

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

6/30/09

SUBJECT:

Novaspect Service Agreement Renewal – SLP Control System

PREPARED BY:

Rob Dunnette – Manager of Power Resources

ITEM DESCRIPTION:

Process control for most Silver Lake Plant (SLP) systems is provided by a proprietary computer-based control system (“Delta V”) provided by Emerson Novaspect. Technical support for the Delta V control system has been provided by the Novaspect, system vendor, since system commissioning. Those technical services include 24-hour consultation support, system-specific notices of hardware and software changes and/or safety concerns, expedited hardware replacement and 300 hours of on-site technical support.

Technical support services are sole-sourced to Emerson Novaspect due to the proprietary and site-specific nature of the technology. Novaspect has provided satisfactory service throughout the life of the service agreement, and has proposed a reasonable adjustment to the scope of service and rate schedules.

This item will provide for a one-year renewal of the Novaspect agreement, based on the scope of services contained within the attached proposal, for a fixed price of \$79,069.00. It is worthy of note that, while the work scope has grown by approximately 50% (in terms of total control and monitoring points), the price has only increased \$1,290 over the previous year. This modest increase in price is made possible by the rapidly expanding capability of the SLP Measures & Control staff to deal with most routine Delta V maintenance issues; a condition that will continue to be actively fostered.

Funding for this agreement is contained within the approved 2009 Power Resources budget.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Utility Board approve a one-year extension of the Emerson Novaspect service agreement for a price of \$79,069.00, with terms and conditions governed by Novaspect proposal #5368-R1.


General Manager


Date

Support Services Plan Rochester Public Utilities Proposal #5368

Date	Rev. No.	Description	Issued By	Checked By
1-June-09	2	Terms & Conditions Revision	LAL	JCT
15-Apr-09	1	Revision	LAL	JCT
5-Mar-09	0	Initial Proposal	JCT	

Executive Summary

Primary Goals for this year's Support Plan are to support Rochester Public Utilities Goal of reducing the Operating and Maintenance cost by \$5M. Listed below are a number of potential items that Novaspect will work with RPU to support the reducing cost goal.

1. Improve the combustion quality and stability on Unit 2. This will reduce the use of support gas on Unit 2 with the goal of completely eliminating the use of support gas. This item has a potential savings of up to \$10K/day. This will also reduce the number of emissions exceedences and in particular opacity.
2. Setup unit 3 for a 'Steam Export Only' mode. This is similar to the work that was completed for Unit 2 earlier this year and has the potential of a savings of \$7K/day when unit 3 is running export only. This will provide the flexibility to cycle the turbine generator on unit 3 without cycling the boiler and can provide additional electrical generation revenue during short high electrical demand periods.
3. Upgrade the BMS logic. There are a number of new enhancements available for the BMS logic package. These enhancements provide easier trouble shooting during a trip, easier troubleshooting during a field device failure, and more flexibility to allow for redundant controller switches while on-line. This has the potential to reduce outage time during a field device failure.
4. Provide Backup support for the RPU Measurement and Controls team. While the M&C team will provide front line management of day to day issues, this support plan will provide the M&C team with technical expertise and 'know how' that comes from our depth of engineering resources.

Summary of Previous Year's Accomplishments

1. The control logic on Unit 2 was modified and tuned to allow for an 'Export Steam Only' mode. With the current electrical demand prices, running in this mode saves RPU up to \$5K/day.
2. Unit 4 fuel changes and optimization.
3. Modified the export steam control strategy to limit flow and temperature exceedences without causing high header pressure.
4. U3 & U4 optimization, boiler and turbine integration.
5. U3 & U4 turbine ramp rates optimization.
6. Provided a design and installation instructions for a low vacuum turbine trip.
7. System maintenance including the upgrading of two operator workstations to quad monitor and upgrading the entire system to version 10.3.

Introduction

The Novaspect Support Services Plan is a collection of valuable services provided by Novaspect and Emerson Process Management. These services include the support of control systems, measurement



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devices, final control elements and the application packages. This provides an encompassing plan for the maintenance and optimization of your investment in process control. Our goal is to assist you with increasing the business results of your company.

The service offerings focus on improving the overall performance of your plant improving:

- Process availability
- Asset protection
- Asset utilization
- Optimization
- Cost management
- Safety, health, and environmental compliance

This plan is intended to establish and maintain a proactive working relationship between the customer and Novaspect. Each Support Plan is customized to the site's requirements based upon specific installation and support needs and consists of a combination of services.

The Services Portfolio

The Services Portfolio is comprehensive and flexible to allow our customers to select those services that meet their particular needs and help them achieve the required business results with their Process Automation Equipment. The following is an example of available service offerings.

Factory Product Support – Software release updates, technical support, access to support website for articles and downloads. This support is delivered through Foundation Support for most products and Guardian for DeltaV. Guardian includes additional proactive system notification services

Express Module Replacement – Rapid access to replacement parts. Typically next business day.

