IRBY CO INC	Switch, Air, 2 Arm, 1ph, 600A, NLB	2,159.10
160	SOLAR BEE	GS series control box w/SCADA monitoring	2,140.00
161	SPARTA CONSULTING INC	2016 SAP Application Support Travel	2,136.06

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ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 04/15/2016 To 05/12/2016
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162	HAWKINS INC	Chlorine gas feeder switchover system	2,124.50
163	FIRST CLASS PLUMBING & HEATIN	Install pressure reducing valve as main	2,123.46
164	SCHMIDT GOODMAN OFFICE PRODUC	Cabinet, 24" x 30" x 28"	2,091.52
165	ADVANCED DISPOSAL SVC SOLID W	2016 Waste Removal Services - SC	2,061.48
166	PAYMENT REMITTANCE CENTER	Jacob Shones, 2016 Gateshaft focus class	2,042.00
167	PAYMENT REMITTANCE CENTER	James Pettis, 2016 Gateshaft Focus class	2,042.00
168	BEST BUY BUSINESS ADVANTAGE d	TV's for Sys Ops Project	2,030.59
169	BARR ENGINEERING COMPANY (P)	Water Sustainability Study Phase 3B	2,008.50
170	VIKING ELECTRIC SUPPLY INC	Tape, Vinyl, .750" x 66', 3M Super 33+	2,003.91
171	ENVIRONMENTAL INITIATIVE	2016 Membership	2,000.00
172	NELSON AUTO CENTER	License, Tax, & Registration	1,993.49
173	NETWORKFLEET INC	2016 Monthly Charge - GPS Fleet Tracking	1,972.20
174	WESCO DISTRIBUTION INC	Insul, Post, F-Neck .750 Stud, 25kV	1,968.96
175	D P C INDUSTRIES INC	2016 Hydrofluorosilicic Acid - Delivered	1,965.16
176	BORDER STATES ELECTRIC SUPPLY	Elbow, 15kV, 200A, LB,1/0 Sol,175-220Mil	1,924.00
177	THE JAMES LEFFEL & CO.	Onsite Measurements	1,881.00
178	NELSON AUTO CENTER	License, Tax, & Registration (Sierra)	1,870.10
179	ALDEN POOL & MUNICIPAL SUPPLY	55 gallon Ace tank, 20" x 47"	1,851.20
180	STUART C IRBY CO INC	Pedestal Base, Secondary, FG, w/o Cover	1,840.00
181	SCHMIDT GOODMAN OFFICE PRODUC	Install furniture for new System Ops Room	1,775.02
182	DAKOTA SUPPLY GROUP	Meter, FM2S CL320 BI-DRCT AMR-Triple ERT	1,759.59
183	VEOLIA ES TECHNICAL SOLUTIONS	High intensity disposal - HID Lamps	1,707.00
184	DOWCO VALVE COMPANY INC	Valve repair Water Treatment Bldg (2)	1,682.21
185	BORDER STATES ELECTRIC SUPPLY	Arc flash bibs, 2XL	1,675.80
186	MINNESOTA ENERGY RESOURCES CO	Natural Gas SC	1,670.55
187	STUART C IRBY CO INC	Pedestal Cover, Box Style, FG	1,667.25
188	CANNON ELECTRIC MOTOR dba	Motor repair - ceramic coating	1,642.00
189	CANNON ELECTRIC MOTOR dba	Motor repair - ceramic coating	1,642.00
190	EXPRESS SERVICES INC	Seasonal staff grounds 2016	1,636.40
191	MAYO CLINIC	CIP Conserve & Save Rebates	1,596.00
192	IHEART MEDIA dba	Service Assured advertising spots	1,590.00
193	ARNOLDS SUPPLY & KLEENIT CO (Spring landscaping clean up at water sit	1,590.00
194	CDW GOVERNMENT INC	6 - Wireless headset w/base	1,578.18
195	K A A L TV LLC	Arbor Day TV Spot	1,575.00
196	CLOWN ROUNDUP LLC	Clowns for 2016 Arbor Day Celebration	1,500.00
197	HALO BRANDED SOLUTIONS	RPU drinking water bottles - give aways	1,485.56
198	MERRICK INC	Paper, Copier, 8-1/2 x 11 White 20# Bond	1,453.50
199	ALDEN POOL & MUNICIPAL SUPPLY	75 gallon Ace tank, 23" x 50"	1,440.70
200	MADSEN BRIAN	2016 Printer Maintenance contract~	1,419.30
201	SEMA	Fleet Parts	1,417.50
202	STUART C IRBY CO INC	Pedestal Cover, Box Style, FG	1,389.38
203	MN PIPE & EQUIPMENT	Misc / valve box / valve stems/ extensio	1,382.98
204	STUART C IRBY CO INC	Pedestal Base, Secondary, FG, w/o Cover	1,380.00
205	NALCO COMPANY	DI Vessels, Cation, CC	1,346.63
206	BADGER METER INC (P)	HRE Badger 4"T1000 100W Itron ERT 10' Ld	1,328.70
207	MED CITY COLLISION INC	repair V 422 - Labor	1,315.00
208	WENCK ASSOCIATES INC	Air Quality Consulting Services	1,313.00
209	STUART C IRBY CO INC	Pedestal Cover, Box Style, FG	1,300.00
210	GOPHER STATE ONE CALL	Gopher calls - Elec	1,289.78
211	GOPHER STATE ONE CALL	Gopher calls - Water	1,289.77
212	CITY OF ROCHESTER	March 2016 WC Admin Fee	1,282.00
213	CITY OF ROCHESTER	2nd Q O&M exp for 37th Str USGS gauging	1,273.50
214	PAYMENT REMITTANCE CENTER	Travel, E&O Conf, Lodging	1,268.71
215	GARCIA GRAPHICS INC	2015 Annual Report	1,250.00

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216	AFFILIATED CREDIT SERVICES IN	2016 Third Party Collections	1,240.67
217	GRAINGER INC	Safety Cabinet for paint	1,227.78
218	WELLS FARGO BANK ACCT ANALYSI	Lockbox Fee	1,224.00
219	PAYMENT REMITTANCE CENTER	iPad Pro 128GB, Smart Keyboard	1,206.04
220	ONLINE INFORMATION SERVICES I	2016 Utility Exchange Report	1,200.60
221	MASTEC NORTH AMERICA INC	Temp refeed for PC	1,200.00
222	BORDER STATES ELECTRIC SUPPLY	Anchor, Triple Helix, 1.50 Sq. Shaft	1,198.32
223	SOMA CONSTRUCTION INC	Crushed concrete for excavation backfill	1,195.22
224	BADGER METER INC (P)	Measuring Chamber, 6" Turbo T-2000	1,162.70
225	MIDCONTINENT ISO INC	April charges	1,144.51
226	BOWMANS SAFE & LOCK SHOP LTD	Door hardware/changes for NERC Complianc	1,137.89
227	CONSOLIDATED COMM ENTERPRISE	2014-2017 Total Care Support	1,135.00
228	GRAYBAR ELECTRIC COMPANY INC	Wejtap tool body	1,096.61
229	BAIER GERALD	2015-2016 Sweeping Services Jan-December	1,090.12
230	BORDER STATES ELECTRIC SUPPLY	Arc flash coat, 2XL	1,081.79
231	NARDINI FIRE EQUIPMENT CO INC	GT2 fire system checks	1,080.00
232	STUART C IRBY CO INC	Alum Bus Tube, 2.00" Sch. 40, 6063	1,078.00
233	ADAPTASPACE INC.	CO monitor mount assy	1,044.00
234	ROCHESTER ARMORED CAR CO INC	2016 Pick Up Services	1,041.89
235	MAJESTIC TENTS AND EVENTS dba	Arbor Day Tents, Chairs and Tables	1,040.96
236	ELECTRICAL TRAINING ALLIANCE	1st yr books for C Grinhaug & H Gleason	1,037.44
237	OLSON BJORN	Travel, IEEE T&D Conf & Expo, Lodging	1,033.89
238	WILDE MIKE	Travel, IEEE PES T&D Conf, Lodging	1,033.89
239	CLAREY'S SAFETY EQUIPMENT dba	Training manikin	1,015.00
240	J J KELLER & ASSOCIATES INC	KellerOnline Prof License 1 yr	1,009.97
241			
242		Price Range Total:	279,321.84
243			
244	<u>0 to 1,000 :</u>		
245			
246	EXPRESS SERVICES INC	Summarized transactions: 25	19,806.95
247	PAYMENT REMITTANCE CENTER	Summarized transactions: 76	14,018.43
248	REBATES	Summarized transactions: 70	11,212.43
249	SCHMIDT GOODMAN OFFICE PRODUC	Summarized transactions: 60	10,916.90
250	BORDER STATES ELECTRIC SUPPLY	Summarized transactions: 30	9,592.55
251	TEREX UTILITIES INC	Summarized transactions: 31	8,047.55
252	MN PIPE & EQUIPMENT	Summarized transactions: 38	7,079.36
253	Customer Refunds (CIS)	Summarized transactions: 103	6,034.44
254	ARNOLDS SUPPLY & KLEENIT CO (Summarized transactions: 13	5,241.23
255	WESCO DISTRIBUTION INC	Summarized transactions: 14	5,054.89
256	STUART C IRBY CO INC	Summarized transactions: 27	4,565.14
257	CINTAS CORP	Summarized transactions: 104	3,930.58
258	CANNON ELECTRIC MOTOR dba	Summarized transactions: 6	3,920.00
259	BOLTON AND MENK (P)	Summarized transactions: 10	3,850.00
260	GRAINGER INC	Summarized transactions: 29	3,071.38
261	USA BLUE BOOK DBA	Summarized transactions: 10	2,931.89
262	NAPA AUTO PARTS (P)	Summarized transactions: 49	2,185.84
263	CDW GOVERNMENT INC	Summarized transactions: 12	2,093.76
264	BADGER METER INC (P)	Summarized transactions: 10	1,998.62
265	MASTEC NORTH AMERICA INC	Summarized transactions: 3	1,988.45
266	DAVE SYVERSON TRUCK CENTER IN	Summarized transactions: 5	1,980.23
267	MCMaster CARR SUPPLY COMPANY	Summarized transactions: 46	1,931.84
268	CITY OF ROCHESTER	Summarized transactions: 6	1,788.06
269	CRESCENT ELECTRIC SUPPLY CO	Summarized transactions: 18	1,772.18

ROCHESTER PUBLIC UTILITIES
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270	CUSTOM COMMUNICATIONS INC	Summarized transactions: 6	1,758.27
271	VIKING ELECTRIC SUPPLY INC	Summarized transactions: 29	1,727.23
272	KRENZ & CO INC	Summarized transactions: 7	1,631.26
273	GREAT RIVER ENERGY	Summarized transactions: 2	1,436.08
274	CENTURYLINK	Summarized transactions: 4	1,387.03
275	INNOVATIVE OFFICE SOLUTIONS L	Summarized transactions: 12	1,342.50
276	REINDERS INC	Summarized transactions: 10	1,319.92
277	BILLTRUST dba	Summarized transactions: 3	1,300.00
278	MED CITY COLLISION INC	Summarized transactions: 2	1,260.89
279	SAUBER MANUFACTURING CO	Summarized transactions: 18	1,236.54
280	SCHWAB VOLLHABER LUBRATT CORP	Summarized transactions: 2	1,222.24
281	LEKATZ CARTER	Summarized transactions: 2	1,220.06
282	BROCK WHITE COMPANY LLC	Summarized transactions: 2	1,214.10
283	METRO SALES INC	Summarized transactions: 2	1,201.18
284	ZEE MEDICAL SERVICE INC (P)	Summarized transactions: 4	1,184.45
285	FLUKE ELECTRONICS INC	Summarized transactions: 5	1,184.00
286	ERC WIPING PRODUCTS INC	Summarized transactions: 2	1,182.37
287	FIRST CLASS PLUMBING & HEATIN	Summarized transactions: 7	1,151.06
288	PEOPLES ENERGY COOPERATIVE	Summarized transactions: 4	1,128.04
289	M P W INDUSTRIAL SERVICES	Summarized transactions: 4	1,116.26
290	J & W INSTRUMENTS INC (P)	Summarized transactions: 4	1,050.04
291	G A ERNST & ASSOCIATES INC	Summarized transactions: 2	1,041.00
292	KELLER AMERICA (P)	Summarized transactions: 4	1,022.20
293	TSP INC	Summarized transactions: 1	947.24
294	PAYMENT REMITTANCE CENTER	Summarized transactions: 1	920.00
295	PW POWER SYSTEMS INC	Summarized transactions: 8	910.65
296	FORBROOK LANDSCAPING SERVICES	Summarized transactions: 3	906.42
297	MOORE RYAN	Summarized transactions: 8	897.92
298	ALDEN POOL & MUNICIPAL SUPPLY	Summarized transactions: 2	896.00
299	ULTEIG ENGINEERS INC	Summarized transactions: 3	894.50
300	HALO BRANDED SOLUTIONS	Summarized transactions: 5	892.62
301	CONSTRUCTION COLLABORATIVE DB	Summarized transactions: 1	888.73
302	IKEGPS INC	Summarized transactions: 1	877.80
303	COOK STEVEN J	Summarized transactions: 4	868.08
304	WORKS COMPUTING INC	Summarized transactions: 3	848.37
305	JOHNSON PRINTING CO INC	Summarized transactions: 2	818.67
306	NARDINI FIRE EQUIPMENT CO INC	Summarized transactions: 3	817.73
307	AB VACUUM CENTER OF WILLMAR L	Summarized transactions: 1	797.02
308	DAKOTA SUPPLY GROUP	Summarized transactions: 8	761.27
309	STEVE BENNING ELECTRIC	Summarized transactions: 4	760.00
310	SEEME PRODUCTIONS LLC	Summarized transactions: 1	750.00
311	POMPS TIRE SERVICE INC	Summarized transactions: 1	747.63
312	FEDEX FREIGHT INC	Summarized transactions: 2	746.26
313	SHI INTERNATIONAL CORP (P)	Summarized transactions: 2	745.99
314	HAWK & SON'S INC	Summarized transactions: 1	720.00
315	MODEM EXPRESS INC	Summarized transactions: 2	720.00
316	WEBB COLLIN	Summarized transactions: 3	717.75
317	POWERMATION DIVISON	Summarized transactions: 7	703.43
318	AUTHORIZE.NET	Summarized transactions: 1	693.85
319	CINTAS CORP	Summarized transactions: 4	674.96
320	HEINRICH ENVELOPE CORPORATION	Summarized transactions: 1	671.82
321	McGRANN SHEA CARNIVAL STRAUGH	Summarized transactions: 1	670.00
322	CLAREY'S SAFETY EQUIPMENT dba	Summarized transactions: 5	666.99
323	AMERICAN ENGINEERING TESTING	Summarized transactions: 1	665.00