Emergency On-Site Services - Access to on-site remedial hardware and software support service specialists. 24 hour access.

Scheduled On-Site Services – Inspection, Initialization, Preventive Maintenance, and other planned services by our service specialists.

Service Bank – A pre-defined bank of engineering support hours for on-going system support. Includes troubleshooting problems to implementing system enhancements.

Alarm Management Services - Assessment and improvement of alarm system functionality for improved plant safety and operator effectiveness.

Control Performance Improvement - Detailed analysis of your system's control loops resulting in recommendations for improvement in loop utilization, process input status, control limitations, and abnormal process variability.

Control Valve and Instrument Asset Management Service - Proactive diagnostics and troubleshooting of field devices with a focus on final control elements and instrumentation. Control Valve Services include the use of the Fisher FlowScanner™ or Valvelink™ software for diagnosing control valve problems.

Combustion Control Performance Tuning – Loop tuning, system performance tuning. Control strategy optimization. Combustion equipment analysis and optimization.

Partnership Support - Tight integration of Your Support Services team and Team Emerson with a focus on prevention, continuous improvement and strategic PAS Life Cycle Management. An assigned SureService Lead Engineer will assist in the monitoring of system reliability, system updates and upgrades.

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Services Proposal

This Support Services Plan is based on the following System IDs.

DeltaV Guardian Support:	0001-0001-6369, 3500 DST, 0001-0002-9630, 100 DST
AMS Foundation Support:	0002-0003-1478, 700 Tag, 0002-0003-2436, 25 Tag

Schedule of Services and Pricing:

Item	Description	Price (\$)	Start	End
1a	DeltaV Guardian Support: (Normal Hours Response) 0001-0001-6369, 3500 DST 0001-0002-9630, 100 DST	31,244.00	05/01/2009	04/30/2010
1b	AMS Foundation Support: 0002-0003-1478, 700 Tag	1,320.00	05/01/2009	04/30/2010
2	AMS Foundation Support: 0002-0003-2436, 25 Tag	1,505.00	05/01/2009	04/30/2012
3	Service Bank: 300 Hrs	45,000.00	05/01/2009	04/30/2010
		Note 2		
		Note 3		
Total Annual Amount		79,069.00		
Total Monthly Amount		6,589.08		

Notes:

- Invoicing to be done on or around the 1 - MAY - 2009. Net 30 days
- AMS Foundation Support for this system expired on Jan. 1, 2004. If a system has been expired for more than one year a Bring Current Fee applies. The Bring Current fee includes 3 years of services (from date of purchase), all software issued since expiration and access to Emerson Help Desk.
- One Service Bank Unit is equal to one (1) hour. Service Bank hours can be used for phone support or onsite support. If the Service Bank is used for onsite support the following Service Bank Units will be utilized for travel time and expenses:

Each Site Visit (From Red Wing):
Each Overnight Stay Required

2 Service Bank Units
1 Service Bank Unit

Contact

Rochester Public Utilities

Signature _____
Name Jay Button
Title _____
Email jbutton@rpu.org

Novaspect, Inc.

Signature _____
Name Jeff Olson
Title Director Automation Services
Email jolson@novaspect.com

Description of Services

DeltaV Guardian Support

Guardian Support provides DeltaV users with the essential support needed to achieve peak system utilization and reduce the risk of lost production with around the clock access to crucial information, timely advice and problem diagnosis by product experts plus the latest software releases and access to on-line information services.

This Service provides:

- Consultation for DeltaV system software and hardware topics, i.e. technical product support. Consultation requests are directed to the Emerson Process Management Response Center. Emerson Process Management will work closely with the Customer's system manager to provide an effective problem-resolution process, including remote system diagnosis where authorized by the Customer and an automatic escalation process for inquiries or problems requiring advanced expertise.
- CD media and documentation for software releases to Programs as and when issued by Emerson Process Management. Software releases may include new and improved features.
- Access to system technical articles via fax information service and Internet WEB site, <http://www.emersonprocess.com/systems/support>). This site provides technical articles with downloadable files and an E: Mail facility for requesting technical assistance or specific software updates.
- Guardian Website – A user-configurable content that is specific to the enrolled system to use in place of the Foundation Support website
- Guardian Email – Automated email messages configured from the Guardian Website to communicate alerts that are specifically applicable to the enrolled system.
- Differentiated Treatment of Support Calls – The GSC will applying system content awareness to the situation to simplify and speed system maintenance and troubleshooting.
- System Analysis Reports – Two system analysis reports per year will be prepared by Emerson specialists, with recommendations on system maintenance based on system content, trends, events and call history.

Customer Responsibilities

To request service the Customer should contact the Emerson Process Management **Response Center at (800) 833-8314**. Upon contacting Emerson Process Management, you must provide the DeltaV or AMS System Identification Number **0001-0001-6369, 0002-0003-1478** and the fullest possible explanation of the problem for which assistance is required.

When Remote Diagnosis is necessary, the Customer will make available and switch-on an Emerson Process Management supplied modem, run the *pcANYWHERE* software and provide a suitable telephone connection.

The Customer shall have a trained engineer available to provide the fullest details available on the problem(s) to be investigated and shall provide any local technical assistance required during the remote log-on and diagnosis session.

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DeltaV Express Module Replacement

Under this Service, the Customer has access to Emerson Process Management's stock of spares held at Emerson Process Management's premises. Should an assembly require replacement, Express Module Replacement provides replacement assemblies shipped within one business day.

Customer Responsibilities

Each Exchange Replacement provided under this Service is supplied on the understanding that the faulty unit is returned to Emerson Process Management within 7 days of dispatch of the Exchange Replacement and that the faulty item is, in Emerson Process Management's opinion, acceptable for repair. Units which have been mechanically damaged, immersed in liquid, corroded or damaged by fire or lightning will be automatically deemed unacceptable and rejected from the Plan. If on receipt by Emerson Process Management the item is found to be unacceptable, it will be returned at the Customer's expense and an invoice for the Exchange Replacement will be issued at 100% of the prevailing list price. Each item returned must be accompanied by sufficient documentation to identify the item as the property of the Customer including return address for redelivery of the item in case found to be unrepairable. Documentation should include the following: System ID Number, DeltaV Part Number, Serial Number, item description, symptom of problem, Service PO number, supplied by Novaspect, Customer contact name, phone and FAX number. Emerson Process Management cannot be held responsible for the loss of any item that is insufficiently identified. Novaspect will supply preprinted shipping labels and provide you with a Returned Goods Authorization number for returned shipments.

Items not returned to Emerson Process Management within the allotted 7-day period will be subject to invoicing at 100% of the prevailing list price.

Service Details

Next business day replacement for DeltaV failed modules. Faulty items shall be returned freight prepaid, using the packing list and address information supplied by Novaspect.

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Application Engineering Support – Service Bank

Service Details

Novaspect will provide scheduled and reactive application engineering per the Schedule of Services. Novaspect will schedule visits, at the mutual convenience of both parties. This Service provides a Specialist on-site to carry out application engineering tasks in order to help maintain and improve the system's operational performance and reliability. It may include a defined number of hours per year or specified days of planned service. A designated site contact will direct the efforts of our specialist. Together they will develop a task list and prioritize the activities for each task. Our specialist will document the completion of task; ultimately it is the responsibility of customer to maintain the task list.

The on-site services may include any of the following items.

System Maintenance

- System Backups – including configuration database, graphic displays, and historian
- System Administration – updating accounts, disk drive defragmentation, installation of service packs
- Upgrades – installation of software upgrades

Application Support

- Application Troubleshooting

System Improvements

- Display Modifications – changes to existing
- New Displays – graphic or tabular format
- I/O Range Changes – for Fieldbus transmitters or traditional I/O
- Alarm Limit Changes – new or existing limits
- Alarm Management – definition of new plant areas, conditional alarms
- Addition Of New Points – monitor or control
- Changes to Control Functionality – modify existing control strategies
- Addition Of New Control – new control functionality either discrete, sequential, or continuous control
- Control Loop Tuning – tuning with the auto tuner and other advanced methods
- Process Optimization – The addition of higher level control for process optimization

Training

- Operator Training – supplemental training to enhance the operator's use of the system
- Instrumentation Training – including configuration and system trouble shooting

System General Maintenance

- Review on-site maintenance logs and alarm logs for system problem identification
- Verify AC and DC voltages, power distribution, grounding systems and UPS operation

Workstations (Operator, Professional, ProfessionalPLUS, and Application Stations)

- Verify proper operation, clean as necessary
- Review diagnostic event log, CPU and memory usage
- Check operator input/output devices including keyboard, mouse and monitors
- Ensure proper operation of CPU cooling fans

Controllers, Input/Output Modules

- Verify status and operation of controller redundancy where applicable
- Verify operation of all I/O redundancy where applicable

DeltaV Control Network

- Check diagnostic status of network communications
- Verify control network traffic and loading

Customer Responsibilities

The Customer shall designate an authorized contact for directing and prioritizing tasks. The designated contact shall be responsible for making the System available for the Specialist during the on-site visit.