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For 04/15/2016 To 05/12/2016
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324	BEST BUY BUSINESS ADVANTAGE d	Summarized transactions: 11	664.74
325	ROOT RIVER HARDWOODS INC	Summarized transactions: 2	662.63
326	CLEMENTS CHEVROLET CADILLAC S	Summarized transactions: 6	660.11
327	MAYASICH PAUL	Summarized transactions: 1	625.00
328	CAPELLE KEITH	Summarized transactions: 2	614.43
329	PEOPLES ENERGY COOPERATIVE	Summarized transactions: 2	601.71
330	DAVIES PRINTING COMPANY INC	Summarized transactions: 1	588.88
331	AUTOMATIONDIRECT.COM	Summarized transactions: 1	579.00
332	ON SITE SANITATION INC	Summarized transactions: 5	578.81
333	MN DEPT OF NATURAL RESOUCES	Summarized transactions: 2	576.00
334	LAWSON PRODUCTS INC (P)	Summarized transactions: 4	573.57
335	SUMMIT FIRE PROTECTION INC	Summarized transactions: 1	565.00
336	BERGERSON CASWELL INC	Summarized transactions: 1	550.00
337	HUDSON WORKWEAR CO INC	Summarized transactions: 8	545.06
338	MCMASTER CARR SUPPLY COMPANY	Summarized transactions: 14	542.79
339	STEVE BENNING ELECTRIC	Summarized transactions: 5	542.22
340	ROCH PLUMBING & HEATING CO IN	Summarized transactions: 2	529.75
341	REBATES	Summarized transactions: 11	525.00
342	GARCIA GRAPHICS INC	Summarized transactions: 6	522.05
343	TARCO INDUSTRIES INC	Summarized transactions: 2	512.63
344	RESCO	Summarized transactions: 2	512.40
345	MERIT CONTRACTING INC (P)	Summarized transactions: 1	509.91
346	GRAYBAR ELECTRIC COMPANY INC	Summarized transactions: 5	504.88
347	WENDLAND UTZ, LTD	Summarized transactions: 1	500.00
348	ADVANTAGE DIST LLC (P)	Summarized transactions: 3	496.76
349	ARCMAN CORP	Summarized transactions: 2	496.38
350	FASTENAL COMPANY	Summarized transactions: 19	492.47
351	BOWMANS SAFE & LOCK SHOP LTD	Summarized transactions: 1	474.00
352	MINNESOTA ENERGY RESOURCES CO	Summarized transactions: 2	471.54
353	FEDEX	Summarized transactions: 12	468.23
354	CORPORATE WEB SERVICES INC	Summarized transactions: 1	450.00
355	HIMEC INC (P)	Summarized transactions: 1	450.00
356	WINKELS ELECTRIC INC	Summarized transactions: 4	440.00
357	FREDRICKSON & BYRON PA	Summarized transactions: 1	433.50
358	PAULS LOCK & KEY SHOP INC	Summarized transactions: 2	422.00
359	U S A SAFETY SUPPLY	Summarized transactions: 6	415.32
360	MCHUGH JESSICA	Summarized transactions: 3	408.77
361	SCHLINK WALTER	Summarized transactions: 5	401.74
362	MENARDS ROCHESTER NORTH	Summarized transactions: 4	384.66
363	GRAINGER INC	Summarized transactions: 1	384.25
364	T E C INDUSTRIAL INC	Summarized transactions: 2	376.19
365	DAKOTA SUPPLY GROUP	Summarized transactions: 9	348.11
366	FASTENAL COMPANY	Summarized transactions: 5	347.87
367	VEOLIA ES TECHNICAL SOLUTIONS	Summarized transactions: 1	345.44
368	OLSON BJORN	Summarized transactions: 2	344.80
369	MENARDS ROCHESTER NORTH	Summarized transactions: 6	340.78
370	MEYER BORGMAN & JOHNSON INC	Summarized transactions: 1	337.50
371	BAIER GERALD	Summarized transactions: 1	327.04
372	CENTURYLINK	Summarized transactions: 1	325.95
373	ADVANCED DISPOSAL SVC SOLID W	Summarized transactions: 1	318.02
374	SEMA	Summarized transactions: 1	315.59
375	TRUCKIN' AMERICA	Summarized transactions: 1	309.78
376	SCHONSTEDT INSTRUMENT COMPANY	Summarized transactions: 2	302.92
377	LARSON GUSTAVE A COMPANY INC	Summarized transactions: 1	302.33

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378	HIAWATHA VALLEY FARM STORE IN	Summarized transactions: 3	299.06
379	WILDE MIKE	Summarized transactions: 2	296.05
380	ASI SIGNAGE INNOVATIONS dba	Summarized transactions: 2	295.38
381	WILLIAMS JERRY	Summarized transactions: 4	286.90
382	MSC INDUSTRIAL SUPPLY CO INC	Summarized transactions: 4	286.38
383	PHENOVA INC	Summarized transactions: 3	279.49
384	SCHWEITZER ENGINEERING LAB IN	Summarized transactions: 1	277.88
385	BOBCAT OF ROCHESTER	Summarized transactions: 2	276.90
386	REICHERT DAVE	Summarized transactions: 3	271.28
387	H2O INNOVATION USA INC (P)	Summarized transactions: 2	267.78
388	MILESTONE MATERIALS	Summarized transactions: 1	256.37
389	WRIGHT TREE SERVICE INC	Summarized transactions: 1	256.23
390	KOTSCHAVAR MARK	Summarized transactions: 3	254.16
391	POST BULLETIN CO	Summarized transactions: 3	249.58
392	OLSON JEFF	Summarized transactions: 2	243.75
393	OLM COUNTY PROPERTY RECORDS	Summarized transactions: 2	238.00
394	ARROW ACE HARDWARE-ST PETER	Summarized transactions: 4	237.15
395	MISSISSIPPI WELDERS SUPPLY CO	Summarized transactions: 8	234.43
396	HAWKINS INC	Summarized transactions: 3	229.69
397	HOGAN PETER	Summarized transactions: 3	229.44
398	BURNDY LLC	Summarized transactions: 1	226.86
399	LAFFLAM JIM	Summarized transactions: 1	213.75
400	SCHAUDENECKER ROBERT L	Summarized transactions: 1	213.75
401	GILLUND ENTERPRISES	Summarized transactions: 2	211.36
402	NU-TELECOM dba	Summarized transactions: 1	208.93
403	FRANZ REPROGRAPHICS INC	Summarized transactions: 3	206.49
404	MN SUPPLY COMPANY INC	Summarized transactions: 1	205.00
405	EATON AEROSPACE LLC	Summarized transactions: 4	203.70
406	ALTERNATIVE TECHNOLOGIES INC	Summarized transactions: 1	195.00
407	CULLIGAN OF ROCHESTER INC	Summarized transactions: 2	190.20
408	TOTAL TOOL SUPPLY INC (P)	Summarized transactions: 2	186.88
409	HEROLD FLAGS	Summarized transactions: 1	185.96
410	STERICYCLE INC	Summarized transactions: 1	184.13
411	DELL MARKETING LP	Summarized transactions: 4	180.26
412	TRENDEX INC	Summarized transactions: 3	177.71
413	SARGENTS LANDSCAPE NURSERY IN	Summarized transactions: 4	172.00
414	NORTHERN / BLUETARP FINANCIAL	Summarized transactions: 3	170.93
415	HEWLETT PACKARD ENTERPRISE CO	Summarized transactions: 1	162.12
416	CARQUEST AUTO PARTS	Summarized transactions: 12	161.64
417	ALL SEASONS POWER & SPORT INC	Summarized transactions: 1	160.26
418	SOLAR BEE	Summarized transactions: 1	160.00
419	STURM DANNY K	Summarized transactions: 1	150.00
420	THRONDSOIN OIL & LP GAS CO	Summarized transactions: 1	144.38
421	GRINHAUG CHAD	Summarized transactions: 2	140.64
422	OLM COUNTY PUBLIC WORKS DEPT	Summarized transactions: 1	140.00
423	HI LINE UTILITY SUPPLY CO (P)	Summarized transactions: 1	135.53
424	FCX PERFORMANCE INC	Summarized transactions: 2	128.19
425	BATTERIES PLUS	Summarized transactions: 1	127.93
426	TOKAY SOFTWARE	Summarized transactions: 2	124.00
427	NICKELS SCOTT	Summarized transactions: 1	122.00
428	IFIXIT	Summarized transactions: 7	108.16
429	VERIFIED CREDENTIALS INC	Summarized transactions: 1	108.00
430	HEINRICH ENVELOPE CORPORATION	Summarized transactions: 1	106.87
431	TOP PERFORMANCE SALES	Summarized transactions: 1	94.37

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432	OLM COUNTY HAZARDOUS WASTE	Summarized transactions: 2	92.80
433	BLACKBURN MANUFACTURING CO	Summarized transactions: 2	91.06
434	HATHAWAY TREE SERVICE INC	Summarized transactions: 1	90.00
435	KEACH TODD	Summarized transactions: 1	85.50
436	LAUGEN STEVE	Summarized transactions: 1	85.50
437	IHEART MEDIA dba	Summarized transactions: 1	80.00
438	SCHAD TRACY SIGNS INC	Summarized transactions: 1	80.00
439	VERIZON WIRELESS	Summarized transactions: 1	79.24
440	ERICKSON BRAD	Summarized transactions: 1	75.00
441	VANCO SERVICES LLC	Summarized transactions: 1	74.80
442	ADAPTASPACE INC.	Summarized transactions: 1	71.78
443	ROCHESTERFEST/CELEBRATION OF	Summarized transactions: 1	70.00
444	INSTY PRINTS ROCHESTER (P)	Summarized transactions: 2	66.13
445	U S BANK	Summarized transactions: 1	61.91
446	RONCO ENGINEERING SALES INC	Summarized transactions: 1	59.78
447	K & S HEATING & AIR COND INC	Summarized transactions: 2	58.19
448	HY VEE	Summarized transactions: 2	57.88
449	MAJESTIC TENTS AND EVENTS dba	Summarized transactions: 1	52.37
450	FEDEX	Summarized transactions: 1	50.36
451	CHS ROCHESTER	Summarized transactions: 1	48.08
452	BLOM BRYAN	Summarized transactions: 1	48.04
453	ALLIED PRODUCTS CORPORATION	Summarized transactions: 1	47.03
454	THOMAS TOOL & SUPPLY INC	Summarized transactions: 1	43.47
455	FLEETPRIDE INC	Summarized transactions: 1	37.88
456	SHERWIN WILLIAMS CO	Summarized transactions: 2	37.74
457	AFFILIATED CREDIT SERVICES IN	Summarized transactions: 1	37.28
458	LOGANS TREE SERVICE & RECYCLI	Summarized transactions: 1	35.00
459	HY VEE NORTH	Summarized transactions: 1	32.78
460	MINNESOTA ENERGY RESOURCES CO	Summarized transactions: 1	31.17
461	A T & T MOBILITY	Summarized transactions: 1	29.76
462	OLM COUNTY CENTRAL FINANCE	Summarized transactions: 1	28.80
463	MEYERS KEVIN	Summarized transactions: 1	26.95
464	JESTUS TIM	Summarized transactions: 1	23.00
465	WERNER ELECTRIC SUPPLY	Summarized transactions: 2	20.50
466	DOUBLETREE HOTEL - BGDS HOTEL	Summarized transactions: 1	20.00
467	FIEK STEVEN	Summarized transactions: 1	19.00
468	TUPPER MATTHEW	Summarized transactions: 1	19.00
469	MENARDS ROCHESTER SOUTH	Summarized transactions: 1	18.60
470	LIVINGSTON TINA	Summarized transactions: 1	18.37
471	GRAYBAR ELECTRIC COMPANY INC	Summarized transactions: 1	16.56
472	BIERBAUM DIRK	Summarized transactions: 1	15.00
473	LUHMANN ABE	Summarized transactions: 1	15.00
474	HANSON PATRICIA S	Summarized transactions: 1	15.00
475	HUMPHREY STEPHANIE	Summarized transactions: 1	15.00
476	RONCO ENGINEERING SALES INC	Summarized transactions: 1	12.32
477	KURTZ DALE	Summarized transactions: 1	11.00
478	METERING & TECHNOLOGY SOLUTIO	Summarized transactions: 1	9.97
479	UNITED PARCEL SERVICE	Summarized transactions: 1	9.04
480	SNAP ON INDUSTRIAL	Summarized transactions: 1	6.69
481	ARROW ACE HARDWARE-ST PETER	Summarized transactions: 1	5.99
482			
483		Price Range Total:	227,253.85
484			
485		Grand Total:	10,049,510.82

Attachment: AP Board CRMO (5616 : A/P Board Listing)

FOR BOARD ACTION

Agenda Item # (ID # 5648)

Meeting Date: 5/31/2016

SUBJECT: Downtown Electric Planning Study

PREPARED BY: Steve Cook

ITEM DESCRIPTION:

Presentation on the results of a long term electric load forecast for the downtown area and potential options for supplying the bulk electric needs of the area.

UTILITY BOARD ACTION REQUESTED:

This is an informational only item.

FOR BOARD ACTION

Agenda Item # (ID # 5644)

Meeting Date: 5/31/2016

SUBJECT: Water Engineering & Operations Report

PREPARED BY: Doug Klamerus

ITEM DESCRIPTION:

The Water E & O Report for 2015 has been provided to the Board under separate cover. The report is prepared annually to document the major accomplishments and performance statistics that reflect the work of the Water department for the year. Staff will make a brief presentation on the report and respond to any questions.

UTILITY BOARD ACTION REQUESTED:

Informational only

FOR BOARD ACTION

Agenda Item # (ID # 5632)

Meeting Date: 5/31/2016

SUBJECT: Wire Puller & Tensioner

PREPARED BY: Steve Monson

ITEM DESCRIPTION:

Fleet Services equipment replacement plan for 2016 includes one new Wire Puller and one new Wire Tensioner for Electric Maintenance and Construction crews. The 2016 capital improvement budget includes \$290,284 for this equipment. Sealed bids were opened on May 6, 2016.

The solicitation was posted on Public Purchase and provided directly to Sherman & Reilly, Inc. and Condux Tesmec, Inc. However, only one bid was received to supply the Wire Puller and Wire Tensioner.

A breakdown of the bid is as follows:

Vendor	Wire Puller	Wire Tensioner	Trade In	Net Price
Sherman & Reilly, Inc.	\$147,964.40	\$74,082.60	\$2,500	\$219,547

Based on our evaluation of the bid which included price, compliance with specifications, delivery, previous experience with manufacturer, and availability of service and repair facilities, Sherman & Reilly, Inc. was determined to be the lowest responsive bid with a price of \$219,547, which includes trade-in.

UTILITY BOARD ACTION REQUESTED:

Approve a resolution to issue a Purchase Order to Sherman & Reilly, Inc. in the amount of \$219,547 plus applicable tax.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a purchase order with Sherman & Reilly, Inc. for:

One Wire Puller and One Wire Tensioner

The amount of the purchase order to be TWO HUNDRED NINETEEN THOUSAND, FIVE HUNDRED FORTY-SEVEN AND 00/100 DOLLARS (\$219,547.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of May, 2016.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 5625)

Meeting Date: 5/31/2016

SUBJECT: Lake Zumbro Dam Powerhouse Improvements

PREPARED BY: Tony Dzubay

ITEM DESCRIPTION:

Sealed bids were opened on May 12th for exterior improvements to the Lake Zumbro Dam powerhouse building. Bids included a base price covering painting, concrete repairs to exterior walls, parapets and east and north walkways, stucco removal and replacement, guardrail improvements and roof replacement. Estimated quantities for concrete, crack sealing and stucco repair were included in the bid package and these areas will be based on actual field measurements of work completed. Expected completion date is November, 2016.

This building was constructed in 1919 and is listed on the National Register of historical places. The construction estimate was about \$550,000. While the bids came in higher than expected, staff believes this is an important project due to the need for major improvements and repairs. Staff speculates the higher prices resulted from the nature of the project, the unknown condition of concrete areas and the current bidding market. A breakdown of the bids is as follows:

Contractor	Base Bid Amount
Alvin E. Benike Inc.	\$ 677,800
Kraus Anderson	\$1,622,568

Benike submitted a responsive and responsible bid and they have performed well on past projects.

The 2016 Power Resources budget included \$495,000 for this project and the balance of these project costs will be supported by the RPU capital contingency fund.