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QUICK REFERENCE GUIDE

System ID Information

DeltaV System ID:	0001-0001-6369, 3500 DST
AMS System ID:	0002-0003-1478, 300 Tag

Service Contact:

Description	Contact	Phone No.
Novaspect Services	Novaspect	847-709-8999
Express Module Replacement		
Customer Help Desk		
After Hours Access		
Global Response Center	Emerson	800-833-8314

Novaspect, Inc.
1776 Commerce Drive
Elk Grove Village, IL 60007

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ADDITIONAL ITEMS

DeltaV Equipment

ITEM #	DESCRIPTION	QTY
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DeltaV Consoles

	Professional Plus Engineering Workstations	1
	Professional Workstation	1
	Operator Workstations	6
	Application Workstations	1

DeltaV Controllers

VE3004	MD Simplex Controllers	
VE3004	MD Redundant Controller Pairs	14

DeltaV System Software

	DeltaV System Software – Revision v8.4.1 – 2000 DST System Database	1
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SERVICES RATE SCHEDULE

Novaspect Rate Schedule
(July 1, 2008)

<u>SERVICE DESCRIPTION</u>	<u>Scheduled Hourly Rate</u>	<u>Demand Hourly Rate</u>
Drawing Services / Project Support Services	\$85.00	
Control System Designer	\$113.00	\$130.00
Instrumentation Engineering	\$139.00	\$160.00
Valve Asset Manager / Valve Diagnostic Engineer	\$139.00	\$160.00
Control System Engineering (See * Note 4)	\$165.00	\$220.00
Control System Field Service Engineer (See * Note 4)	\$180.00	\$235.00
Project Manager / Lead Project Engineer	\$180.00	
Custom Training Courses	\$190.00	
Network Design Consulting	\$190.00	
Control Loop Performance Consulting	\$205.00	
Process Consulting (Steam Generation, Refining, Batch)	\$230.00	

Primetime – Hourly Rate times 1 (Straight time)
Monday - Friday, 7:00 AM to 6:00 PM (8 hour maximum)

Overtime - Hourly Rate times 1.5 (Time and one-half)
Monday - Friday hours exceeding 8 hours but less than 12 hours
Saturday, 7:00 AM to 6:00 PM (8 hour maximum)

Premium Time - Hourly Rate times 2 (Double time)
Monday - Friday hours exceeding 12 hours
Service engagements or shifts that begin outside of Primetime or Overtime
Saturday hours exceeding 8 hours
Sundays and Novaspect scheduled holidays

- * Note 1 - A four (4) hour minimum charge (including travel time) applies to demand services.
- * Note 2 - A four (4) hour minimum charge will be applied for calls canceled or re-scheduled with less than 24 hours prior notification.
- * Note 3 – The appropriate multiplier applies to all minimum charges.
- * Note 4 – Rates are subject to discount for large projects and Service Agreements based upon project size or services committed under a Service Agreement.
- * Note 5 – For time and material engagements, Novaspect will invoice one hour for project management time for every 20 hours of engineering services provided.

Technical support is available at the defined rate for the service type required. An access fee of \$500.00 will be charged for technical support during Primetime hours and an access fee of \$1000.00 will be charged for technical support during non-Primetime hours. Hourly charges in addition to the access fee will begin after 1 hour.

TRAVEL AND EXPENSE CHARGES

- Travel time is calculated portal to portal at prevailing rates.
- All travel and living expenses will be invoiced at cost plus 10% as incurred by Novaspect.
- Auto mileage will be invoiced at the IRS rates per mile (currently \$0.55/mile).

EQUIPMENT RENTAL CHARGES

- Control system equipment is available for rental. Pricing upon request.
- Control system test equipment is available for rental (i.e. Combustion Gas Analyzer)

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STANDARD TERMS & CONDITIONS OF SALE

The proposal to which these Terms and Conditions are attached (the "Proposal"), these Terms and Conditions and any Change Orders (as defined herein) shall constitute the entire agreement between the parties and shall collectively be referred to herein as the "Agreement."