UTILITY BOARD ACTION REQUESTED:

Approve a resolution to enter into a contract with Alvin E. Benike Inc. in the amount not to exceed \$677,800 and authorize the Mayor and City Clerk to execute the agreement. Management further recommends the Board authorize staff to process change orders in compliance with Board Policy Statement, Section 6.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve an agreement with Alvin E. Benike, Inc., authorize staff to process change orders in compliance with Board Policy Statement, Section 6 and authorize the Mayor and the City Clerk to execute the agreement for:

Lake Zumbro Dam Powerhouse Improvements

The amount of the contract not to exceed SIX HUNDRED SEVENTY-SEVEN THOUSAND, EIGHT HUNDRED AND 00/100 DOLLARS (\$677,800.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of May, 2016.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 5638)

Meeting Date: 5/31/2016

SUBJECT: Westside Energy Station Project

PREPARED BY: Wally Schlink

ITEM DESCRIPTION:

RPU staff has committed to the Board to submit a recommendation for sustainable energy options for the Westside Energy Station. The process included using the project engineering team of Sargent & Lundy and Boldt Construction to develop a comprehensive list of options and concepts to improve energy efficiency at the WES.

The options were divided into categories - façade improvements, daylighting, HVAC, electrical, plumbing and on-site generation. Each building is detailed separately for potential savings using the previously mentioned categories.

Sargent & Lundy then used Trace 700 modeling software to determine the payback period on the investment and make a yes or no recommendation based on that data.

The original requirements either included in the project contract or included in state building and energy codes are integrated into the base design and we will benefit from the considerable energy savings as part of the original contract with the Westside Energy Partners. Inclusion of those standard sustainable features does impact the outcome of the evaluation.

Staff will make a presentation on the results and the basis for their recommendation.

BUDGET: Fits within overall project budget.

UTILITY BOARD ACTION REQUESTED:

Approve sustainable energy options as recommended by staff for the sum of \$351,690 plus 15% engineering at \$52,753 plus 10% contingency for a total approved amount of \$444,887.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the sustainable energy options as recommended by staff for the

Westside Energy Project

and allow for change orders to be managed by internal authorization procedures.

The amount of the options \$351,690 plus 15% engineering at \$52,753 plus 10% contingency for the total to be approved to be FOUR HUNDRED FORTY FOUR THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND 00/100 DOLLARS (\$444,887.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of May, 2016.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 5646)

Meeting Date: 5/31/2016

SUBJECT: Westside Energy Station Project; General Arrangement Modifications

PREPARED BY: Wally Schlink

ITEM DESCRIPTION:

RPU staff communicated to the Board that the Westside Energy Station project scope was for a "box" style arrangement to allow for competitive bidding that would be adjusted during the preliminary design phase to the final configuration required to meet the utility's needs.

During this phase considerations related to safety, plant layout, security, administrative space to eventually replace Silver Lake, shops for electrical, mechanical and I&C staff to maintain Westside, Cascade Creek and IBM facilities, conference room that converts and supports our Continuity of Operations Plan, interconnection to the transmission grid and supply of utilities to the site were discussed and incorporated into the final plan.

Working closely with our engineers, Sargent and Lundy, we have arrived at a final general arrangement for the site that meets the current and future needs of the utility and supports the mission of our organization.

Cost breakdown is as follows:

- Civil - site grading, road, parking, surfaced area and underground civil work - \$350,086
- Structural / Architecture - foundations and buildings - \$637,795
- Mechanical - BOP equipment, piping, valves, HVAC, fire protection - \$112,975
- Electrical & Instrumentation - BOP equipment, cables, termination, grounding, heat tracing, security system - \$323,849
- 10% contingency - \$142,471
- Engineering costs are imbedded in the above estimates

Staff will make a presentation on the additional scope and the basis for their recommendation.

BUDGET: Fits within overall project budget.

UTILITY BOARD ACTION REQUESTED:

FOR BOARD ACTION

Agenda Item # **(ID # 5646)**

Meeting Date: 5/31/2016

Approve general arrangement modifications as recommended by staff for the sum of \$1,424,705 plus 10% contingency for a total approved amount of \$1,567,176.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve general arrangement modifications as recommended by staff for

Westside Energy Station Project cost breakdown:

- Civil - site grading, road, parking, surfaced area and underground civil work - \$350,086
- Structural / Architecture - foundations and buildings - \$637,795
- Mechanical - BOP equipment, piping, valves, HVAC, fire protection - \$112,975
- Electrical & Instrumentation - BOP equipment, cables, termination, grounding, heat tracing, security system - \$323,849
- 10% contingency - \$142,471
- Engineering costs are imbedded in the above estimates

The total amount of \$1,424,705 plus 10% contingency for a total approved amount of ONE MILLION FOUR HUNDRED TWENTY FOUR THOUSAND SEVEN HUNDRED AND FIVE AND 00/100 DOLLARS (\$1,567,176.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of May, 2016.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 5639)

Meeting Date: 5/31/2016

SUBJECT: Customer Care Solution

PREPARED BY: Patty Hanson

ITEM DESCRIPTION:

In May, staff presented to the Board “follow-ups” from February’s presentation along with new additional information regarding a new customer care solution. Following is a brief recap:

- 1) We reaffirmed that Cayenta is the best qualified provider for our new customer care system.
- 2) We highlighted the Cayenta contract agreements and Statement of Work (SOW)
 - a. *Support and Maintenance Agreement: \$142,845*
 - b. *Software Implementation Services Agreement: \$1,392,895*
 - c. *Software License Agreement: \$565,381*
 - d. *Statement of Work for Cayenta CIS & B System*
- 2) We highlighted the Vertex Data Utility Services’ *Consulting Services Agreement: \$197,233* for the SAP interfaces.
- 3) We shared the project costs for the customer care project which equal \$3,577,427.
- 4) We shared the project schedule for the 18 month project starting in July 2016 through November 2017.

UTILITY BOARD ACTION REQUESTED:

Staff recommends the Board to:

- 1) Approve the execution of the three Cayenta contract agreements and statement of work (SOW) for the purchase of the licensing, support & maintenance, implementation services, and to provide professional services outlined in the SOW.
- 2) Approve the execution of the Vertex Data Utility Services contract agreement and SOW for professional services outlined in the SOW to build the SAP interfaces.
- 3) Approve the authorized, not to exceed, amount of \$3,577,427 for this customer care project which includes a 10% contingency.

The Contract Agreements are subject to final approval by the City Attorney and General

FOR BOARD ACTION

Agenda Item # (ID # 5639)

Meeting Date: 5/31/2016

Manager.

SUPPORT AND MAINTENANCE AGREEMENT

THIS AGREEMENT made as of the 31st day of May, 2016. (the “Effective Date”).

BETWEEN:

N. HARRIS COMPUTER CORPORATION
 (“Harris”)

- and -

CITY OF ROCHESTER, A MINNESOTA MUNICIPAL CORPORATION, ACTING THROUGH ITS PUBLIC UTILITY BOARD
 (“Organization”)

RECITALS

1. Harris has licensed to Organization certain Software pursuant to a Software License Agreement;
2. The Organization wishes to receive support and maintenance services related to the Software;
3. Harris shall provide the support and maintenance services related to the Software;
4. The Organization and Harris are entering into three (3) separate agreements with each dealing with a separate aspect of the Software: a Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this support and maintenance agreement (the “Support and Maintenance Agreement”) and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

1. Unless otherwise defined herein, all defined terms used herein shall have the meaning ascribed to them in the Software License Agreement (the “License Agreement”).
2. This Support and Maintenance Agreement is the exclusive statement of the entire support and maintenance agreement between Harris and Organization.
3. Harris shall provide software support primarily via telephone and electronic mail in addition to site visits only when necessary. The support services will be provided only during the hours of operation as described in Exhibit 2 hereto and which are in effect as

of the Start Date (as defined below), as such services may, at Harris's sole discretion, be modified or supplemented from time to time. To enable Harris to provide effective support, the Organization will establish auto remote access procedures compatible with Harris's then current practices which may be revised over time.

4. This Support and Maintenance Agreement becomes effective the date the Software is installed (the "Start Date").
5. In consideration for the support services specified in Section 2, Organization shall pay the "Support and Maintenance Fee" as detailed in Exhibit 1 below. The Support and Maintenance Fee will be billed annually in advance beginning on the Start Date and thereafter on the anniversary of the Start Date or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Support and Maintenance Fee to its fiscal year or any other period it may request, during the initial term of this Support and Maintenance Agreement, that Harris issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Support and Maintenance Fee from time to time in relation to each renewal term but Organization shall only be billed once per year.
6. In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for its direct expenses in providing support services ("Billable Fees") pursuant to this Support and Maintenance Agreement which include as of the Start Date:
 - (1) its direct travel expenses which are excluded from the total fees amount described in Section 4.1 (a), including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees. Rates for lodging reimbursement will be determined by the most recent GSA rate, excluding tax as published (<http://www.gsa.gov/portal/category/100120>). The Organization will reimburse for standard coach airfare in addition to baggage fees. First-class airfare will not be reimbursed. Should Harris wish to travel in a higher class of service than RPU allows, reimbursement will be limited to the coach airfare. Travel arrangements should be made seven or more days in advance.;
 - (2) courier services, photocopying, faxing and reproduction, all reasonable travel costs (hotel and airfare) including a travel time rate of \$75.00 per hour;
 - (3) a per diem rate of \$55.00 for week days and a \$110.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided);
 - (4) and a mileage charge based on the current Internal Revenue Service recommended rate per mile, long distance telephone calls; and
 - (5) all other reasonable expenses incurred in the performance of Harris's duties including courier services and documentation copying or production.

Harris may update its reimbursement policies and rates related to the Billable Fees from

time to time, in which case such updated policies shall apply for purposes of this Support and Maintenance Agreement, provided that such updated reimbursement policies must generally apply to all clients of Harris.

7. Harris shall supply all Upgrades to Organization at no additional charge other than the payment of the Support and Maintenance Fee. Upgrades may require additional services to be performed by Harris outside of the scope of those services provided by Harris including additional training not covered by the Software Implementation Services Agreement and professional services for the installation and implementation of the Upgrade that will be subject to the Harris's then-prevailing policies, terms and Billable Fees related to pricing and hourly rates. All such services shall be performed subject to a newly negotiated Scope of Work that will be subject to the terms of the Software Implementation Services Agreement.
8. All Updates of the Software and all those services listed in Exhibit 2 which are included as part of Organization's Software support will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee.
9. All payments hereunder shall be in U.S. dollars and shall be net of any taxes, tariffs or other governmental charges. Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the sale, use or delivery of the support and maintenance services described in this Support and Maintenance Agreement shall be paid by Organization and such sums shall be due and payable to Harris upon receipt of an invoice therefore. Any taxes levied in relation to the services required for a Release shall be paid by Organization. For the sake of clarity, all of the fees listed in this Support and Maintenance Agreement are not inclusive of any applicable taxes: the Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes.
10. The initial term of this Support and Maintenance Agreement shall be for one year beginning on the Start Date or as the initial term has been modified pursuant to Section 5. Thereafter, this Support and Maintenance Agreement shall automatically renew on an annual basis, unless terminated by either party upon giving to the other not less than 90 days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Organization shall pay the then prevailing Support and Maintenance Fee in advance for each term of the Support and Maintenance Agreement and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Support and Maintenance Fee for the then applicable term. The termination of this Support and Maintenance Agreement by Organization shall not affect the License or the Software License Agreement. Harris shall neither refund any Support and Maintenance Fees nor any Billable Fees if this Support and Maintenance Agreement is terminated. Organization acknowledges that if this Support and Maintenance Agreement is terminated, then it will not be eligible to receive the benefits of this Support and Maintenance Agreement including the right to Releases or to access the source code in escrow upon the occurrence of any Event of Default.

11. Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.
12. Harris shall have the right to terminate this Support and Maintenance Agreement immediately if:
 - (a) Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with the License Agreement; or
 - (b) Organization has not paid an invoice within ninety (90) days of the start of a renewal term.
13. Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the License Agreement.
14. Either party's lack of enforcement of any provision in this Support and Maintenance Agreement in the event of a breach by the other shall not be construed to be a waiver of any such provision and the non-breaching party may elect to enforce any such provision in the event of any repeated or continuing breach by the other.
15. The parties agree that the terms and conditions contained herein shall prevail notwithstanding any variations on any orders, e-mails or other correspondence submitted by Organization.
16. The particular provisions of this Support and Maintenance Agreement shall be deemed confidential in nature and neither Organization nor Harris shall divulge any of its provisions as set forth herein to any third party except as may be required by law.
17.
 - (a) Termination of this Support and Maintenance Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
 - (b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Support and Maintenance Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Support and Maintenance Agreement.
 - (c) FOR BREACH OR DEFAULT BY HARRIS OR OTHERWISE IN CONNECTION WITH THIS SUPPORT AND MAINTENANCE AGREEMENT, INCLUDING A BREACH OR DEFAULT ENTITLING THE ORGANIZATION TO RESCIND OR BE DISCHARGED FROM THE

PROVISIONS OF THIS SUPPORT AND MAINTENANCE AGREEMENT, THE ORGANIZATION'S EXCLUSIVE REMEDY, IN ADDITION TO ELECTING IF SO ENTITLED TO RESCIND OR BE DISCHARGED FROM THE PROVISIONS OF THIS SUPPORT AND MAINTENANCE AGREEMENT, SHALL BE PAYMENT BY HARRIS OF THE ORGANIZATION'S DIRECT DAMAGES TO A MAXIMUM AMOUNT EQUAL TO, AND HARRIS SHALL IN NO EVENT BE LIABLE IN EXCESS OF, TWICE THE AMOUNT OF FEES ACTUALLY PAID BY THE ORGANIZATION TO HARRIS UNDER THIS SUPPORT AND MAINTENANCE AGREEMENT DURING THE THEN-CURRENT TERM (NOT TO EXCEED 12 MONTHS) OF THE SUPPORT AND MAINTENANCE AGREEMENT UP TO AND INCLUDING THE DATE OF TERMINATION.

- (d) IN NO EVENT SHALL ANY DAMAGES INCLUDE, NOR SHALL HARRIS BE LIABLE FOR, ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES EVEN IF HARRIS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, HARRIS SHALL NOT BE LIABLE FOR LOST PROFITS, LOST BUSINESS REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, OR FOR ANY CLAIM WHATSOEVER AGAINST THE ORGANIZATION BY ANY OTHER PARTY.
- (e) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY THE ORGANIZATION IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.
18. The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Support and Maintenance Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.
19. Where remedies are expressly afforded by this Support and Maintenance Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of the Harris arising out of or in connection with this Support and Maintenance Agreement, notwithstanding any remedy otherwise available at law or in equity.
20. The Organization may, at Organization's option, enter into an escrow arrangement with Harris. Upon the Organization's request:
- (i) Organization shall be presented with the standard escrow beneficiary

enrolment document for participation in Harris's source code escrow arrangement with an escrow agent (the "**Escrow Arrangement**").

- (ii) By entering into this Escrow Arrangement, the Organization shall have all the rights as stipulated in the escrow agreement together with those rights which are more specifically outlined in Schedule "A", Escrow Terms, which shall form part of this Support and Maintenance Agreement in accordance with the terms of Schedule "A".
 - (iii) No escrow in Third Party Software is provided.
21. This Support and Maintenance Agreement shall be governed by the laws of the State of Minnesota.
 22. This Support and Maintenance Agreement may not be assigned by the Organization unless, concurrently with any such assignment, the Organization assigns its rights under, and complies with the provisions of the License Agreement.
 23. This Support and Maintenance Agreement shall be binding upon the successors and assigns of the parties and enure to the benefit of the successors and permitted assigns of the parties.
 24. The invalidity or unenforceability of any provision or covenant contained in this Support and Maintenance Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be modified to the extent necessary in order to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.
 25. This Support and Maintenance Agreement may be executed in counterparts (whether by facsimile signature or in PDF format via e-mail or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

N. HARRIS COMPUTER CORPORATION

Name: Jeff Bender
Title: CEO

CITY OF ROCHESTER

By: _____
Ardell Brede, Mayor

Attest: _____
Aaron Reeves, City Clerk

Approved
as to Form: _____

Terry Adkins, City Attorney

ROCHESTER PUBLIC UTILITIES

By: _____
Mark Kotschevar, General Manager

Attachment: Harris SUPPORT Agreement for RPU v.Board (5639 : Customer Care Solution)

Schedule “A”

Escrow Terms

Where the Organization has agreed to be a beneficiary of the Escrow Agreement (as defined below) by entering into the Escrow Arrangement, the following sections shall apply to the Support and Maintenance Agreement upon the execution of the Escrow Arrangement.

- (a) Harris and Lincoln-Parry (the “**Escrow Agent**”) have entered into an escrow agreement (the “**Escrow Agreement**”). The Source Code is provided by Harris to the Escrow Agent pursuant to the terms of this Agreement. The Organization has a right to the Source Code pursuant to the provisions of this Schedule and the Escrow Agreement as it has agreed to participate in the Escrow Arrangement and is a beneficiary because the Organization has completed the Escrow Arrangement document. Harris agrees that if an “Event of Default” occurs, then the Organization shall have the right to one copy of the most current version of the Source Code for the affected Software and associated Documentation.
- (b) An **Event of Default** is defined as and shall be deemed to have occurred if Harris: (1) ceases to market or make available maintenance or support services for the Software during a period in which the Organization is entitled to receive or to purchase, or is receiving or purchasing, such maintenance and support and Harris has not promptly cured such failure despite the Organization’s demand that Harris make available or perform such maintenance and support, (2) becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings, and it continues to be subject to bankruptcy proceedings ninety (90) days following either its application into bankruptcy protection or the commencement of such proceedings, or (3) has transferred all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the obligations of Harris set forth in this Agreement.
- (c) Harris will promptly and continuously update and supplement the Source Code as necessary with all corrections, improvements, updates, releases, or other changes developed for the Software and Documentation. Such Source Code shall be in a form suitable for reproduction and use and shall consist of a full source language statement of the program or programs comprising the Software.
- (d) The governing License for the Software includes the right to use Source Code received under this Schedule as necessary to modify, maintain, and update the Software but for no other purposes outside the normal business operations of the Organization.
- (e) The termination of the Support and Maintenance Agreement shall immediately end the Organization’s rights as a beneficiary under the Escrow Agreement and Escrow Arrangement, as applicable.
- (f) This Schedule “A” shall form part of the Support and Maintenance Agreement

only where an Escrow Arrangement is entered into by the parties. The Escrow Agreement provides that either the Escrow Agent or Harris will annually send notices to the Organization of the Escrow Agent's continued possession of the Source Code and will also state the activity related to the Source Code provided to the Escrow Agent by Harris for the previous year. The Escrow Agreement cannot be terminated without the consent of each beneficiary (licensee) of the Escrow Agreement.

Exhibit 1
Annual Support and Maintenance Fee

Cayenta Solution	Annual Maintenance
Cayenta Licenses	
CIS & B	\$91,291
MWM (Mobile Work Management)	\$12,500
Customer Self-Service (web portal)	\$6,250
GIS Connector (ESRI)	\$5,000
Caystone Project and Test Management Tool	\$0
Total Cayenta Products	\$115,041
3rd Party Products	
Uniface (system software) - unlimited users	\$13,805
IBM Cognos Reporting/BI - unlimited viewers, plus two report writer licenses	\$8,750
Planet Press (bill print and formatting) - unlimited bills	\$3,750
Total 3rd Party Products	\$26,305
Subtotal	\$141,345
Escrow fees (Iron Mountain)	\$1,500
Total annual costs	\$142,845

Payment Schedule

3rd Party Products – Due 30 days after contract signing.....	\$25,850
Cayenta products – Due April 1, 2017.....	\$111,250
Annual Software Escrow Fees – starting April 1, 2017.....	\$1,500

Attachment: Harris SUPPORT Agreement for RPU v.Board (5639 : Customer Care Solution)

Exhibit 2

Standard Support and Maintenance Services – Standard Guidelines

The purpose of this Exhibit 2 is to provide our customers with information on our standard coverage, the services which are included as part of your annual software support, a listing of call priorities, an outline of our escalation procedures and other important details.

Consultant reserves the right to make modifications to this document as required; provided, however, Consultant shall not reduce the scope of support provided hereunder without the prior written consent of the Organization.

The services listed below are services that are included as part of your software support.

- 800 Toll Free Telephone support
- Scheduled assistance for installations, upgrades & other special projects (there may be charges depending on the scope of work)
- Technical troubleshooting & issue resolution
- E-mail support call logging and notification
- Free eSupport access 24 x 7 with the following on-line benefits:
 - Log & close calls
 - View & update calls
 - Update contact information
 - Access published documentation
 - Access available downloads
 - Access Support knowledge base
 - Participate in Discussion Forums
 - Report on metrics
- Standard software releases and updates
 - Defect corrections (as warranted)
 - Planned enhancements
 - State and/or Federal mandated changes (charges may exist depending on scope)
 - Payroll regulated changes
 - Participation in BETA program, optional at CPU's discretion
 - Release notes
- Limited training questions (15 minute guideline)
 - Customer Care Program
 - Quarterly News Letter with support tips
 - Technical support bulletins
 - Communication on new products and services
 - On-site visits (as required)
- Design review for potential enhancements or custom modifications
- Outstanding Calls Report with conference call (as required)
- Ability to attend the annual customer conference (attendance fees apply)

Helpdesk Hours

Our standard hours of support are from 6:00 a.m. PST to 6:00 p.m. PST, Monday to Friday, excluding designated statutory holidays. Support is available from 6:00 p.m. PST through to 6:00 a.m. PST and is billable on an hourly basis. Weekend assistance is available and must be scheduled in advance and in most cases is billable.

Response Times

Response times will vary and are dependent on the priority of the call. We do our best to ensure that we deal with incoming calls in the order that they are received, however calls will be escalated based on the urgency of the issue reported. Our response time guidelines are as follows:

Priority 1: 1 - 4 hours

Priority 2: 1 - 8 hours

Priority 3: 1 - 24 hours

Call Priorities

In an effort to assign our resources to incoming calls as effectively as possible, we have identified three types of call priorities, 1, 2 & 3. A Priority 1 call is deemed by our support staff to be an Urgent or High Priority call, Priority 2 is classified as a Medium Priority and Priority 3 is deemed to be a Low Priority. The criteria used to establish guidelines for these calls are as follows:

Priority 1 – High

- System Down (Software Application, Hardware, Operating System, Database)
- Inability to process payroll checks
- Inability to process accounts payable checks
- Inability to process bills
- Program errors without workarounds
- Incorrect calculation errors impacting a majority of records
- Aborted postings or error messages preventing data integration and update
- Performance issues of severe nature impacting critical processes
- Hand-held interface issues preventing billing
- Security issues

Priority 2 - Medium

- System errors that have workarounds
- Calculation errors impacting a minority of records
- Reports calculation issues
- Printer related issues (related to interfaces with our software and not the printer itself)

- Hand-held issues not preventing billing
- Performance issues not impacting critical processes
- Usability issues
- Workstation connectivity issues (Workstation specific)

Priority 3 - Low

- Report formatting issues
- Training questions, how to, or implementing new processes
- Aesthetic issues
- Issues with workarounds for large majority of accounts
- Recommendations for enhancements on system changes
- Questions on documentation

Call Process

All issues or questions reported to support are tracked via a support call; our support analysts cannot provide assistance unless a support call is logged. Our current process for logging calls includes the following: eSupport (via website), email, and phone.

- Your call must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of your question or issue and any other information you believe pertinent.
- Our support system or one of our support analysts will provide you with a call id to track your issue and your call will be logged into our support tracking database.
- Your call will be stored in a queue and the first available support representative will be assigned to deal with your issue.
- As the support representative assigned to your call investigates your issue, you will be contacted and advised as to where the issue stands and the course of action that will be taken for resolution. If we require additional information, you will be contacted by the assigned support representative to supply the information required.
- All correspondence and actions associated with your call will be tracked against your all in our support database. At any time, if available to you, you may log onto our website to see the status of your call.
- Once your call has been resolved, you will receive an automated notification by email that your call has been closed. This email will contain the entire event history of the call from the time the call was created and leading up to the resolution of the call. You also have the option of viewing both your open and closed calls, if available to you, via our website.
- If your issue needs to be escalated to a development resource or programmer for resolution, your issue will be logged into our development tracking database and you will be provided with a separate id number to track the progress of the issue. At this time, your support call will be closed and replaced by the development id number. The development id number will remain open until your issue has been completely resolved. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue.
- Contact the support department at your convenience for a status update on your development issues, or log onto our website (if available to you) to view your issues on-line.

Escalation Process

Our escalation process is defined below. This process has been put in place to ensure that issues are being dealt with appropriately. If at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate with the support department as follows:

- Level 1:** Contact the support representative working on your issue
- Level 2:** Contact the support supervisor or group lead
- Level 3:** Contact the director of support
- Level 4:** Contact the vice president of support

Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below.

New Year’s Eve	Early Closure
New Year's Day	Closed
Labor Day	Closed
Christmas Eve	Early Closure
Christmas Day	Closed

Attachment: Harris SUPPORT Agreement for RPU v.Board (5639 : Customer Care Solution)

Billable Support Services

The services listed below are services that are out of scope of your support and maintenance agreement and are therefore considered billable services.

- Extended telephone training (beyond 15 minutes)
- Forms redesign or creation (includes Bill Prints, Notice Prints and Letters)
- Setup & changes to hand-held interface or creation of new interface
- Setup of new services or changes to services (PAP, ACH, etc)
- File imports/exports - Interfaces to other applications
- Refreshes, backups, restores, setting up test areas
- Setup of new printers, printer setup changes
- Custom modifications (reports, bills, forms, reversal of customizations)
- Setting up additional companies / agencies / tokens / general ledgers
- Data conversions / global modification to setup table data
- Database maintenance, repairs & optimization
- Extended Hardware & Operating System support
- Upgrades & support of third party software
- Installations / re-installations (workstations, servers)

Test Databases & Environments

We support customers in the maintenance of independent Test Environments for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to the live environment. The creation of Test Databases & Environments is a billable service, quotations & incremental maintenance rates will be provided on request.

Connection Methods

To ensure we can effectively support our clients, we require that a communication link is established and maintained between our two sites. It is the client's responsibility to ensure the connection is valid at your location so that we can connect to your site and resolve any issues. Our supported methods of connection are: Direct internet, Virtual Private Network (VPN), Remote Access Server (RAS), Direct Connection (modem) and Terminal Services (a backup connection may be required for file transfers).

Hardware and Third Party Support – if applicable

The purpose of this section is to provide our customers with information on our standard coverage and the services which are included as part of your annual hardware and third party software support (if applicable). This section serves as a guideline for the support department but is superseded by an existing third party or other agreement.

Standard Hardware and Third Party Software Support Services

- 800 telephone support – first line phone support for troubleshooting (note more complex issues will be escalated to the actual vendor of the products)
- “on call” after hours support (scheduled assistance for installations, upgrades and other special projects – there may be charges depending on the scope of work)
- remote connection support
- technical troubleshooting
- limited training questions (15 minute guideline)
- assistance with creation of backup scripts / backup recovery
- assistance with recovering data resulting from system crashes (charges may apply)
- recommendations on specific hardware requirements
- support provided for installed database issues (30 minute guideline)
- ODBC installation and connection to database assistance
- updating databases to support new versions of installed applications
- assistance with database installation, configuration and updating

The services listed below are services that are out of scope and are therefore considered billable – please note that we do not provide hardware support for any printers:

- on-site installation or upgrade of hardware and third party software
- extended telephone training (beyond 15 minutes)
- reconfiguration of hardware and file servers
- recovering data resulting from client error
- upgrading of hardware systems
- preventative maintenance monitoring or other services
- recommending or assisting with disaster recovery plans
- re-establishment of ODBC connection if connection was lost due to actions of customer
- ODBC connections to other third party products
- creation of custom reports
- report writer training, upgrades and installations (other than at time of initial purchase)

SOFTWARE IMPLEMENTATION SERVICES AGREEMENT

THIS AGREEMENT made as of the 31st day of May, 2016. (the “Effective Date”).

BETWEEN:

N. HARRIS COMPUTER CORPORATION
 (“Harris”)

- and -

CITY OF ROCHESTER, A MINNESOTA MUNICIPAL CORPORATION, ACTING THROUGH ITS PUBLIC UTILITY BOARD
 (“Organization”)

RECITALS

1. The Organization wishes to retain Harris to perform the Services (as defined herein).
2. The Organization and Harris agree to enter into three (3) separate agreements each dealing with a separate aspect of the software: a Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I INTERPRETATION

1.1 Definitions

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) **“Agreement”** and similar expressions mean this Software Implementation Services Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All references to **“Articles”** or **“Sections”** mean and refer to the specified Article or Section of this Agreement except where a different agreement is explicitly identified.

- (b) **“Change Order”** means any written documentation between the Organization and Harris evidencing their agreement to change particular aspects of this Agreement.
- (c) **“Completion of Services”** means that the Software is fully operational and performing in conformity with the specifications set out herein. For purposes of this Agreement, Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as its predominate business system.
- (d) **“Required Programs”** has the meaning set out in Section 2.3(b) hereof.
- (e) **“Scope of Work”** means the scope of work appended hereto as Schedule “A” delineating, among other things, the Services that will be provided by Harris to Organization pursuant to this Agreement, as such schedule may be amended or modified by mutual specific written agreement of the parties’ respective representatives from time to time in accordance with the terms of this Agreement. Each SOW shall include a detailed description of the services required, a schedule of Deliverables, a project timeframe, compensation expectation and shall be subject to the terms and conditions of this Agreement. Harris will be authorized to begin the SOW upon issuance of a purchase order, executed SOW, or written notice from Organization to proceed.
- (f) **“Services”** has the meaning set out in Section 2.1 hereof.

To the extent that a capitalized word is used in this Agreement, should it not be properly defined in this Agreement then it shall have the meaning attributed to it in the Software License Agreement executed concurrently with this Agreement. Any discrepancy between a defined term in this Agreement and one in the Software License Agreement shall be resolved in favour of the definition in this Agreement, to the extent that there is an inconsistency.

1.2 **Schedules**

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

Schedule “A” -	Scope of Work
Schedule “B” -	Fee Structure & Payment Schedule
Schedule “C” -	Sample Form Change Order

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this Agreement shall control.

ARTICLE II CONSULTING SERVICES

2.1 Harris's Services

In order to achieve the Completion of Services, Harris agrees, subject to the terms and conditions of this Agreement, to perform the following services (the "Services") for the Organization in accordance with the relevant Scope of Work:

- (a) Oversee and implement the conversion from the Organization's existing software applications to Harris's Software.
- (b) Install the Software and perform necessary set up and configuration operations.
- (c) Provide training.
 - (i) Harris recommends a maximum of ten (10) people in each training class for optimal training. In any training class exceeding ten (10) people, Organization may be assessed an additional charge for additional instructors.
 - (ii) Organization is required to make copies of the training manuals required for the training classes either by photocopy or electronic duplication each of which is subject to the restrictions and obligations contained in this Agreement.
 - (iii) On-line reference documentation is delivered with each release. Organization may print this documentation solely for its internal use.
 - (iv) Cancellation of any on-site Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. Organization will be billed for any non-recoverable direct costs incurred by Harris that result from a cancellation by Organization with fourteen (14) days or less of scheduled on-site Services. Additionally, Organization hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as Harris's then current schedule permits. Harris is not responsible for any delay in Organization's project resulting from Organization's cancellation of Services. If upon Harris arrival, the Organization is not adequately prepared or has not completed the assigned tasks for such visit by Harris, then the Organization will be billed 100% of the on-site fee and scheduled on-site Services can be cancelled by Harris. If additional Services are required because the Organization was not adequately prepared, Harris will provide a Change Order to the Organization for the additional Services.
- (d) The Statement of Work describes in greater detail the Services, the method by which the Services shall be performed and other obligations on the part of the two

parties. To the extent that the Statement of Work more explicitly details the Services or the obligations of a party, then those details shall prevail over any other document that is less explicit. Any warranties or representations on the part of Harris in the Statement of Work are not binding on Harris and are merely provided for information purposes; the only warranties and representations provided by Harris in respect of the Services and this Agreement are found in [Article III Article III](#).