1. **ACCEPTANCE.** ACCEPTANCE OF THIS AGREEMENT BY BUYER WITHIN 30 DAYS OF THE DATE HEREOF (OR SUCH LONGER PERIOD AS NOVASPECT, INC. ("NOVASPECT") SHALL, IN ITS SOLE DISCRETION, AGREE TO IN WRITING) CREATE A CONTRACT BETWEEN NOVASPECT AND BUYER FOR THE PERFORMANCE OF SERVICES ("SERVICES") AND THE SALE OF HARDWARE, SOFTWARE, FIRMWARE AND/OR OTHER PRODUCTS ("GOODS"), EACH AS PARTICULARLY DESCRIBED IN THE PROPOSAL. BY ACCEPTING THIS AGREEMENT WITHIN THE REQUISITE TIME PERIOD, BUYER AGREES TO ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. TO THE EXTENT BUYER'S PURCHASE ORDER OR ANY OTHER STATEMENT OF BUYER CONTAINS ANY TERMS OR CONDITIONS IN ADDITION TO OR DIFFERENT FROM THE TERMS OF THIS AGREEMENT, SUCH TERMS AND CONDITIONS ARE HEREBY REJECTED BY NOVASPECT AND HEREBY WAIVED BY BUYER AND SUCH TERMS AND CONDITIONS SHALL NOT AFFECT THIS AGREEMENT NOR BE BINDING UPON NOVASPECT ABSENT AN EXPRESS WRITTEN STATEMENT BY NOVASPECT TO THE CONTRARY. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES WITH RESPECT TO THE SERVICES AND THE DELIVERY OF THE GOODS AND SUPERSEDES ANY OTHER NEGOTIATIONS, AGREEMENTS AND REPRESENTATIONS BETWEEN THE PARTIES, WRITTEN OR ORAL. NO MODIFICATION OF THIS AGREEMENT SHALL BE OF ANY FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY NOVASPECT. IN THE EVENT OF ANY CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND THE PROPOSAL, THE TERMS OF THE PROPOSAL SHALL GOVERN. IN THE EVENT OF ANY CONFLICT BETWEEN ANY CHANGE ORDER AND THESE TERMS AND CONDITIONS OR THE PROPOSAL, THE TERMS OF THE CHANGE ORDER SHALL GOVERN.
2. **AGREEMENT TO MAKE PAYMENT.** Buyer shall pay to Novaspect the fees and purchase prices set forth in the Proposal, as increased or decreased pursuant to any adjustments set forth in any Change Orders (the "Payments"). Any Goods ordered other than those specifically set forth in the Proposal, including additional copies of data/documentation or non-standard data/documentation, shall be priced at Novaspect's prices then in effect.
3. **INVOICES: METHOD OF PAYMENT.** Novaspect shall issue an invoice to Buyer (an "Invoice") each month for the amount due Novaspect, as determined pursuant to the terms of the Proposal. Buyer shall pay to Novaspect the amount set forth in each invoice within 30 days of receipt of such Invoice. Any amount, which is not paid when due shall bear interest at the rate of 1.5% per month or portion thereof from the date such amount, became due through the date on which payment is received by Novaspect. All payments shall be made without deduction or setoff to Novaspect at the address set forth in the Proposal.
4. **SECURITY.** As security for the purchase price of the Goods, Buyer hereby grants and conveys to Novaspect a purchase money security interest in the Goods. Buyer shall, upon request of Novaspect, sign any financing statements and other instruments requested by Novaspect and shall otherwise cooperate with Novaspect in any manner deemed necessary to evidence, perfect or continue such security interest. The security interest granted to Novaspect shall be terminated only upon payment in full for the Goods.
5. **SCHEDULING.** Buyer understands that any product design services to be performed by Novaspect are unique, extremely complex and involve a great degree of Buyer/Novaspect interaction. The schedule for completion of the Services and delivery of the Goods set forth in the Proposal is a good faith estimate of Novaspect. The time actually required to complete the Services and deliver the Goods will be subject to Buyer availability, Buyer's timely delivery of information described in the Proposal or otherwise requested by Novaspect, the accuracy of such information, unforeseen design issues, design changes and modifications requested by Buyer pursuant to Change Orders, and other matters which generally effect product choice or product design services. Novaspect shall use all commercially reasonable efforts to meet all schedules set forth in the Proposal. Novaspect shall have no liability to Buyer or any other party for any loss or damage arising out of any Service or Good, which is provided later than designated in the Proposal.
6. **DELIVERIES.** Novaspect shall deliver to Buyer the Goods described in the Proposal. All deliveries from Novaspect to Buyer shall be F.O.B. shipping point and title and risk of loss with respect to such deliveries shall pass to Buyer upon delivery to Buyer or representatives of Buyer including, but not limited to, any common or contract carrier, bailee, agent, or employee of Buyer. If Buyer does not accept such F.O.B. delivery, Buyer shall be responsible for all storage charges and other expenses incurred in handling and moving the Goods. Buyer shall pay transit insurance, packaging, handling, shipping and carrier costs associated with the Goods and all sales, use, excise and other taxes levied upon the Goods. Buyer's sole remedy for lost Goods, damage caused during shipment or any delay attributable to shipment shall be an action against the carrier. Buyer agrees to hold Novaspect harmless against any and all penalties, claims, demands, losses, causes of action, suits, judgments, costs and expenses, including reasonable attorneys' and paralegals' fees, of whatever nature arising out of or in connection with the shipment or storage of Goods. Novaspect reserves the right to withhold any and all deliveries in the event Buyer fails to pay any invoice in accordance with its terms or in the event Novaspect has reason to believe Buyer does not have the financial ability to pay any future invoice when due.
7. **CHANGE ORDERS.** In the event that Buyer requests any modifications to the Services or to the type or number of Goods, Novaspect shall, if commercially reasonable, prepare and deliver to Buyer a Change Order Proposal describing such modifications and the changes in the Services and/or Goods necessary to effect such modifications (a "Change Order"). The Change Order will also set forth the additional Payments, if any, and the basis upon which additional Payments will be computed and an estimate of the revised schedule for completion of the Services and delivery of the Goods. After receipt of a Buyer request, verbal or written, for modifications to the Services or to the type or number of Goods, Novaspect may elect not to continue or complete the Services or deliver Goods until Novaspect receives a written authorization to proceed with the additional scope of work. The execution of the written authorization required hereunder by Buyer shall constitute authorization from Buyer for Novaspect to proceed with the Services and delivery of the Goods as modified by the Change Order and Buyer's consent to the increase or decrease in the Payments and the revised schedule set forth in the Change Order.
8. **TERMINATION.** Buyer may, by written notice to Novaspect (a "Termination Notice"), terminate its order for Goods and Services or any portion thereof at any time. Notwithstanding the "Notices" provision hereof, a Termination Notice shall not be effective until actually received by Novaspect (the "Termination Date"). Novaspect shall cease performance of the Services and delivery of the Goods as soon as is reasonably possible following receipt of a Termination Notice. Within 15 days after receipt of a final invoice, Buyer shall pay to Novaspect that portion of the Payments allocated to Services performed through the Termination Date, as determined by Novaspect, plus all expenses and non-cancelable commitments incurred by Novaspect prior to or in connection with such termination including, without limitation, the cost of all Goods and all processing, handling and fabrication costs incurred in connection with the Goods (collectively, the "Termination Payment"). Novaspect shall prepare a final invoice with respect to the Termination Payment as soon as is practicable following receipt of a Termination Notice.
9. **INDEMNIFICATION.**
 - (a) Novaspect hereby agrees to indemnify and hold Buyer harmless from and against penalties, claims, demands, losses, causes of action, suits, judgments, costs and expenses, including reasonable attorneys' and paralegals' fees from (i) the injury or death of any employee, contractor, subcontractor, agent of or other person acting on behalf of or otherwise engaged by Novaspect (a "Novaspect Representative") caused by the negligent act or omission of a Novaspect Representative; and (ii) the injury or death of any person other than a Novaspect Representative caused by the negligent act or omission of a Novaspect Representative; provided however, Novaspect's liability set forth in the preceding clause (ii) shall be limited to the proportionate share of liability caused by the Novaspect Representative vis-a-vis all other parties contributing to the cause of such injury, sickness or death and (iii) any third party claim that the Buyer's use of the Goods or Services as permitted hereunder infringes any United States patent, copyright, trade secret or other intellectual property right. Except for any claim under section 9(a)(iii), in no event shall Novaspect's liability under this paragraph exceed the amount of \$1,000,000.00.
 - (b) Novaspect hereby agrees to indemnify and hold Buyer harmless from and against penalties, claims, demands, losses, causes of action, suits, judgments, costs and expenses, including reasonable attorneys' and paralegals' fees from the damage to or destruction of property caused by the negligent act or omission of a Novaspect Representative in providing the Services. In no event shall Novaspect's liability under this paragraph exceed the amount of \$1,000,000.00.
 - (c) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, BUYER AGREES THAT NOVASPECT SHALL NOT BE LIABLE TO BUYER FOR ANY DELAY IN PERFORMANCE (UNLESS SPECIFICALLY DEFINED IN THE PURCHASE ORDER'S SCOPE OF WORK SECTION) NOR SHALL NOVASPECT'S LIABILITY IN ANY EVENT EXTEND TO INCLUDE INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES WHETHER OR NOT NOVASPECT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH CLAIM INCLUDING, WITHOUT LIMITATION, LOSS OF TIME, LOSS OF USE, OR LOSS OF ANTICIPATED PROFITS OR REVENUE.
 - (d) Buyer hereby agrees to indemnify and hold Novaspect harmless from and against any and all penalties, claims, demands, losses, causes of action, suits, judgments, costs and expenses, including reasonable attorneys' and paralegals' fees, of whatever nature arising from (i) the failure of Buyer to keep, perform and observe its obligations hereunder; (ii) any injury, sickness or death of a person other than a Novaspect Representative or damage to property to the extent caused by the negligent act of the Buyer and not caused by the negligent act or omission of a Novaspect Representative; (iii) any injury, sickness or death of a Novaspect Representative caused by the negligent act of the Buyer and not caused by the negligent act or omission of a Novaspect Representative; (iv) the failure of Buyer to comply with and observe all present and future laws, orders, codes, regulations, ordinances, rules and decrees of each governmental agency or instrumentality which may be applicable to the Goods or Buyer's business; (v) any actual or alleged infringement of any third party's intellectual property rights to the extent arising from designs, design information, specifications, processes or formulas supplied by Buyer;