2.2

Performance by Harris

- (a) **Manner of Performance** -- Harris shall perform the Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof.
- (b) **Harris's Discretion** -- Harris shall determine in its sole discretion the manner and means by which the Services shall be performed, with due consideration of adequate knowledge transfer to the Organization personnel. Harris will communicate openly with the Organization on its methodology, manner and means.
- (c) **Conduct on Organization's Premises** -- The Services shall be performed with the Organization's full co-operation, on the premises of the Organization or, if agreed to by both parties, at an alternative location. Harris agrees, while working on the Organization's premises, to observe the Organization's rules and policies relating to the security thereof, safety, access to or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information. Harris agrees that when it is working on the Organization's premises, its personnel shall observe the Organization's administrative and ethics codes relating to the security, access or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.
- (d) **Inquiries by Organization** -- Harris shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.
- (e) **Independence** -- As an independent consultant, Organization retains Harris on an independent contractor basis and not as an employee.
- (f) **Coordination of Services** -- Harris agrees to work closely with Organization staff in the performance of Services and shall be available to Organization's staff, consultants, and other staff at all reasonable times.
- (g) **Maintenance and Inspection** -- Harris shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Harris shall allow a representative of Organization, during normal business hours, to examine, audit, and make transcripts or copies of such records and any other documents created, pursuant to

the Agreement. Harris shall allow inspection of all work, data, documents, proceedings, and activities related to the agreement for a period of two (2) years from the date of final payment under this Agreement unless Harris is required to maintain such records pursuant to any law or regulation.

2.3

Performance by Organization

- (a) **Co-operation by Organization** -- The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and agrees to act reasonably and co-operate fully with Harris to achieve the Completion of Services.
- (b) **Required Programs** -- The Organization acknowledges that the use of the Software requires that the Organization obtain and install additional required software programs (the “Required Programs”), as detailed in Schedule “A” of the Software License Agreement, and the Organization agrees that the acquisition of the Required Programs shall be at its sole cost and that the cost thereof is not included in the fees herein. The Organization further acknowledges that the operation of the Software requires the Organization’s hardware to be of sufficient quality, condition and repair, and the Organization agrees to maintain its hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of Completion of Services. If the Organization has not properly installed the Required Programs on hardware of sufficient quality, condition and repair, Harris shall have the right to suspend the Services and the related scheduled time frames until these issues have been dealt with by Organization sufficiently and to Harris’s reasonable satisfaction.
- (c) **Project Manager** -- The Organization shall appoint a project manager (the “Project Manager”) who shall work closely with Harris to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the Organization and their co-operation with and participation in such process.
- (d) **Additional Organization Obligations**
 - (i) Organization shall install all Updates within a reasonable period of time of Organization’s notification of their availability. However, any fix or correction designated as “critical” by Harris shall be implemented by Organization within thirty (30) days of notification to the Organization by Harris of its availability.
 - (ii) Organization shall notify Harris of suspected defects in any of the Software supplied by Harris. Organization shall provide, upon Harris request, additional data deemed necessary or desirable by Harris to reproduce the environment in which such defect occurred.

- (iii) Organization shall allow the use of online diagnostics on the Software supplied by Harris to Organization, if required by Harris during problem diagnosis. Organization shall provide to Harris, at Organization's expense, access to the Designated Computer System via the Organization's firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).
- (iv) Organization shall ensure that its personnel are, at relevant stages of the project, educated and trained in the proper use of the Software in accordance with applicable Harris manuals and instructions. If Organization's personnel are not properly trained as mutually determined by Harris and Organization, Organization agrees that such personnel will be trained by Harris or Organization within fifteen (15) days of determination. If Organization desires Harris to perform the required training then Harris shall be compensated in accordance with this Agreement.
- (v) Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause and despite anything in this Agreement or the Statement of Work to the contrary, Harris is absolved from any requirements regarding the backup of any data. Organization shall provide Harris with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
- (vi) Organization shall not permit any third party to provide any services during the term of this Agreement where that third party shall have direct access to or provide services in relation to the Software or any Third Party Software without Harris's prior written consent.
- (vii) Organization shall have the sole responsibility for:
 - (A) the performance of any tests it deems necessary prior to the use of the Software.
 - (B) assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods.
 - (C) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.
 - (D) timely upgrade and keeping current all third party license releases and/or Software products to meet the requirements of the Software.

ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1 Warranty

Harris warrants that the Services will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

Harris shall have no liability hereunder if the Organization has modified the Software in any manner without the prior written consent of Harris.

3.2 No Other Warranties

The express warranties contained above are in lieu of all other representations, warranties and conditions, express or implied, whether arising by statute or otherwise in law or from a course of dealing, or usage of trade. Without limiting the generality of the foregoing, Harris does not represent or warrant and the Organization acknowledges that there are no further representations or warranties, whether express or implied, including any warranties regarding the merchantability of the Services nor for any outcome.

ARTICLE IV FEES AND PAYMENTS

4.1 Fees and Payments

- (a) The Organization agrees to pay Harris total fees as delineated in Schedule "B". The fee structure and payment schedule is outlined in the attached Schedule "B".
- (b) The Organization shall reimburse the Consultant for all reasonable travel costs including a travel time rate of \$75.00 per hour, meal expenses of not more than \$55.00 (\$110 for weekends/holidays) per diem (no receipts provided) and a mileage charge based on the current Internal Revenue Service recommended rate per mile. Rates for lodging reimbursement will be determined by the most recent GSA rate, excluding tax as published (<http://www.gsa.gov/portal/category/100120>). The Organization will reimburse for standard coach airfare in addition to baggage fees. First-class airfare will not be reimbursed. Should Harris wish to travel in a higher class of service than RPU allows, reimbursement will be limited to the coach airfare. Travel arrangements should be made seven or more days in advance. Travel time is capped at 8 hours door-to-door for Consultant staff traveling to Organization facility for purposes of work upon project. Travel costs are estimated in Schedule "B".

- (c) During the term of this Agreement, Harris shall, from time to time, deliver invoices to Organization. Each invoice delivered to Organization by Harris shall be due and payable upon receipt thereof by Organization.
- (d) In the event Organization fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies Harris has under this Agreement or otherwise, Harris shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services shall not relieve the Organization of its obligation to pay its outstanding invoices, including any applicable late charges.
- (e) Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any local or state tax Harris may be required to collect or pay upon the delivery of the Services described in this Agreement shall be paid by Organization and are excluded from the prices listed in Schedule “B” and such sums (including the payment of the taxes) shall be due and payable to Harris upon receipt of an invoice therefore. Any taxes levied after delivery of the Services described in this Agreement shall be paid by Organization. For the sake of clarity, all of the fees listed in this Agreement are not inclusive of any applicable taxes: the Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. Organization warrants that there are no additional county/city/municipal style taxes that apply to any of the Services, Support Services or Licenses or that are in relation to income taxes payable by Harris’s employees.

4.2 Change Orders

With respect to any proposed changes to the Services defined by this Agreement that do not materially impact the scope of either party's work effort required under this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change that, in the reasonable opinion of the other party, materially impacts the scope of the parties' work effort required under this Agreement, such as, but not limited to, changes in the allocation of the resources of the Organization and of Harris applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require a party to provide additional work hours, the other party may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing, the Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. A sample change order is presented in Schedule “C”

**ARTICLE V
REMEDIES AND LIABILITY**

5.1 Remedies and Liability

- (a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
- (i) EXCEPT FOR DAMAGES ARISING OUT OF (a) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (b) HARRIS'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (c) INJURY OR DEATH TO PERSONS OR (d) DAMAGE TO TANGIBLE OR REAL PROPERTY, BOTH PARTIES AGREE THAT HARRIS'S ENTIRE LIABILITY (UNDER CONTRACT OR IN TORT INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO THIS AGREEMENT SHALL NOT EXCEED TWICE THE AMOUNT OF FEES PAID TO HARRIS BY THE ORGANIZATION UNDER THE RELEVANT SCOPE OF WORK IN THIS AGREEMENT.
- (ii) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES, LOST REVENUE, LOSS OF DATA OR LOSS OF PROFITS, EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- (iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

5.2 Intent

The parties agree that the limitation of liability as set out in Section 5.1 above shall apply under any circumstances (including as a result of a default under this Agreement, a tort related claim or breach of contract). For the purposes of Section 5.1 only, a party relying on the limitation of liability shall be deemed to include that party's shareholders, directors, officers, employees, elected officials and affiliates.

5.3 Remedies

Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of Harris arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

5.4 Insurance

Harris shall obtain, as a minimum; the following described types and limits of insurance coverage. All policies called for herein shall become effective before Harris undertakes any work under this Agreement and shall remain in full force and effect for a minimum of 1 year after closing of this Agreement. Further, Harris shall furnish Organization with an insurance certificate or certificates at the time the Agreement is consummated between the parties, evidencing such insurance coverage prior to work commencing on said project. Each of said certificates shall provide the following:

- A. A 30-day notice of cancellation of the Commercial General Liability Policy.
- B. Workers' Compensation. Harris shall obtain and maintain workers' compensation insurance policy with limits meeting the statutory requirements for Minnesota.
- C. Commercial General Liability Insurance. Harris shall obtain and maintain a commercial liability insurance policy with limits of \$1,000,000 each occurrence/\$2,000,000 aggregate for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of the contractor, its officers, employees or agents during the term of the contract. Products and completed operations coverage is to be included within the required limits.
- D. Excess Umbrella Liability. Harris shall obtain and maintain an umbrella policy with limits of at least \$1,000,000 to cover the excess above the underlying CGL and Auto liability policies requested in this insurance section.
- E. Auto Insurance. Harris shall obtain and maintain commercial auto insurance policy with limits of at least \$1,000,000 each occurrence for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of the Consultant, its officers, employees or agents, including

hired and non-owned vehicles, during the contract. If such insurance contains a general aggregate limit, the general aggregate limit shall be \$2,000,000.

F. Professional Liability Insurance. Harris shall obtain and maintain a professional liability insurance policy with limits of at least \$1,000,000 each claim/\$2,000,000 aggregate to cover claims for injury, repairs or damages arising out of professional errors or omissions.

G. Harris’ CGL and Auto liability insurance policies shall name the City of Rochester as an additional insured for claims from work conducted pursuant to this agreement, and shall be primary to any liability insurance maintained by the City. Certificate holder shall be listed as:

City of Rochester
Acting Through Its Public Utility Board
4000 East River Road NE
Rochester MN 55906

**ARTICLE VI
GENERAL**

6.1 Force Majeure

Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of such party including, but not limited to, acts of God, acts of war or of the public enemy, riots, fire, flood, or other natural disaster, acts of government, strike, walkout, communication line or power failure, failure in operability or destruction of the Organization’s computer (unless by reason of the negligence of a party to this Agreement) or failure or inoperability of any software other than the Software. Any applicable delivery schedule shall be extended by a period of time equal to the time lost because of any such delay.

6.2 Confidentiality

(a) Duty Owed to the Organization -- Harris acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement or the performance of the Services. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, Harris agrees:

- (i) to maintain this information in confidence;
- (ii) not to use this information other than in the course of this Agreement;
- (iii) not to disclose or release such information except on a need-to-know only basis;

Attachment: Harris SERVICES Agreement for RPU v.Board (5639 : Customer Care Solution)

- (iv) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of Harris; and
- (v) to take all appropriate action, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Harris, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.
- (vi) Organization exclusively owns all Customer Data and Harris agrees to return, or at the election of Organization, destroy (and confirm in writing the destruction) all Customer Data upon the termination or expiration of this Agreement, or earlier if requested to do so in writing by Organization.

6.3

Termination

- (a) Except for those terms that explicitly survive the expiration or termination of this Agreement, this Agreement shall expire upon the Completion of Services. The parties may at any time revive this Agreement so that it may be used in relation to a new Statement of Work.
- (b) If Harris should neglect to perform the Services properly or otherwise fail to comply with the requirements of this Agreement, the Organization must notify Harris in writing of such default (a “Default Notice”). Upon receipt of a Default Notice, Harris must either correct the default at no additional cost to the Organization, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If Harris fails to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, the Organization may terminate the whole of this Agreement or the part of this Agreement relating to the provision of Services and in such case will be responsible for payment to Harris of only that part of the fee earned by Harris for those Services performed up to the time of communication of such notice of termination to Harris.
- (c) If the Organization should fail to comply with its obligations under this Agreement, Harris must notify the Organization in writing of such default (a “Default Notice”). Upon receipt of a Default Notice, the Organization must correct the default at no additional cost to Harris, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the Organization fails to

correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, Harris may terminate the whole of this Agreement and in such case the Organization will be responsible for payment to Harris of only that part of the fee earned by Harris for that part of the Services performed in accordance with this Agreement up to the time of communication of such notice of termination to the Organization.

- (d) The termination of this Agreement prior to the Completion of Services shall result in the concurrent termination of the Support and Maintenance Agreement and of the Software License Agreement. The termination or expiration of this Agreement following the Completion of Services shall not affect the rights of either party in either the Support and Maintenance Agreement or the Software License Agreement.

6.4 Mediation

The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties.

6.5 Addresses for Notice

Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered personally, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after 5:00 p.m. local time on the date of delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed, in the case of Harris, to:

N. HARRIS COMPUTER CORPORATION
 1 Antares Drive, Suite 400
 Ottawa, Ontario K2E 8C4
 Attention: CEO

Telephone: 613-226-5511, extension 2149

and in the case of the Organization, to:

ROCHESTER PUBLIC UTILITIES
4000 E River Rd NE
Rochester, MN 55906
Attn: CIO

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.5.

6.6 Assignment

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.

6.7 Reorganizations

The Organization acknowledges that where a “Reorganization” occurs as that term is defined in the Software License Agreement, the same provisions related thereto shall apply to this Agreement. The application of a Reorganization may result in a change in the fees provided for in these provisions.

6.8 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. No other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Harris by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Organization acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein. The terms of this Agreement may not be changed except by an amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by Harris, with such provisions being deemed deleted.

6.9 Section Headings

Section and other headings in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

6.10 Governing Law

This Agreement shall be governed by the laws of the State of Minnesota.

6.11 Trial by Jury

Organization and Harris hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of Harris in connection therewith or contemplated thereby.

6.12 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be modified to the extent necessary in order to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

6.13 Waiver

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the Agreement or by law despite such forbearance or notice.

6.14 Counterparts

This Agreement may be executed in counterparts (whether by facsimile or PDF signature or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

6.15 Survival

Section 4.1 and Articles V and VI shall survive the termination and/or expiration of this Agreement.

6.16 Further Assurances

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall

provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

N. HARRIS COMPUTER CORPORATION

Name: Jeff Bender
Title: CEO

CITY OF ROCHESTER

By: _____
Ardell Brede, Mayor

Attest: _____
Aaron Reeves, City Clerk

Approved
as to Form: _____

Terry Adkins, City Attorney

ROCHESTER PUBLIC UTILITIES

By: _____
Mark Kotschevar, General Manager

Attachment: Harris SERVICES Agreement for RPU v.Board (5639 : Customer Care Solution)

Schedule "A"
Statement of Work

**Schedule “B”
Fee Structure and Payment Schedule**

Cayenta Implementation Services	
Project Management	\$271,383
0.0 Project Initiation & Preparation	\$13,896
1.0 Discovery/Analysis & Configuration	\$51,048
2.0 Custom Development	\$315,950
3.0 Data Conversion	\$113,400
4.0 Test Planning & Execution	\$431,280
5.0 Training Planning & Delivery	\$51,336
6.0 Deployment – Go-live	\$36,000
7.0 Post Implementation Support	\$108,602
Total Implementation Fees	\$1,392,895

The total fees payable under this Software Implementation Services Agreement are **\$1,392,895**.

The above fees shall be paid in the manner as delineated in the Statement of Work. The payment schedule will be based on milestone deliverables and will include a holdback payment for final acceptance.

Estimated Travel Costs	\$175,000
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The Organization shall reimburse Harris for its direct expenses, including, but not limited to, all reasonable travel costs including a travel time rate of \$75.00 per hour, meal expenses of not more than \$55.00 (\$110 on weekends/holidays) per diem (no receipts provided) and a mileage charge based on the current Internal Revenue Service recommended rate per mile. Rates for lodging reimbursement will be determined by the most recent GSA rate, excluding tax as published (<http://www.gsa.gov/portal/category/100120>). The Organization will reimburse for standard coach airfare in addition to baggage fees. First-class airfare will not be reimbursed. Should Harris wish to travel in a higher class of service than RPU allows, reimbursement will be limited to the coach airfare. Travel arrangements should be made seven or more days in advance. Travel time is capped at 8 hours door-to-door for Consultant staff traveling to Organization facility for purposes of work upon project.

Attachment: Harris SERVICES Agreement for RPU v.Board (5639 : Customer Care Solution)

Schedule "C"
Sample Form Change Order

Change Order

(a) Contact & General Information

Client	_____	Date	_____
Client	_____		
Contact	_____	Software	_____
		Application	_____
Client Email	_____		_____

(b) (c) Description of Work

Attachments:

(d) Client Approval

_____	_____	_____
000		\$0.00
Chargeable Hours	Rate	Amount
_____	_____	_____
000	000	
Non-Chargeable Hours	Total Hours	

Client Signature _____ **Date** _____

Your signature serves as an acceptance of the "Amount" listed above as it relates to the description of work contained in this Change Order. Your signature also indicates you have reviewed and agree to the scope of work as detailed in any accompanying enclosures or attachments. This signed document indicates that you have provided all of the accurate information necessary to produce the work as stated in the above Change Order.

(e) Internal Use Only

Customer #	Application #	Originated by #	PO#	000000
_____	_____	_____	_____	_____

Attachment: Harris SERVICES Agreement for RPU v.Board (5639 : Customer Care Solution)

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (the “Agreement”) made as of the 31st day of May, 2016 (the “Effective Date”).

BETWEEN:

N. HARRIS COMPUTER CORPORATION
 (“Harris”)

- and -

CITY OF ROCHESTER, A MINNESOTA MUNICIPAL CORPORATION, ACTING THROUGH ITS PUBLIC UTILITY BOARD
 (“Organization”)

RECITALS

1. Harris wishes to grant the Organization a license to utilize the Software as defined herein;
2. The Organization wishes to acquire a license to utilize the Software
3. The Organization and Harris agree to enter into three (3) separate agreements, each dealing with a separate aspect of the Software: this Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement.

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I. INTERPRETATION

Section 1.01 Definitions

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) “**Active Account**” means each discrete billing unit or customer that requires a bill to be generated from the System. Active Account does not include each discrete billing unit or Customer that no longer receives a bill generated from the System but for historical data

reporting purposes require account information to be maintained or manipulated through the System. Accounts with multiple services are considered to be a single account.

- (b) **“Agreement”** and similar expressions mean this Software License Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All references to “Articles” or “Sections” mean and refer to the specified Article or Section of this Agreement except where a different agreement is explicitly identified.
- (c) **“Completion of Services”** shall have the definition ascribed to it in the Software Implementation Services Agreement.
- (d) **“Concurrent Users”** means the total number of Users who can access the Software at any one time as detailed in Schedule “A, and further described in Section 2.01(c).
- (e) **“Concurrent User License”** means a license that restricts the total number of Users who can access the Software at any one time to the number detailed in Schedule “A”.
- (f) **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be established by evidence that would be acceptable to a court of competent jurisdiction; or is declared by the Minnesota Government Data Practices Act to be public data.
- (g) **“Designated Computer System”** shall mean the Organization’s platform and operating system environment which is operating the Software.
- (h) **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.
- (i) **“License”** means the license rights granted to the Organization pursuant to Section 2.01(a) hereof and includes both a Concurrent User License and a Site License.
- (j) **“Release”** means an Update and an Upgrade.
- (k) **“Required Programs”** have the meaning set out in Section 3.04.

- (l) **“Site”** means solely at the production environment described in Schedule “A” and at an unlimited number of non-production environments.
- (m) **“Site License”** means a license that restricts the Software such that it can reside in one production environment and unlimited non production environments.
- (n) **“Software”** means the software products that are listed in Schedule “A” and includes any Update(s) or Upgrade(s) that have been provided to Organization. Third Party Software is not included in the definition of Software except where this License Agreement explicitly states otherwise.
- (o) **“Third Party Software”** means the third party software product licensed to Organization by the applicable licensors as listed in Schedule “C”. Future Releases of the Software may require alternate third party software to be licensed by Organization, which will be subject to a third party license agreement between Organization and the relevant third party software licensor. In such case Schedule “C” shall be amended in accordance with Section 6.08 to add any such third party software and it shall be deemed “Third Party Software” for the purposes of this Agreement.
- (p) **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).
- (q) **“Upgrade”** means a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).
- (r) **“User”** means any employee of Organization or any of Organization’s agents who are authorized by Harris pursuant to the terms of this Agreement to have access to the Software.

Section 1.02 Currency

Unless otherwise specified, all references to amounts of money in this Agreement and the related Schedules refer to U.S. currency.

Section 1.03 Schedules

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

Schedule “A” - Description of Software

- Schedule “B” - License Fees & Payment Schedule
 Schedule “C” - Third Party Software License and Third Party Software Terms

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this License Agreement shall control unless otherwise expressly stated in the provision giving rise to the conflict or inconsistency.

ARTICLE II. SOFTWARE LICENSES

Section 2.01 Grant of Licenses

- (a) Subject to the terms and conditions of this Agreement including without limitation the payment of the License Fees, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Designated Computer System at the Site and for the number of Concurrent Users specified in Schedule “A” (the “License”). All Releases installed by Organization are subject to this License. This License and the other terms and conditions related to this License do not apply to Third Party Software except as this License Agreement may state otherwise.
- (b) Any Software furnished by Harris in machine-readable form may be copied in whole or in part by Organization for use on the Designated Computer System, access to which by Users can be from any computer terminal, whether internal to or external to Organization’s facility incorporating the Designated Computer System. To the extent that any temporary files associated with the Software are created during such use on terminals those temporary files are permitted under this License but only for such time that the temporary files are actually required. Organization agrees that the original copy of all Software furnished by Harris and all copies thereof made by Organization are and at all times remain the sole property of Harris.
- (c) Any License granted under this License Agreement permits the Organization to: (i) use the Software for its municipal and corporate purposes including, but not limited to, performing testing, disaster recovery, disaster testing, training, archival and backup as the Organization deems necessary, and (ii) use, copy and modify the Documentation for the purpose of creating and using training materials relating to the Software, which training materials may include flow diagrams, system operation schematics, and/or screen prints from operation of the Software. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality and have been approved by Harris in advance of the independent contractors’ access to the Software; Harris reserves all rights in approving such access by independent contractors. The Organization shall be responsible for (i) all of the actions of and (ii) any misuse of the Software by any independent contractor.

- (d) The Organization may duplicate Documentation, at no additional charge, for the Organization's permitted uses so long as all required proprietary markings are retained on all duplicated copies.
- (e) For further clarification, the Software is licensed to the Organization on multiple levels. The Software is licensed on a “Concurrent User License” and “Site License” basis as set forth in Schedule “A”.
- (i) A Concurrent User License permits the Organization to use the Software on the Designated Computer System (including all environments such as training, disaster recovery, etc.) provided that the number of Users who may be simultaneously using the Software is limited to the number of Concurrent Users specified for such Software on Schedule “A”. A User is further defined as anyone authorized by the Organization who is logged onto the Software, regardless of the type of interface (i.e. graphical user interface or browser user interface).
- (ii) A Site License permits the Organization to use the Software on the Designated Computer System in one (1) production environment and unlimited non production environments for the purposes of disaster recovery, disaster testing, training, archival and backup. Organization requires a separate Site License for each production environment into which the Software or any portion thereof is read in machine-readable form.

The Organization may purchase additional licenses to use the Software at the time such licenses become necessary at Harris’s then current prices and terms.

- (f) As between Harris and Organization, Harris reserves all rights, title and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.

Section 2.02 Term of License

This Agreement commences on the Effective Date. The License is perpetual and of indefinite duration and shall continue to be in force unless terminated pursuant to the terms hereof (the “Term”).

Section 2.03 Restrictions on Use

- (a) Without limiting the generality of Section 2.01 and in addition the other restrictions listed therein, Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software for any purpose other than in connection with Organization’s primary business or operations; (ii) disassemble, de-compile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivate works of the Software; (iv) rent, lease, lend, or use the Software for timesharing or bureau use or to publish or host the Software for

others to use; or (v) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement. Organization shall be wholly liable to Harris for any misuse of the Software and these restrictions are absolute except as and only to the extent that this Agreement may expressly permit Organization to do otherwise.

- (b) The Software and related materials supplied by Harris are protected by copyright and trademark laws. The Software is licensed and may not be resold by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by Harris.

Section 2.04 Ownership of Software and Confidential Information

- (a) The Organization acknowledges that the Software contains proprietary information and Confidential Information of Harris which shall, at all times, remain the property of Harris and, in addition to its obligations outlined in Section 2.03, the Organization agrees to treat such Confidential Information in accordance with Subsections (b) and (c) herein.
- (b) The Organization will take the same care to safeguard the Software as it takes to safeguard its own Confidential Information of a like nature and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
- (c) In order to assist Harris with the protection of its proprietary information and Confidential Information and to enable Harris to ensure that the Organization is complying with its obligations, Organization shall permit Harris to visit during normal business hours any premises at which the Software is used or installed and shall provide Harris with access to its Software. Harris shall provide Organization with reasonable notice of any such audit.

Section 2.05 Ownership and Disposition of Documents

- (a) The parties agree that no materials or documents are being created for Organization by Harris under this Agreement. All materials and documents which were developed or prepared by Harris for general use and which are not the copyright of any other party or publicly available, including educational materials, shall continue to be the property of Harris.
- (b) Where the Organization requests custom materials or documents, the parties shall enter into a separate written agreement which shall include a duly executed statement of work and such other provisions as are typically found in an agreement of that nature, including without limitation, provisions regarding the ownership of such customer materials or documents.

Section 2.06 Third Party Software

- (a) Harris shall distribute to Organization the Third Party Software which is described as Third Party Software in Schedule “A”. Organization shall pay Harris for the Third Party Software in the amount of the purchase price(s) listed on Schedule “B. Harris and/or the Third Party Software manufacturer(s) will provide Organization with one copy of the then current user documentation for use with the Third Party Software.
- (b) It is acknowledged by the parties hereto that the Third Party Software provided by Harris to Organization pursuant to this Agreement was developed and delivered to Harris by one or more third party software companies. As such, the Third Party Software is licensed to Organization by the applicable licensor listed in Schedule “A” and subject to the terms and conditions of the applicable license agreement for such Third Party Software. Harris makes no warranties, express or implied, with respect to the Third Party Software, including, without limitation, their merchantability or fitness for a particular purpose and Harris accepts no liability of any kind whatsoever with respect to the Third Party Software. Any warranty Organization has with respect to the Third Party Software shall be solely provided by the Third Party Software licensor except where this Agreement expressly states otherwise.
- (c) Organization acknowledges that IBM’s relevant standard licensing and use terms, as amended by IBM from time to time, apply to its use of Cognos and that Organization is bound by such licensing and use terms and such terms are included in Schedule “C”. The standard licensing and use terms shall include anything described as a “Licensing Information Document” by IBM and all licensing files and NOTICE files that are included with the Cognos software or as may be supplied by IBM to Organization from time to time. To the extent that the terms in the Licensing Information Document or similar type documents provided by IBM differ from those in Schedule “C”, the terms in the Licensing Information Document shall take precedence;
- (d) All such licenses are restricted licenses, which means that the Cognos software may only be used with the Software.
- (e) Organization agrees that it shall not permit any third party to have access to the Third Party Software during the term of this Agreement and that the restrictions as set out in Section 2.03 and the confidentiality obligations set out in Section 6.01 shall equally apply to the Third Party Software, subject to any specific permissions that are provided in the license provided by the third party licensor to the Organization.

**ARTICLE III.
REPRESENTATIONS AND WARRANTIES**

Section 3.01 Warranty of Performance

Harris warrants to the Organization that:

- (a) The Software will substantially perform as described in the Documentation for a period of ninety (90) days from the Effective Date if the Software is used in accordance with the Documentation, the terms of this License Agreement and where the Organization has the Required Programs and the hardware meets the requirements of Section 3.03 (b). The Organization's sole recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software.
- (b) In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by Harris, provided Organization has entered into a valid Support and Maintenance Agreement with Harris, Harris will make reasonable commercial efforts to provide Organization with a correction or suitable workaround in accordance with the terms of such Support and Maintenance Agreement. Harris reserves the right to correct any defects about which it is made aware and to produce Releases at a time of Harris's own choosing and at Harris's discretion. .

Section 3.02 Exclusions to Warranty

Harris shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of Harris, including

- (a) where the installation, integration, modification or enhancement of the Software has not been carried out by Harris or its authorized agent, or where Organization has taken any action which is expressly prohibited by the Documentation or this Agreement;
- (b) any use or combination of the Software with any software, equipment or services not supplied by or on behalf of Harris;
- (c) User error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted in this Agreement;
- (d) Organization's failure to install a new Update which has been released to remedy an error or bug, and which Harris has stated to Organization is a required Update necessary for security purposes or for legislative compliance purposes or other reasons as Harris may determine is important in its sole discretion; or
- (e) Any other event of force majeure.

Section 3.03 No Other Warranties

TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED AND ALL OTHER MATERIALS AND SERVICES ARE PROVIDED TO THE ORGANIZATION “AS IS” AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

HARRIS, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HEREWITH, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

HARRIS DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE ORGANIZATION’S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF HARRIS.

Section 3.04 Required Programs

- (a) The Organization acknowledges that the use of the Software requires that the Organization obtain and install additional required software programs (the “**Required Programs**”), as detailed in the attached Schedule “A”. The Organization agrees that the acquisition of the Required Programs shall be at its sole cost and that the cost thereof is not included in the fees herein, including for any future updates about which Organization is provided with commercially reasonable advance notice.
- (b) Organization’s hardware must also be of sufficient quality, condition and repair, and the Organization agrees to maintain its hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of the proper installation and implementation of the Software in accordance with the Software Implementation Services Agreement. If Harris determines that Organization’s hardware is not of sufficient quality, condition and repair, Harris shall notify Organization in writing of the Hardware deficiencies. Organization will use reasonable efforts to remedy any hardware deficiencies within 30 days of notification.
- (c) Organization shall provide no less than 180 days’ notice where the Organization anticipates changing any of the third party software or hardware products in use on the Designated Computer System so that Harris may assess whether the Software will

function with the different software or hardware. Where Harris determines that the Software may not function with the alternative software or hardware then any upgrade by Organization to the software or hardware will be at Organization's sole risk. Harris and Organization may be required to enter into a Scope of Work document subject to additional fees in order to make this determination.

ARTICLE IV. FEES AND PAYMENTS

Section 4.01 Fees and Payments

- (a) The Organization agrees to pay Harris total license fees detailed in Schedule "B" (the "License Fees"), which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule "B". The License is subject to the full payment of the license fees.
- (b) Except for any aspect of the License Fee which is payable on the Effective Date, during the term of this License Agreement Organization shall have thirty (30) days after the date outlined in the payment schedule in Schedule "B" to pay Harris the applicable License Fee.