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and (vi) specifications, design information, processes or other information or representation supplied or made by Buyer which proves to be inaccurate or which was not supplied by Buyer but should have been under the circumstances.

10. LIMITED WARRANTY.

- (a) Novaspect warrants that the Goods shall be fit for the purpose intended provided such purpose has been communicated to Novaspect by Buyer and provided (i) Novaspect has not indicated in a writing delivered to Buyer that it disagrees with Buyer's selection of any such Goods or (ii) the purpose intended has not been affected by (A) improper handling, storage or installation by a person other than a Novaspect Representative, (B) deterioration, corrosion or other adverse affect to the Goods arising from exposure to chemicals, fumes or other environmental variants not known to Novaspect, (C) specifications, design information, under the circumstances, (D) any alterations or repairs not approved by Novaspect or any accident affecting the Goods not caused by a Novaspect Representative or (E) abuse or improper use or maintenance of the Goods. Novaspect's Representatives' oral statements do not constitute warranties and should not be relied upon by Buyer as such. All warranty claims for the particular purpose intended shall be deemed unconditionally waived by Buyer unless Buyer shall notify Novaspect in writing of such alleged breach within one year of delivery of the Goods. Buyer shall afford Novaspect prompt and reasonable opportunity to inspect all Goods as to which any breach of warranty claim is made hereunder. If the requisite notice is provided and the Goods are not fit for Buyer's intended purpose, Novaspect will either replace or repair the Goods or adjust the matter fairly and promptly, but under no circumstances shall Novaspect be liable for any delay in performance nor shall Novaspect's liability in any event extend to include incidental, special, exemplary, consequential or punitive damages whether or not Novaspect has been previously advised of the possibility of such claim including, without limitation, loss of time, loss of use, or loss of anticipated profits or revenue. In no event shall Novaspect's liability under this paragraph exceed the amount of \$1,000,000.00.
- (b) EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH (A) ABOVE, (i) NOVASPECT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY; AND (ii) BUYER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE WARRANTIES, IF ANY, OF THE ORIGINAL EQUIPMENT MANUFACTURER(S) OF THE GOODS.

11. DEFAULTS. In the event that Buyer fails to pay all or any portion of the Payments when the same is due and payable or is otherwise in default of any of its covenants hereunder or fails to comply with any of the terms or conditions hereof, or, in Novaspect's reasonable opinion, Buyer's ability to make timely Payments hereunder is impaired, or Buyer becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or bankruptcy, reorganization, arrangement or insolvency proceeding or other proceedings for any relief under any bankruptcy or similar law for the relief of debtors are instituted by or against Buyer, then in any such event Novaspect may, (a) terminate and cancel this Agreement forthwith upon written notice to Buyer, (b) require cash payment, satisfactory security, and/or other assurances before providing further Services and Goods, (c) declare the Termination Payment and all other sums payable to Novaspect hereunder to be immediately due and payable whereupon such amount shall forthwith become immediately due and payable to Novaspect, (d) if full payment for the Goods has not been received, enter upon Buyer's premises or any other place where the Goods are located and repossess all of the Goods without notice, hearing, court order or further process of law and otherwise exercise any rights as a secured party under the Uniform Commercial Code and/or (e) pursue any other remedy available to Novaspect at law or in equity.

12. RETURN. Novaspect shall not accept return of the Goods unless it notifies Buyer in writing to the contrary. In the event Novaspect accepts return of the Goods, neither transportation charges for the return of Goods nor any other costs or charges incurred in connection therewith shall be paid by Novaspect unless authorized in advance by Novaspect.

13. SAFETY WARNINGS/COMPLIANCE WITH LAWS. Buyer accepts and assumes all liability and responsibility for all safety warnings in connection with the Goods and for compliance of the Goods with all federal, state and local laws.

14. INSTALLATION. Buyer shall be responsible for receiving, storing, installing, starting up and maintaining the Goods (unless specifically defined in the purchase order's scope of work section). If requested by Buyer, Novaspect shall provide a quotation for services to assist Buyer in these functions.

15. BUYER SUPPLIED DATA. Notwithstanding anything contained herein, to the extent that Novaspect has relied upon any specifications, information or representation of Buyer, whether relating to the operating conditions of Buyer or any other state of affairs impacting the selection or design of the Goods, the provision of the Services or the preparation of the Proposal, which specification, information or representation proves to be inaccurate, Novaspect shall have no liability to Buyer or persons claiming under Buyer resulting from such inaccuracy. In the event of such inaccuracy, Novaspect and Buyer shall modify the Services and/or the selection of the Goods to accommodate the true state of affairs and shall modify the Proposal accordingly including, without limitation, adjusting the Payments and re-establishing time deadlines.

16. SOFTWARE AND COMPUTER PROGRAMS. Buyer acknowledges and agrees that Buyer's right to use any software or firmware constituting part of the Goods shall be governed by, and subject to the conditions of, a separate software license agreement. Buyer acknowledges and agrees that all title to the software or firmware constituting part of the Goods shall remain vested in the manufacturer of such software or firmware or the licensor thereof and shall be furnished to and used by Buyer only after execution of, and subject to, such separate license agreement. Buyer's sole and exclusive remedy with respect to any software or firmware provided hereunder shall be limited to the warranties, if any, of the manufacturer or licensor of such software or firmware. Buyer shall have no right to alter, modify, copy or prepare derivative works of any software or firmware except in accordance with such license agreement.