ARTICLE V. REMEDIES, LIABILITY AND INDEMNITY

Section 5.01 Remedies and Liability

- (a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this License Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
 - (i) EXCEPT FOR DAMAGES ARISING OUT OF (a) HARRIS'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (b) HARRIS'S INTENTIONAL MISREPRESENTATION, NEGLIGENCE OR WILLFUL MISCONDUCT, OR (c) HARRIS'S INDEMNIFICATION OBLIGATIONS SET FORTH IN Section 5.03, BOTH PARTIES AGREE THAT HARRIS'S ENTIRE LIABILITY (UNDER CONTRACT OR IN TORT INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO OR ARISING UNDER THIS LICENSE AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE TWICE THE

AMOUNT OF LICENSE FEES PAID TO HARRIS BY THE ORGANIZATION UNDER THIS AGREEMENT.

- (ii) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- (iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

Section 5.02 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this License Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 5.03 Intellectual Property Indemnity

- (a) In the event there is a third party claim against Organization alleging that Organization's use of the Software in accordance with this License Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trade-mark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, Harris shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by Harris on Organization's behalf. Harris will not settle any claim unless the Organization, its departments, officers, agents, and employees are unconditionally released from any and all liability as part of any settlement. This indemnity is only effective where (i) Organization has not made any admissions or begun settlement negotiations either prior to or after providing notice to Harris of the applicable claim except with Harris's prior written consent, (ii) Harris has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iii) Organization assists and provides information to Harris throughout the action or

proceeding, and (iv) Organization has not modified the Software in any manner whatsoever except with the prior written consent of Harris.

- (b) Harris' liability for any claims under this Section 5.03 shall be reduced to the extent such claim arises from (i) alterations or modifications to the Software by Organization or a third party in any manner whatsoever except with the prior written consent of Harris; (ii) combination, integration or use of the Software with software, hardware or other materials not approved by Harris where such claim would not have arisen but for such combination, integration or use; (iii) use of the Software other than in compliance with this Agreement; (v) compliance with the Organization's written instructions or specifications; or (vi) use of the Software after notice from Harris that it should cease due to possible infringement.
- (c) Any breach by Organization of its covenants under this Section 5.03 shall nullify this indemnity but not the sole right of Harris to have full and complete authority of the defense to defend such claim or proceeding and of all negotiations related therewith and the settlement thereof. In the event that the Organization's use of the Software is finally held to be infringing or Harris deems that it may be held to be infringing, Organization agrees that the only remedy available to it is that Harris shall be, at Harris's election, for Harris to: (1) procure for the Organization the right to continue use of the Software; or (2) modify or replace the Software so that it becomes non-infringing.
- (d) The foregoing states Harris's entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade-mark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof.
- (e) Organization may, at Organization's sole cost and expense—which is outside the scope of this indemnity—retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances (except where the court has specifically made an order against such attendance) related to the proceeding.
- (f) The indemnity provisions of this Section 5.03 shall not apply to Third Party Software and Harris shall have the right to substitute the licensor of the Third Party Software to perform Harris's obligations hereunder and the Organization agrees to release Harris from any obligations related to such Third Party Software.

Section 5.04 Remedies

Where remedies are expressly afforded by this License Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of Harris arising out of or in connection with this License Agreement, notwithstanding any remedy otherwise available at law or in equity.

**ARTICLE VI.
GENERAL**

Section 6.01 Confidentiality

- (a) Duty Owed to the Organization -- Harris acknowledges that it may receive information from the Organization or otherwise in connection with this License Agreement. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, Harris agrees:
- (i) to maintain this information in confidence;
 - (ii) not to use this information other than in the course of this License Agreement;
 - (iii) not to disclose or release such information;
 - (iv) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of Harris; and
 - (v) to take all reasonable actions, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Harris, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this License Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.

Section 6.02 Termination

- (a) If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to (i) issue a written notice disputing the alleged default within such thirty (30) day period; or (ii) to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, the other party may terminate this Agreement effective upon written notice to the other party to that effect.
- (b) If Organization has failed to pay the license fees in accordance with Article IV then Harris shall have the right to terminate the license rights granted herein and this Agreement effective immediately upon written notice to Organization.

Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any

proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favourably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

Section 6.03 Procedure on Termination

- (a) If this Agreement is terminated prior to the Completion of Services, then within thirty (30) days following such termination, the Organization shall either return to Harris or delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify, under the hand of a duly authorized officer of the Organization, that all copies of the Software or any part thereof, in any form, within the possession or control of the Organization have either been returned to Harris or deleted.
- (b) If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- (c) Despite Subsection (d) below, all warranties related to the Software automatically terminate upon the termination of this License Agreement.
- (d) The following sections and articles shall survive the termination of this Agreement: Section 3.02, **Error! Reference source not found.**, Section 5.01, Section 5.02, Section 5.04, Article IV and Article VI.

Section 6.04 Mediation

Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after

the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

Section 6.05 Addresses for Notice

Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered personally, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after 5:00 p.m. local time on the date of delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed, in the case of Harris, to:

N. HARRIS COMPUTER CORPORATION
1 Antares Drive, Suite 400
Ottawa, Ontario K2E 8C4
Attention: CEO

and in the case of the Organization, to:

ROCHESTER PUBLIC UTILITIES
4000 E River Rd NE
Rochester, MN 55906
Attn: General Manager

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.05.

Section 6.06 Assignment

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, and sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns

Section 6.07 Reorganizations

The Organization acknowledges that the License Fee set out in this License Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the Organization amalgamates, consolidates or undergoes any similar form of corporate reorganization or transition (a "Reorganization"), and the resulting

entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional concurrent users or sites, Harris shall be entitled to receive, and the Organization shall pay, an additional License fee based on the then prevailing License fee in effect. The provisions of this Section 6.07 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 6.07 shall not apply where the Organization undergoes a Reorganization involving only other organizations that have already have a valid License to use the same Software. For purposes of this Agreement, any corporate changes undergone by the Organization will be characterized as either an assignment, in which case Section 6.06 will apply, or a Re-organization, in which case Section 6.07 will apply, but it is not intended that Section 6.06 and Section 6.07 will apply to any single sequence of events, if such application would result in a duplication of the fees provided for in those provisions.

Section 6.08 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. No other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Harris by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. However, the parties agree that two other agreements are being entered into concurrently with this Agreement which are in addition to any of the third party agreements detailed herein. These two other agreements are the Support and Maintenance Agreement and the Software Implementation Services Agreement, each of which are separate agreements and are binding in their own right and upon their own terms. The terms of this Agreement may not be changed except by an amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by Harris, with such provisions being deemed deleted.

Section 6.09 Section Headings

Section and other headings in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

Section 6.10 Governing Law

This License Agreement shall be governed by the laws of the State of Minnesota. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement.

Section 6.11 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed modified to the extent necessary in order to render such provision valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

Section 6.12 Waiver

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the License Agreement or by law despite such forbearance or notice.

Section 6.13 Counterparts

This Agreement may be executed in counterparts (whether by facsimile signature, in an email PDF or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

Section 6.14 Further Assurances

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

Section 6.15 Allocation of Risk

Organization acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between Organization and Harris and set forth an allocation of risk reflected in the fees and payments due hereunder.

Section 6.16 Relationship

The parties are and shall at all times remain, independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the parties. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is in law responsible.

Section 6.17 U.S. Government End-Users

The Software (i) was developed exclusively at private expense; (ii) is a trade secret of Harris for the purposes of the Freedom of Information Act; (iii) is “commercial computer software” subject to limited utilization (Restricted Rights); and (iv) including all copies of the Software, in all respects is and shall remain proprietary to Harris or its licensors. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions for software developed exclusively at private expense as set forth in: (i) for the DoD, the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or 252.227.7014 or any successor clause, and (ii) for all government agencies, the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19 or any successor clause. The U.S. Government must refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it was acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above. The manufacturer/owner is N. Harris Computer Corporation, 1 Antares Drive, Suite 200, Ottawa, ON K2E 8C4.

Section 6.18 Equitable Relief

Organization acknowledges and agrees that it would be difficult to compute the monetary loss to Harris arising from a breach or threatened breach of this Agreement and that, accordingly, Harris will be entitled to specific performance, injunctive or other equitable relief in addition to, or instead of monetary damages in the event of a breach or threatened breach of this Agreement by Organization.

Section 6.19 Language

The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only. .

Section 6.20 Force Majeure

No default, delay or failure to perform on the part of Harris shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes,

riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

Section 6.21 Survival

The following sections and articles shall survive the termination or expiration of this Agreement: Section 1.01, Section 1.02, Section 2.03, Section 2.04, Section 2.05, Section 2.06, 3, **Error! Reference source not found.**, Section 5.01, Article IV and Article VI and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

N. HARRIS COMPUTER CORPORATION

Name: Jeff Bender
Title: CEO

CITY OF ROCHESTER

By: _____
Ardell Brede, Mayor

Attest: _____
Aaron Reeves, City Clerk

Approved
as to Form: _____

Terry Adkins, City Attorney

ROCHESTER PUBLIC UTILITIES

By: _____
Mark Kotschevar, General Manager

Schedule “A”
Description of Software

Software Provided by Consultant	Description of License
Cayenta CIS Solution	Site License (unlimited users) - includes the following modules: CIS – Customer Information System MWM – Mobile Workforce Management CSS – Customer Self-Service (web/mobile) GIS Connector
Uniface system software	Run-time version (sold by Consultant as OEM partner of Uniface)
Third Party Software	Description of License
IBM/Cognos BI Reporting Bundle	1 Cognos BI Administrator Authorized User Licenses (D06WQLL) AND Unlimited Cognos BI Enhanced Consumer Authorized User Bundle(D06ZKLL)
IBM/Cognos BI Professional Author	2 Cognos BI Professional Authorized User Licenses(D06X0LL)
Planet Press	Bill images and PDF export tool

Other Required Programs or mutually agreed-upon equivalent **(to be provided by Organization):**

1. SQL Server
2. Microsoft Office Professional 2003 (or later)
3. Microsoft Project (for users who need to access project planning documents)
4. Microsoft Visio
5. FTP software (ex. WS-FTP)
6. Screen Capture tool (SnagIt or equivalent)
7. Toad for SQL Server – database access tool from Quest Software.

**Schedule “B”
License Fees and Payment Schedule**

Cayenta Solution	Initial Cost
Cayenta Licenses - unlimited users	
CIS & B (licensed for 52,166 customers @ \$7/account)	\$365,162
MWM (Mobile Work Management)	\$50,000
Customer Self-Service (web portal)	\$25,000
GIS Connector (ESRI)	\$20,000
Caystone Project and Test Management Tool	included
Total Cayenta Products	\$460,162
3rd Party Products	
Uniface (system software) - unlimited users	\$55,219
IBM Cognos Reporting/BI - unlimited viewers, plus two report writer licenses	\$35,000
Planet Press (bill print and formatting) - unlimited bills	\$15,000
Total 3rd Party Products	\$105,219
Total License Fees	\$565,381

Payment Schedule:

License Fees – 30 days after contract signing.....\$565,381

Attachment: Harris LICENSE Agreement for RPU v. Board (5639 : Customer Care Solution)

Schedule “C”

Third Party Software Licenses and Third Party Software Terms

For the purposes of this Agreement, the IBM/Cognos products outlined in Schedule “A” as “Third Party Software” sold by Harris as OEM partner of IBM/Cognos.

IBM/COGNOS END-USER LICENSE TERMS

IMPORTANT READ CAREFULLY: You have installed, accessed or downloaded a Cognos software product (“Software”). Your use of this product is governed by the following terms. You can agree to those terms by clicking on the boxes indicated below. If you do not agree with them, click on the appropriate box.

1. **GENERAL** - These terms govern the license by you of this COGNOS Software program, including all related user manuals and documentation, whether provided to you in physical or electronic form.
2. **LICENSE- COGNOS** grants you a non-exclusive, non-transferable license to use the Software for the purpose(s) for which it was provided to you. Any upgrade or new release of the Software is also subject to the provisions of this Agreement. You will not distribute or make the Software available to any other party.
3. **SUPPORT** - Support is available through the organization that provided you with the Software.
4. **PROPRIETARY RIGHTS** - All title in and rights to the Software (including any copyrights) remains exclusively with COGNOS. The rights of COGNOS are protected by local laws and International treaties. You will not decompile, disassemble or otherwise reverse engineer the Software.
5. **WARRANTY** - COGNOS warrants that: (a) for a period of thirty (30) days following the initial delivery/download/access of the Software, or of any new release of the Software, to or by you, the Software will perform in conformity with its related documentation, and (b) the media on which the Software is provided, if applicable, is free from defects in materials and workmanship under normal use. Subject to applicable law, all other warranties or conditions express, implied, or otherwise, are excluded. Your only remedy against COGNOS if this warranty is breached will be, at the option of COGNOS: (a) to repair or replace the Software or (b) to refund the amounts paid in respect of the defective Software. This remedy is void if you misuse the Software contrary to its related documentation.

6. **LIMITATION OF LIABILITY** - COGNOS will not be liable to you for any special, indirect, incidental, consequential or exemplary damages, including costs or legal expenses, in connection with the supply, use or performance of the Software, even if it is aware of the possibility of the occurrence of such damages. In certain jurisdictions the foregoing limitation may not be effective, in which case the applicable law will prevail.

7. **INTELLECTUAL PROPERTY INDEMNIFICATION** - COGNOS will indemnify, defend and hold you harmless against any claims, legal actions, losses and other expenses arising out of or in connection with any claims that the Software infringes or violates any intellectual property right of any third party (“Claim”), on the condition that COGNOS has sole control of the defense and negotiations for its settlement or compromise. The sole obligation of COGNOS to you in this regard will be to (a) obtain for you the right to use the Software, or (b) replace or modify such Software so that it is no longer subject to a Claim, but performs the same functions in an equivalent manner. COGNOS will not settle any infringement claim unless you, your departments, officers, agents, and employees, are unconditionally released from any and all liability as part of any settlement.

8. **TERMINATION** - If you breach any of these terms, COGNOS may terminate your license to use the Software and on receipt of notice to that effect from COGNOS, you will destroy all copies of the software in your possession and purge it from your system.

9. **EXPORT CONTROLS** – The Software may not be downloaded, transmitted or otherwise exported or re-exported except in compliance with applicable statutes or regulations relating to the country of destination, or to the users or the use of the Software. By downloading or using this Software you are representing and warranting that you are not located in, under the control of, or a national or resident of any such embargoed country or on any such denial list. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or use the Software, and you represent that you have complied with any regulations or registration procedures required by applicable law.

10. **U.S. GOVERNMENT RESTRICTED RIGHTS** - The Software provided to the government of the United States of America, its agencies or instrumentalities (“U.S. Government”) is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to the restrictions in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c) (1) and (2) of the Commercial Computer Software - Restricted Rights at 48CFR52.227-19, as amended or applicable, or such other applicable rules and regulations that provide COGNOS with the same or greater protection. The manufacturer of the Software is Cognos Incorporated, 3755 Riverside Dr., Ontario, Canada.

11. **APPLICABLE LAW** - This Agreement, and any matters relating to it, will be governed, construed and interpreted in accordance with the local laws applicable where you are located.