17. NON-SOLICITATION: Buyer agrees that during the execution of the Services by Novaspect, and for a period of twelve (12) months after performance of the Services, it will not hire any employee(s) of Novaspect or its project team and will not entice or counsel any such employee(s) to leave Novaspect employ. Buyer agrees that this covenant shall extend to its agents and affiliates. In the event that an employee of Novaspect is hired or leaves the employ of Novaspect in such circumstances, the buyer shall pay Novaspect, as compensation for the cost incurred by Novaspect in recruiting and training the employee, the sum equivalent to six (6) months salary for each employee hired from or leaving the employment of Novaspect.

18. FORCE MAJEURE. Novaspect shall not be liable for any failure to perform resulting from acts of God, war, riot, fire, explosion, accident, flood, sabotage, the shortage of or inability to obtain from anticipated sources adequate materials, components, parts or Goods, or transportation facilities, compliance with governmental requests, law, regulations, orders or actions, the breakage or failure of machinery or apparatus, national defense requirements or any other event beyond the reasonable control of Novaspect; or in the event of labor trouble, strike, lockout or injunction affecting Novaspect or its supplies, suppliers or transporters which event makes impractical the provision of the Services or the manufacture, procurement, transportation, delivery, acceptance or use of the Goods. Novaspect shall give written notice to Buyer with reasonable promptness after the occurrence of any such event.

19. RELATIONSHIP OF PARTIES. The relationship of the parties shall be that of independent contractors and not as partners or joint ventures. Each party is, and is intended to be, engaged in its own and entirely separate business.

20. NOTICES. All notices and other communications given hereunder shall be in writing and deemed to have been given when (i) personally delivered, (ii) one business day after delivery to a nationally recognized overnight courier service, (iii) upon the written confirmation of receipt following the transmission of a telecopy or (iv) three days after being mailed by certified mail, postage prepaid, to the addresses of Novaspect or Buyer as set forth in the Proposal or to such other addresses as either party may request by notice given in accordance with this paragraph.

21. GOVERNING LAW; JURISDICTION AND VENUE/LIMITATION PERIOD. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. NOVASPECT AND BUYER IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT OR ANY DOCUMENT, INSTRUMENT OR TRANSACTION IN CONNECTION HERewith SHALL BE HEARD OR LITIGATED EXCLUSIVELY IN COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO-ROCHESTER, COUNTY OF COOK OLMSTED, STATE OF ILLINOIS MINNESOTA. NOVASPECT AND BUYER CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID CITY, COUNTY AND STATE AND IRREVOCABLY WAIVE ANY RIGHT TO TRANSFER OR CHANGE VENUE OF ANY SUCH ACTION OR PROCEEDING OR OBJECT TO THE JURISDICTION OF ANY SUCH COURT OVER THE PARTIES HERETO. NO ACTION OTHER THAN AN ACTION FOR UNPAID PAYMENTS UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

22. COLLECTION/ENFORCEMENT EXPENSES. In addition to any other amounts due hereunder, Buyer shall reimburse Novaspect for all costs and expenses (including reasonable attorneys' and paralegals' fees and expenses) incurred by Novaspect in collecting any amount due to Novaspect or enforcing any provision of this Agreement. Novaspect shall reimburse Buyer for all costs and expenses (including reasonable attorneys' and paralegals' fees and expenses) incurred by Buyer in collecting any amount due to Buyer or enforcing any provision of this Agreement.

23. GENERAL PROVISIONS. Except as expressly set forth herein, any waiver by any party of its rights under this Agreement shall be in writing and signed by the party waiving such right. The failure of either party to enforce any of the provisions of this Agreement or any rights in respect thereto, or to exercise any election herein provided, shall not waive such provisions, rights or elections or subsequent breaches thereof. No course of dealing shall be deemed to constitute a continuing waiver of any breach or default or right or remedy hereunder. Buyer shall not assign its rights or obligations under this Agreement to any party without Novaspect's prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and permitted assigns. Except as otherwise stated herein, termination of this Agreement shall not release either party from any liability or obligation which has

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therefore accrued and remains to be performed as of the date of such termination. Novaspect shall not assign its rights or obligations under this Agreement to any party without Buyer's prior written consent



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a contract agreement with Emerson Novaspect for

Control System Support Services Plan - Novaspect Proposal #5368

The amount of the agreement to be SEVENTY NINE THOUSAND SIXTY NINE AND NO/100 DOLLARS (\$79,069.00).

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 30th day of June, 2009.

President

Secretary