Consulting Services Agreement (the "Agreement")

This Agreement dated May _____, 2016, reflects the terms and conditions agreed to by **Vertex Data Utility Services, LLC ("Vertex")** and **City of Rochester, Minnesota, a Minnesota municipal corporation, acting through its Public Utility Board ("Client")** with respect to Vertex providing Client with consulting services as defined herein. Vertex and Client are hereinafter referred to individually as a **"Party"** and collectively as the **"Parties."**

It has been agreed by Vertex and Client as follows:

1. Vertex shall provide the Services defined in the Statement of Work (the **"SOW"**) attached to this Agreement (the **"Services"**) for the period specified in the SOW (the **"Contract Term"**).
2. The scope of services required under this Agreement shall be described in separately authorized Statements of Work (hereinafter referred to as the "SOW"). Each SOW shall include a detailed description of the services required, a schedule of Deliverables, a project timeframe, compensation expectation and shall be subject to the terms and conditions of this Agreement. Vertex will be authorized to begin the SOW upon issuance of a purchase order, executed SOW, or written notice from Client to proceed. The Client reserves the right to make changes to the SOW, with an equitable change in compensation and schedule, upon execution of a mutually acceptable amendment or Change Order signed by authorized representatives of the Client and Vertex.
3. Vertex warrants that the Services will be performed in a professional and workmanlike manner. THE PRECEDING IS VERTEX'S ONLY WARRANTY CONCERNING THE SERVICES AND ANY WORK PRODUCT, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE THAT VERTEX SPECIFICALLY DISCLAIMS.
4. Client will promptly provide all information; instructions and all data reasonably required by Vertex to enable Vertex to perform its obligations under this Agreement and shall cause its personnel and other suppliers to provide such cooperation to Vertex and to Vertex's personnel as Vertex may require to enable Vertex to perform the Services. Client shall remain responsible for the protection, integrity and backup of its data and software and shall, in accordance with best industry practice, take regular backup copies of its data and software used by Vertex in connection with the provision of the Services and keep the back-up copies and media secure. Client exclusively owns all Customer Data and Vertex agrees to return, or at the election of Client, destroy (and confirm in writing the destruction) all Customer Data upon the termination or expiration of this Agreement, or earlier if requested to do so in writing by Client. Vertex may not release any Customer Data to any third party without written approval from Client.
5. The charges payable by Client shall be as detailed in the SOW (the **"Charges"**).
6. Client shall pay the Charges within 30 days of the date of Vertex's invoice. Any invoice remaining unpaid for more than thirty (30) days from receipt shall accrue interest at a rate of the lesser of one and one-half (1.5%) percent per month or the highest rate allowed by law. Unless provided otherwise in an Appendix to either this Agreement or the SOW, Vertex shall be reimbursed by Client for all reasonable expenses incurred by Vertex in the performance of the Services, including, but not necessarily limited to, travel and lodging expenses, communications charges and computer time and supplies. RPU Consultant Travel Policy applies. There shall be added to any charges payable by Client under this Agreement amounts equal to any and all applicable taxes, however designated, incurred as a result of or otherwise in connection with this Agreement or the Services, including without limitation state and local privilege, excise, sales, and use taxes and any taxes or amounts in lieu thereof paid or payable by Vertex, but excluding taxes based upon the net income of Vertex.
7. Vertex shall obtain, as a minimum; the following described types and limits of insurance coverage. All policies called for herein shall become effective before Vertex undertakes any work under this Agreement and shall remain in full force and effect for a minimum of 1 year after closing of this Agreement. Further, Vertex shall furnish Client with an insurance certificate or certificates at the time the Agreement is consummated between the parties, evidencing such insurance coverage prior to work commencing on said project. Each of said certificates shall provide the following:

- A. A 30-day notice of cancellation and/or non-renewal.
- B. Workers' Compensation. Vertex shall obtain and maintain workers' compensation insurance policy with limits meeting the statutory requirements for Minnesota.
- C. Commercial General Liability Insurance. Vertex shall obtain and maintain a commercial liability insurance policy with limits of \$1,000,000 each occurrence/\$2,000,000 aggregate for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of the contractor, its officers, employees or agents during the term of the contract. Products and completed operations coverage is to be included within the required limits.
- D. Excess Umbrella Liability. Vertex shall obtain and maintain an umbrella policy with limits of at least \$1,000,000 to cover the excess above the underlying CGL and Auto liability policies requested in this insurance section.
- E. Auto Insurance. Vertex shall obtain and maintain commercial auto insurance policy with limits of at least \$1,000,000 each occurrence for both bodily injury & property damage liability to cover claims for injury or damage resulting or arising from the actions of the Consultant, its officers, employees or agents, including hired and non-owned vehicles, during the contract. If such insurance contains a general aggregate limit, the general aggregate limit shall be \$2,000,000.
- F. Professional Liability Insurance. Vertex shall obtain and maintain a professional liability insurance policy with limits of at least \$1,000,000 each claim/\$2,000,000 aggregate to cover claims for injury, repairs or damages arising out of professional errors or omissions.
- G. Vertex' CGL and Auto liability insurance policies shall name the City of Rochester as an additional insured for claims from work conducted pursuant to this agreement, and shall be primary to any liability insurance maintained by the City. Certificate holder shall be listed as:

City of Rochester
Acting Through Its Public Utility Board
4000 East River Road NE
Rochester MN 55906

- 8. THE AGGREGATE LIABILITY OF VERTEX (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), NON-FRAUDULENT MISREPRESENTATION, FOR BREACH OF ANY WARRANTY EXPRESS OR IMPLIED, UNDER ANY INDEMNITY, FOR LIQUIDATED DAMAGES, WILFUL DEFAULT OR OTHERWISE HOWSOEVER) TO CLIENT SHALL BE LIMITED IN TOTAL TO THE CHARGES (LESS ANY APPLICABLE TAXES OR PASS THROUGH EXPENSES) ACTUALLY PAID TO VERTEX IN THE PRECEDING ONE YEAR BY CLIENT UNDER THE RELEVANT SOW GIVING RISE TO SUCH LIABILITY.
- 9. VERTEX SHALL NOT BE LIABLE TO CLIENT (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), NON-FRAUDULENT MISREPRESENTATION, FOR BREACH OF ANY WARRANTY EXPRESS OR IMPLIED, UNDER ANY INDEMNITY, FOR LIQUIDATED DAMAGES OR OTHERWISE) HOWSOEVER) FOR ANY INCREASED COSTS OR EXPENSES OR FOR ANY LOSS OF PROFITS, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF BUSINESS CONTRACTS, LOSS OF REVENUE, COSTS CLAIMS OR LIABILITIES FOR WHICH VERTEX MAY BE LIABLE TO ANY THIRD PARTY, COSTS OF TENDERING OR RE-TENDERING, LOSS OF PRODUCTION, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS OR DATA OR ANY SPECIAL OR CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE OF ANY KIND WHATSOEVER AND HOWSOEVER CAUSED ARISING OUT OF OR IN CONNECTION WITH THE MATTERS RELATED TO THIS AGREEMENT.
- 10. Nothing in this Agreement shall exclude the liability of Vertex in the case of liability arising from death or injury to persons resulting from negligence (whether in contract or tort) or in the case of fraud or fraudulent misrepresentation insofar as such exclusion or restriction is unlawful. If it ceases to be unlawful to impose a limit the limits in this Agreement or if greater the minimum limit that can lawfully be imposed shall apply.

11. Vertex shall not be liable for any failure to perform the Services to the extent that it is prevented from doing so by reason of:
- (i) any breach, act, omission, negligence or default of Client, its employees, sub-contractors or agents under this Agreement; or
 - (ii) instruction, advice, direction or recommendation made or procured to be made by Client to Vertex; or
 - (iii) the data not being available to Vertex or by the data not being in the format agreed for the provision of the Services.
12. This Agreement may be terminated by either Party immediately by written notice to the other Party if:
- (i) the other Party commits any material breach of this Agreement which is incapable of remedy or which, being capable of remedy is not remedied within 30 days of a notice from the non-breaching Party specifying the breach and requiring its remedy; or
 - (ii) any procedure is commenced with a view to the winding-up or dissolution of the other Party, or the appointment of an administrator, receiver, administrative receiver or trustee in bankruptcy or all or substantially all of its assets and that procedure (unless commenced by the other Party) is not terminated or discharged within 30 days; or
 - (iii) the other party ceases or threatens to cease wholly or substantially to carry on its business;
- Any termination of this Agreement (howsoever caused) shall not affect any accrued rights or liabilities of either Party.
13. Client undertakes and warrants to Vertex that its information and data provided to Vertex under this Agreement will not infringe any third party's intellectual property rights or any laws or regulations in respect of data protection or privacy of personal data. Vertex shall defend at its expense any third party notices, allegations, claims, suits or proceedings against the Client, its departments, officers, agents or employees alleging that the Client's use of Vertex's products or services as permitted by this Agreement infringes, violates or misappropriates the intellectual property rights of any third party, and to pay costs and damages finally awarded in any such suit or agree to by Vertex in settlement with such third party (including reasonable attorney's fees and expenses) provided that Vertex is notified promptly in writing of the suit and at Vertex's request and at its expense is given control of said suit and all requested reasonable assistance for defense of same. Vertex agrees it will not settle any claim unless the Client, its departments, officers, agents and employees are unconditionally released from any and all liability as part of any settlement.
14. The ownership and sole right to any patent, copyright, trademark, design right, registered design right, trade name, database rights, know how and any other industrial or intellectual property right whether registered or unregistered including the right to apply for any of the foregoing (collectively "**Intellectual Property Rights**") shall be vested as follows:
- 14.1 any material document, data or information designed, created, prepared or provided by Vertex or its personnel for or to Client for the purposes of this Agreement or in connection with the Services ("the **Vertex IPR's**") shall be vested in Vertex; and
 - 14.2 any pre-existing Intellectual Property Rights used or supplied by one Party under this Agreement shall remain vested in that Party or its licensors.
15. Upon final payment, Client shall have a perpetual, nontransferable, paid-up right and license solely for purposes of its internal business to use, copy, modify and prepare derivative works of the deliverable items developed in the course of the Services pursuant to this Agreement, whether jointly or individually, subject to the terms of Section 16.
16. During the course of the Services for Client, each Party may be given access to information that (i) relates to the other's past, present, and future research, development, business activities, products, services, and technical knowledge, and (ii) has been identified as confidential ("**Confidential Information**"). In connection therewith, the following subsections shall apply:

16.1 The Confidential Information of the other Party may be used by the receiver only in connection with the Services;

16.2 Each Party agrees to protect the confidentiality of the Confidential Information of the other in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind. Access to the Confidential Information shall be restricted to those of Vertex's and Client's personnel engaged in a use permitted hereby;

16.3 The Confidential Information may not be copied or reproduced without the discloser's prior written consent;

16.4 All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed upon the first to occur of (a) completion of the Services or (b) request by the discloser;

16.5 Nothing in this Agreement shall prohibit or limit either Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it without obligation of confidence, (ii) independently developed by it, (iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Agreement;

16.6 In the event either Party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other Party, it shall provide prompt notice to the other of such receipt. The party receiving the subpoena shall thereafter be entitled to comply with such subpoena or other process to that extent permitted by law; and

16.7 The Minnesota Government Data Practices Act applies in determining whether any data is considered confidential or in determining the status of any data created, received, or maintained under this Agreement.

17. Neither Party shall make any external comment or issue any external announcement, public circular, press statement, publicity, advertising or promotional or other marketing activity information or materials concerning or relating to this Agreement, the existence of this Agreement, the other Party or any ancillary matter (but excluding any disclosure required by legal, accounting or regulatory requirements) without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.
18. Vertex reserves the right to determine which of its personnel shall be assigned to perform Services, and to replace or reassign such personnel during the term hereof; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Client's request for specific individuals.
19. In connection with this Agreement each Party is an independent contractor and as such will not have any authority to bind or commit the other Party. Nothing herein shall be deemed or construed to create a joint venture, partnership or agency relationship between the Parties for any purpose.
20. The Parties agree that, during the term of this Agreement, and for a period of six (6) months following its termination, neither Party will directly, or indirectly through a third party, solicit, offer employment to, employ, obtain services from, or in any other manner engage the services of any individual who was, or was at any time during the six (6) months prior to such solicitation offer, an employee of the other Party or an individual employed as an independent contractor by the other Party.
21. This Agreement (together with all other documents to be entered into pursuant to it) sets out the entire agreement and understanding between the Parties, and supersedes all proposals and prior written or verbal agreements, discussions, arrangements and understandings between the Parties, relating to its subject matter.
22. The waiver by either Party of any right or the failure by either Party to exercise any right or to insist on the strict performance of any provision of this Agreement shall not operate as a permanent or full waiver of or preclude the further or other exercise of that right or any other provision.

- 23. If in any particular case any of the clauses shall be or be held to be invalid, void or unenforceable or not to apply to the Agreement the other clauses shall continue in full force and effect.
- 24. Any sections which are expressly stated to apply after the expiration or termination of the Agreement shall continue in full force and effect in accordance with their terms and the provisions of sections 7, 8, 9, 10, 11, 15, 16, 17, 20, 26 shall survive the expiration or termination of the Agreement.
- 25. Neither Party has the right to assign its rights and obligations under this Agreement without the written consent of the other Party; which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, each Party has the right to assign or delegate, in whole or in part, its rights and obligations under this Agreement to (i) an affiliate of such Party, or (ii) to an entity which acquires all or substantially all of the assets of the assigning party or to any successor in a divestiture, merger or acquisition upon notice to the other Party.
- 26. This Agreement does not create any right or benefit enforceable by any person not a party to it.
- 27. This Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota and the courts of Olmsted County, Minnesota shall have exclusive jurisdiction and venue in all matters contained herein, unless specified otherwise.

AS WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

VERTEX DATA UTILITY SERVICES, LLC
CLIENT

CITY OF ROCHESTER

By: _____
Ardell Brede, Mayor

Attest: _____
Aaron Reeves, City Clerk

By: _____

Approved
as to Form: _____

Name: _____

Terry Adkins, City Attorney

ROCHESTER PUBLIC UTILITIES

Title: _____

By: _____
Mark Kotschevar, General Manager

Attachment: Rochester Public Utilities_Verex Consulting Services Agreement (5639 : Customer Care Solution)



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the execution of three agreements with Cayenta and the statement of work (SOW) and authorize the Mayor and the City Clerk to execute the agreements for:

- 1) The execution of the three Cayenta contract agreements and statement of work (SOW) for the purchase of the licensing, support & maintenance, implementation services, and to provide professional services outlined in the SOW.
- 2) The execution of the Vertex Data Utility Services contract agreement and SOW for professional services outlined in the SOW to build the SAP interfaces.
- 3) The authorized, not to exceed, amount of \$3,577,427 for this customer care project which includes a 10% contingency.

The Contract Agreements are subject to final approval by the City Attorney and General Manager and authorize staff to process change orders in compliance with Board Policy Statement, Section 6.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of May, 2016.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 5620)

Meeting Date: 5/31/2016

SUBJECT: Termination of Solar Purchase Power Agreement

PREPARED BY: Jeremy Sutton

ITEM DESCRIPTION:

Solar City was unable to perform contract in timely manner, therefore contract is to be terminated.

RPU staff is investigating alternate options at this time. Second low bidder is currently in bankruptcy.

UTILITY BOARD ACTION REQUESTED:

Request that the Board approve the Termination of Power Purchase Agreement with Solar City.

SolarCity

May 5, 2016

City of Rochester, a Minnesota Municipal Corporation, acting by and through Its Public Utility Board

Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55906
Attention: Mark Kotschevar, General Manager

RE: Termination of Solar Power Purchase Agreement dated September 11, 2015 between City of Rochester for RPU Service Center 496 kW ground mount and SolarCity Corporation (the "Agreement")

This letter is to memorialize our mutual agreement to terminate the Agreement with immediate effect and without further liability to either party.

By signing this letter, each of the parties below acknowledges and agrees with the termination of the Agreement.

Acknowledged and agreed:

SOLARCITY CORPORATION

CITY OF ROCHESTER

By: 
COMMERCIAL

By: _____
Ardell Brede, Mayor

Name: Lyndon Rive

Attest: _____
Aaron Reeves, City Clerk

Title: CEO

Approved
as to Form: _____

Terry Adkins, City Attorney

ROCHESTER PUBLIC UTILITIES

By: _____
Mark Kotschevar, General Manager

Attachment: RPU Purchase Termination letter signed 20160517 (5620 : Termination of Solar Purchase Power Agreement)



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a contract agreement with Solar City Corporation and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Termination of Solar Power Purchase Agreement

dated September 11, 2015 between City of Rochester for RPU Service Center 496 kW ground mount and SolarCity Corporation

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of May, 2016.

President

Secretary